

COMMON COUNCIL PROCEEDINGS
July 1, 2014

The meeting was called to order at 5:30 PM by Councilwoman-at-large Kiyak followed by the Pledge of Allegiance.

Present: Councilmen Michalski, Rivera, Councilwoman Szukala and Councilwoman-at-large Kiyak.

Also present: Mayor Dolce, City Attorney Szot, City Treasurer Woods, Building Inspector Zurawski, Clerk, Board of Assessors Mleczko, Director of Development Neratko, Personnel Administrator Heyden, Kim Robbins, Fire Chief Ahlstrom and Police Chief Ortolano.

Councilwoman-at-large Kiyak excused Fiscal Affairs Officer Halas from tonight's meeting.

Absent: Councilman Gonzalez and Department of Public Works Director Gugino.

Certification of June 17, 2014 meeting was read by City Clerk Joiner.

RESOLVED: That the reading of the minutes of Tuesday, June 17, 2014 be dispensed with.

Motion by Councilman Rivera to accept the minutes as presented. Seconded by Councilman Michalski.

Carried, all voting aye.

PUBLIC COMMENTS:

No one spoke.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Dolce stated this will be a busy weekend in the City with Music on the Pier scheduled for Thursday, Fireworks display scheduled for Friday and Wreck and Roll scheduled for Saturday and encouraged the public to attend these events.

Mayor Dolce announced the timeline for the Seawall Construction Project stating crews will mobilize on July 20th; demolition of the wall will begin the first week of August and the project is scheduled to be completed within six months.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

Petition from The Resource Center and Filling the Gap, Inc. requesting permission to sell newspapers at City designated intersections on July 9th from 6:00 AM until 10:00 AM. Also, requesting Police assistance from the Dunkirk/Fredonia line from Central Avenue to Washington Park and to use Washington Park to host their Victory Celebration on Friday, July 18th for the "Annual Laurel Run."

Councilwoman-at-large Kiyak advised this organization is seeking approval for three separate requests, therefore, would like Council to approve them separately.

Request to sell newspapers on July 9th between the hours of 6:00 AM and 10:00 AM.

Carried, all voting aye.

Request to hold the annual Jamestown to Dunkirk relay run.

Councilwoman-at-large Kiyak advised a motion to approve contingent on prior proof of appropriate insurance by the sponsor and by all participating vendors or contractors naming the city as additional insured, approval of loudspeaker permit if applicable, and that all city property is left in the same condition as prior to the event was needed and referred this to the Department of Public Works, Police Department, Fire Department and Law Department.

Councilman Rivera moved to approve. Seconded by Councilman Michalski.

Carried, all voting aye.

Request for Victory Park Celebration in Washington Park.

Councilwoman-at-large Kiyak advised a motion to approve contingent on prior proof of appropriate insurance by the sponsor and by all participating vendors or contractors naming the city as additional insured, approval of loudspeaker permit if applicable, and that all city property is left in the same condition as prior to the event was needed and referred this to the Department of Public Works, Police Department, Fire Department and Law Department.

Councilwoman Szukala moved to approve. Seconded by Councilman Rivera.

Carried, all voting aye.

Petition from Cassadaga Job Corps Academy for permission to conduct horse and carriage rides at Point Gratiot on July 31st from 7:00 PM until 9:45 PM for their annual prom.

Councilwoman-at-large Kiyak advised a motion to approve contingent on prior proof of appropriate insurance by the sponsor and by all participating vendors or contractors naming the city as additional insured and that all city property is left in the same condition as prior to the event was needed and referred this to the Department of Public Works, Police Department, Fire Department and Law Department.

Councilwoman Szukala moved to approve. Seconded by Councilman Michalski.

Carried, all voting aye.

Petition from the Dunkirk Chamber of Commerce to allow Peter Wolf Toth to "camp out" in the lot between the Clarion Hotel and Tim Horton's for a period not to exceed ninety days.

Councilwoman Szukala asked Mayor Dolce to explain this petition and asked City Attorney Szot if liability insurance was needed.

Mayor Dolce advised Gina Kron has contacted the original artist, Peter Wolf Toth, he has agreed to either refurbish the current statue or create a new statue. Mr. Toth prefers to work outdoors, a section of the lot has been blocked off, and a tent has been donated; he has a camper and he will have use of the facilities at the Clarion Hotel. Mayor Dolce advised the project should be completed within two to six weeks.

City Attorney Szot advised there are several liability concerns.

Councilwoman Szukala advised it is wonderful that the original artist is willing to come back to the city to repair the statue but wants to make sure the city is protected against any possible liability.

Police Chief Ortolano advised he has spoken with Mr. Kron and Department of Public Works Director Gugino, does not foresee any potential problems, it is a secured area and his department will monitor the area.

Councilwoman-at-large Kiyak advised a motion to approve contingent on prior proof of appropriate insurance by the sponsor or by the individual was needed and referred this to the Department of Public Works, Police Department, Fire Department and Law Department.

Councilwoman Szukala moved to approve. Seconded by Councilman Michalski.

Carried, all voting aye.

Loudspeaker application from Taqueria Mexicana for microphones, speakers and amplifiers at 45 Lake Shore Drive East on July 4th from 5:00 PM until 11:00 PM.

Councilwoman-at-large Kiyak advised this applicant submitted his loudspeaker application late last year, was reprimanded and informed there is a timeframe for submission of these applications; they disregarded the timeframe again this year and asked councilmembers how they wish to proceed with this application.

Councilman Michalski advised he voted no last year due to neighbor's concerns, stated "their house is literally right behind this location, I just felt it was too close to neighborhoods to approve" and advised he will be voting no on this request.

Councilman Rivera asked Police Chief Ortolano to elaborate on this application.

Police Chief Ortolano advised this event has been held for the past four to five years; they get a good crowd, play their music and usually wrap up by 10 or 11 o'clock.

Councilwoman-at-large Kiyak stated "it is difficult, we are bending the rules but we don't necessarily bend them for everyone?"

Mayor Dolce advised this establishment is located in the harborfront district making the music legal.

Councilwoman-at-large Kiyak advised a motion to approve this applications was needed.

Vote on petition:

Ayes: Councilman Rivera, Councilwoman Szukala, Councilwoman-at-large Kiyak.

No: Councilman Michalski.

Carried, 3-1.

Loudspeaker application from Tim Wdowiasz on behalf of the First Ward Falcon Club to use microphones and speakers for a live band at Promenschenkle Stadium on July 18th from 7:00 PM until 11:00 PM.

Councilwoman-at-large Kiyak advised a motion to approve this applications was needed.

Councilwoman Szukala moved to approve this application. Seconded by Councilman Michalski.

Carried, all voting aye.

Loudspeaker application from Henry Hooten for a band and standup comic at 212 Webster Street on July 3rd from 7:00 PM until 9:00 PM.

Councilman Rivera asked if this is the first time this has been done.

Police Chief Ortolano advised Mr. Hooten has done this the past several years, he always submits signatures from his neighbors giving him their permission and there has never been an issue with Mr. Hooten's requests.

Councilwoman-at-large Kiyak advised a motion to approve this applications was needed.

Councilman Rivera moved to approve this application. Seconded by Councilman Michalski.

Carried, all voting aye.

Loudspeaker application from Holy Trinity Church to use loudspeakers and amplifiers on July 19th from 1:00 PM until 5:00 PM for their annual summer parish festival.

Councilwoman-at-large Kiyak advised a motion to approve this applications was needed.

Councilman Rivera moved to approve these applications. Seconded by Councilman Michalski.

Carried, all voting aye.

Notice of Claim from Robert Henderson for damages to his garage and lawn equipment allegedly caused by a ruptured city waterline.

Notice of Claim from Barbara Katta for alleged damages to her vehicle.

Summons and complaint from Miguel Corraliza Sanchez vs. the City of Dunkirk and others.

Councilwoman-at-large Kiyak advised a motion to refer these to the City Attorney was needed.

Councilman Rivera moved to refer this to the City Attorney. Seconded by Councilman Michalski.

Carried, all voting aye.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:

Councilman Michalski asked Department of Development Director Neratko for an update on the AI Tech Cleanup Project.

Department of Development Director Neratko advised he spoke with Maurice Moore from the DEC today, 65 percent of the design work has been completed, bid packages will go out late summer/early fall, the contractor will begin work this fall and completion of this project is scheduled for Spring 2015. Department of Development Director Neratko further advised there has been a one to two month delay in this project due to the weather.

Councilman Rivera advised the next Public Safety Committee Meeting will be held on July 8th at 2:00 PM in the Mayor's Conference Room, thanked Walter Rutland for having him on his show last Wednesday and announced tonight's council meeting is being recorded and will be broadcast on ACCESS 12.

Councilwoman Szukala asked if the 2014 street paving list was complete and will the list be made public.

Mayor Dolce advised he met with Department of Development Director Neratko and CDBG Administrator Nicole Waite, DPW Director Gugino, City Engineer Woodbury and Street Department Supervisor Porpiglia last week regarding the use of Community Development Block Grant funds for designated streets in the city and advised the list is almost finalized and ready to go out to bid. Mayor Dolce stated "we will be topping the streets that we did the hot-in-place on last year and there will be a focus; one of our target areas is Washington Park" and advised the list is always made available to the public.

Councilwoman Szukala advised the next Public Works Meeting will be held on July 14th at 1:45 PM in the Mayor's Conference Room.

Councilwoman Szukala stated the June 1st Marina payment of \$20,000.00 has not been received by the city and asked for an update.

City Attorney Szot advised several notices have been sent to the tenant reminding them of their obligation to pay their rent or be in breach of their lease agreement.

Councilwoman Szukala advised she spoke with the Mayor regarding the disrepair of the seawall behind the Water Filtration Plant and inquired if this could be repaired with funds from the Phase III Consent Order Project.

Councilwoman Szukala advised the Salvation Army is closed due to remodeling and is scheduled to reopen mid-August.

Councilwoman-at-large Kiyak spoke in regard to the disrepair of the seawall behind the Water Filtration Plant and inquired if it would be repaired from funds from the Phase III Consent Order budget (roughly \$500,000.00) or would an additional funding be needed.

City Treasurer Woods advised it would be additional funding, as repairs for that portion of the wall was not budgeted in that Consent Order.

Councilwoman-at-large Kiyak asked Mayor Dolce if he was aware of the serious potholes within the city (Sixth Street and Washington Avenue, Central Avenue by the Big Dipper) and asked if barriers should be placed to prevent people from endangering themselves or their vehicles.

Mayor Dolce advised the city is working on repairing the potholes and stated he has spoken with the city engineer regarding possibly putting up a sign notifying the public that it is upcoming but the city engineer didn't feel that that step was necessary yet.

Councilwoman-at-large Kiyak advised Councilmembers have been receiving numerous calls regarding potholes and asked Mayor Dolce for a list for of streets that will be repaired first and if this list could be published in the newspaper for residents.

Councilwoman-at-large Kiyak was going to inquire with Department of Public Works Director Gugino regarding the Water System Improvements Progress Report as of July 2014 but due to his absence will present this at the next meeting.

Councilwoman-at-large Kiyak advised the next Economic and Development Committee Meeting will be held on July 7th at 1:45 PM in the Mayor's Conference Room.

City Attorney Szot revisited the petition allowing Peter Wolf Toth to camp out in the lot between the Clarion Hotel and Tim Horton's and advised if the sponsor or individual cannot provide appropriate insurance, Mr. Toth should submit an Indemnification Agreement Policy releasing the city of all liability in the event of personal injury to him or damages to his property.

Councilwoman-at-large Kiyak advised a motion to approve contingent on prior proof of appropriate insurance by the sponsor or by the individual or Personal Indemnification Policy was needed and referred this to the Department of Public Works, Police Department, Fire Department and Law Department.

Councilman Michalski moved to approve. Seconded by Councilwoman Szukala.

Carried, all voting aye.

PRE-FILED RESOLUTIONS:

RESOLUTION #55-2014
JULY 1, 2014

BY: COUNCILWOMAN SZUKALA

**AUTHORIZE AGREEMENT FOR INDEPENDENT CONTRACTOR
(New York Main Street Program)**

WHEREAS, the City of Dunkirk, through its Department of Planning & Development (the "Department") has a need for assistance with the previously-awarded New York Main Street Grant program, including but not necessarily limited to the provision of technical and compliance assistance necessary for the administration of the Program; and

WHEREAS, following published Legal Notice, proposals for such services were requested by the Department; and

WHEREAS, Labella Associates, D.P.C. is ready, willing and able to provide such assistance as an independent contractor for the City and the New York Main Street grant includes \$15,000 for such services; now, therefore, be it

RESOLVED, that the Mayor is directed and authorized to execute any and all agreements necessary to engage the services of **LaBella Associates D.P.C.**, 300 Pearl Street, Buffalo, New York 14202, as an independent contractor to provide contracting services and assistance with this Program commencing July 2, 2014, and extending through June 30, 2015, with payment of One Hundred Dollars (\$100.00) per hour with such funds drawn from the Department of Development Contracted Services Account No. 001-8020-4036, with reimbursement drawn from the New York Main Street Program funding.

Councilwoman Szukala asked Department of Development Director Neratko to explain this Resolution.

Department of Development Director Neratko advised \$15,000.00 was set aside in this grant for administrative purposes, no city or taxpayer funds will be used and was told this project could be completed for \$15,000.00.

Councilwoman-at-large Kiyak requested this Resolution be amended with language stating the maximum amount paid would not exceed \$15,000.00.

Councilwoman-at-large Kiyak advised a motion to amend this Resolution was needed.

Councilman Rivera moved to amend this Resolution. Seconded by Councilman Michalski.

Vote to amend Resolution: Carried all voting aye. Resolution amended.

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JULY 1, 2014

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(New York Main Street Program)**

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WHEREAS, following published Legal Notice, proposals for such services were requested by the Department; and

WHEREAS, Labella Associates, D.P.C. is ready, willing and able to provide such assistance as an independent contractor for the City and the New York Main Street grant includes \$15,000 for such services; now, therefore, be it

RESOLVED, that the Mayor is directed and authorized to execute any and all agreements necessary to engage the services of **LaBella Associates D.P.C.**, 300 Pearl Street, Buffalo, New York 14202, as an independent contractor to provide contracting services and assistance with this Program commencing July 2, 2014, and extending through June 30, 2015, with payment of One Hundred Dollars (\$100.00) per hour with such funds drawn from the Department of Development Contracted Services Account No. 001-8020-4036, with reimbursement drawn from the New York Main Street Program funding, at a cost not to exceed \$15,000.

Councilwoman-at-large Kiyak advised a motion to approve this Resolution as amended was needed.

Councilwoman Szukala motioned to vote on Resolution as amended. Seconded by Councilman Michalski.

Vote on Resolution as amended: Carried, all voting aye.

**RESOLUTION #56-2014
JULY 1, 2014**

BY: COUNCILMEMBERS MICHALSKI, GONZALEZ and SZUKALA

**AUTHORIZING BOARDWALK LEASE AGREEMENT TERMINATION/EXTENSION
(Aisling Heenan d/b/a Spike Dailey's)**

WHEREAS, the City of Dunkirk has developed and marketed the **Dunkirk Boardwalk Project** (the "Boardwalk") 8-22 Central Avenue, Dunkirk, New York, to help create and to encourage the vibrancy of the City's harbor district; and

WHEREAS, **Aisling Heenan d/b/a/ Spike Dailey's** ("Heenan") has, under a lease dated December 19, 2011, occupied a portion of the Boardwalk commonly known as Spike Daily's (18 Central Avenue) for an on-premises sales of alcohol to the general

public, which lease runs through April 30, 2015 at an annual blended rental of Three Thousand Three Hundred Sixty Dollars and Zero Cents (\$3,360.00); and

WHEREAS, by Resolution No. 49-2014 (June 3, 2014), the Common Council authorized a two-year lease to Heenan to occupy a portion of the Boardwalk commonly known as 20 Central Avenue for on-and-off premises restaurant sales, which lease runs through May 31, 2016 at an annual rental of Four Thousand Two Hundred Dollars and Zero Cents (\$4,200.00); and

WHEREAS, the City has been requested to modify the lease at 18 Central Avenue, extending the term for one (1) year and increasing the annual rental to Four Thousand Two Hundred Dollars and Zero Cents (\$4,200.00) (with such pro rata increase to take effect July 1, 2014) in order to more appropriately accommodate the kitchen operation of the leasehold at 20 Central Avenue, now, therefore, be it

RESOLVED, that the Mayor, Anthony J. Dolce, is hereby authorized; a) to execute any appropriate documents terminating a certain lease for 18 Central Avenue (expiring May 30, 2015), and b) to execute a lease agreement with **Aisling Heenan d/b/a Spike Dailey's**, Seel Acres, Dunkirk, New York 14048, for rental of 18 Central Avenue, Dunkirk, New York 14048, for the period July 1, 2014 through May 31, 2016, at an annual rental of Four Thousand Two Hundred Dollars and Zero Cents (\$4,200.00).

Councilwoman Szukala asked Mayor Dolce or Department of Development Director Neratko to explain this Resolution.

Mayor Dolce advised the city is terminating Spike Dailey's current lease and proposing a new one that will take effect July 1st with a new dollar amount that is equal to the other new tenants at the Boardwalk and to allow this lease to run concurrent with Mrs. Heenan's other lease due to the shared kitchen. Mayor Dolce advised the Liquor Authority made that request of Mrs. Heenan and she in turn made that request to the city.

Councilwoman-at-large Kiyak stated "at the last council meeting, I voiced concern that the tenant currently leasing 18 Central Avenue was given an unfair advantage in obtaining the lease at 20 Central Avenue, since established protocol for advertising these available spaces was not followed. The lease for 20 Central Avenue was approved by Council for a term of one year, which would allow the City to review the renewal or not at that time. I believe the terms of the lease should stand; therefore, I will be casting a no vote.

Vote on Resolution:

Ayes: Councilman Michalski, Councilman Rivera, Councilwoman Szukala.

No: Councilwoman-at-large Kiyak.

Carried, 3-1.

RESOLUTION #57-2014
JULY 1, 2014

BY: COUNCILWOMAN SZUKALA

**AUTHORIZATION OF A LEASE AGREEMENT
FOR AN OFFICE COPIER AT THE WASTE WATER TREATMENT PLANT**

WHEREAS, the current office copier lease agreement with Xerox, for the Waste Water Treatment Plant is scheduled to expire at the end of August, and

WHEREAS, our current monthly lease payment to Xerox is Ninety-Seven Dollars and Ninety-Seven Cents (\$99.97), and

WHEREAS, after obtaining three (3) quotes from companies: Xerox – 60 month lease at \$99.97 per month; COMDOC – 60 month lease at \$111.00 per month; and Toshiba – 63 month lease at \$90.00 per month; and

WHEREAS, COMDOC, a Xerox Company would like to enter into a sixty (60) month lease agreement for One Hundred Eleven Dollars and Zero Cents (\$111.00) Fixed, now, therefore be it

RESOLVED, that the Mayor is hereby authorized to execute a sixty (60) month lease agreement with COMDOC, a Xerox Company, for an office copier which includes training, labor, service, parts and supplies (except for paper and staples), at a monthly payment of One Hundred Eleven Dollars and Zero Cents (\$111.00), and, be it finally

RESOLVED, that funds for this lease be allocated from budget account #003-8130-4036, Contracted Services.

Councilman Michalski advised there was some concern this should go through a Finance Committee Meeting and stated this was not required as the dollar amount is under the \$10,000.00 Procurement Policy limit; Ms. Robbins from the Waste Water Treatment Plant did provide three different bid quotes and stated he confirmed this with Fiscal Affairs Officer Halas.

Councilwoman-at-large Kiyak advised she is a member of the Finance Committee, requested this be presented at a committee meeting and stated she lost the opportunity for full discussion regarding this matter and does not feel comfortable moving forward at this time regardless of the dollar limit and will be voting no on this resolution.

Councilwoman Szukala advised she has spoken with Ms. Robbins regarding the needs of that department and stated she will vote in favor of this resolution.

Councilwoman-at-large Kiyak stated "I will just reiterate that we did ask for specific details for the same type of copier or machinery in the clerk's office when we did all have an opportunity to discuss it as a group, not individually. It feels like we're making exceptions." Councilwoman-at-large Kiyak advised council should be consistent when making policies and stated she has a problem with the lack of consistency in this

area, not the renewal of a contract and this is why she will be voting no on this Resolution.

Vote on Resolution:

Ayes: Councilman Michalski, Councilman Rivera, Councilwoman Szukala.

No: Councilwoman-at-large Kiyak.

Carried, 3-1.

ADJOURNMENT:

Councilwoman Szukala moved to adjourn. Seconded by Councilman Rivera.

Carried, all voting aye.

Adjourned at 6:07 PM

Nicole Joiner, City Clerk
