



Rochester Hills

Minutes

City Council Regular Meeting

1000 Rochester Hills Dr.
Rochester Hills, MI 48309
(248) 656-4600
Home Page:
www.rochesterhills.org

*J. Martin Brennan, Greg Hooper, Nathan Klomp, Vern Pixley, James Rosen,
Michael Webber and Ravi Yalamanchi*

Vision Statement: The Community of Choice for Families and Business

*Mission Statement: "Our mission is to sustain the City of Rochester Hills as the premier
community of choice to live, work and raise a family by enhancing our vibrant residential
character complemented by an attractive business community."*

Monday, November 8, 2010

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

*President Hooper called the Regular Rochester Hills City Council Meeting to order
at 7:04 p.m. Michigan Time.*

ROLL CALL

Present 7 - J. Martin Brennan, Greg Hooper, Nathan Klomp, Vern Pixley, James Rosen,
Michael Webber and Ravi Yalamanchi

Others Present:

*Bryan Barnett, Mayor
Tara Beatty, Chief Assistant
Dan Casey, Manager of Economic Development
Paul Davis, Acting Director of DPS/Engineering
Derek Delacourt, Deputy Director of Planning
Gerry Lee, Forestry Operations Manager
Jane Leslie, City Clerk
Sresht Rengesh, Rochester Hills Government Youth Council Representative*

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

**A motion was made by Webber, seconded by Pixley, that the Agenda be Approved as
Presented. The motion CARRIED by the following vote:**

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

PUBLIC COMMENT

None.

LEGISLATIVE & ADMINISTRATIVE COMMENTS

Mr. Pixley stated that last weekend at the State Meet, Rochester High School student Brook Handler finished first in the State in Cross Country. Rochester Adams High School student Jamie Morrissey also attained the honor of being named an All-State runner. He reported that Stoney Creek's Girls' Cross Country team placed eleventh at the Meet, while Stoney's Boys' Cross Country Team placed twelfth.

Mr. Brennan reported that the Brookwood Subdivision Make a Difference Day Flea Market raised \$13,300 to be donated to charitable organizations. He congratulated both Rochester High School and Adams High School, noting that this is the first time in twenty years that both football teams have made the Playoffs.

Mr. Klomp expressed his appreciation to everyone who voted in the November 2, 2010 Election. He mentioned that as the holidays are fast approaching, many of the area's charitable organizations are looking for volunteers. He suggested that one organization interested individuals might wish to contact is the Holiday Helpers, noting that information can be found on their website at justlendahand.com.

Mr. Rosen stated that he has received a number of requests from residents asking for the City to provide larger recycle bins and smaller garbage bins.

Mr. Webber commented that he wished to congratulate all student athletes across all school districts, noting that their successes are the result of the time and dedication of both the athletes and their parents.

Sresht Rengesh, Rochester Hills Government Youth Council (RHGYC) Representative, expressed his thanks to everyone who voted in the Election, commenting that RHGYC representatives provided student manpower at several of the City's Precincts. He announced that the RHGYC will participate in the Rochester Hometown Christmas Parade on December 5th, the City's Family Fun Night on December 10th, and Christmas Caroling at a local senior citizen facility. He reported that the group is working on a promotional video. He stated that he wished to give recognition to Avondale High School's athletes, noting their spectacular record for volleyball and football.

Mayor Barnett commended the residents who came out to the polls on Election Day and thanked Clerk Leslie and her election team. He made the following announcements:

- The City's road projects are winding down.
 - * The Tienken Road Bridge is now open.
 - * The Technology Drive Extension to Adams is almost complete, with aesthetic work remaining.
 - * The M-59 Widening Project should be completely open by November 10th. The Sound Wall portion of the project will be completed next year.

- * Auburn Road has been improved substantially.
- * All road projects underway in the City should be ending for the season in the next two weeks.
- The City's Families First Program is evolving into the Communities First Program, with businesses and non-profit organizations now eligible for nomination. The Program is a chance for the City to recognize those who give back to the community.
- The City is collecting donations of new and gently-used coats for the Coats for the Cold Program until November 30th on behalf of the Oakland County Sheriff's Office. Donations can be placed in the bin located in the Lobby of City Hall.
- The City received an award last week as a part of the Keep Michigan Beautiful Program for its substantial contribution to environmental improvement on behalf of the outstanding recycling program.

ATTORNEY MATTERS

None.

PRESENTATIONS

2010-0422 Proclamation in Recognition of Pancreatic Cancer Awareness Month - November 2010

Attachments: [Agenda Summary.pdf](#)
[Proclamation.pdf](#)
[Resolution.pdf](#)

Mayor Barnett read the Proclamation.

Presented.

Whereas, pancreatic cancer is the fourth leading cause of cancer deaths in the United States; and

Whereas, sadly, there is no cure for pancreatic cancer and there have been no significant improvements in early detection, treatment methods, or survival rates in the last 40 years; and

Whereas, when symptoms of pancreatic cancer present themselves, it is usually too late for an optimistic prognosis, and the average life expectancy of those diagnosed with metastasis disease is only three to six months; and

Whereas, the good health and well-being of the residents of Rochester Hills are enhanced as a direct result of increased awareness about pancreatic cancer and research into early detection, causes, and effective treatments; and

Whereas, the Pancreatic Cancer Action Network is the first and only national patient advocacy organization that serves the community in Michigan and nationwide by focusing its efforts on public policy, research funding, patient services, and public awareness and education related to developing effective treatments and a cure for pancreatic cancer; and

Whereas, the Pancreatic Cancer Action Network and its affiliates in Michigan support those patients currently battling pancreatic cancer, as well as to those who have lost their

lives to the disease, and are committed to nothing less than a cure.

Therefore, Be It Resolved, that the Mayor and City Council designate the month of November 2010 as "Pancreatic Cancer Awareness Month" in the City of Rochester Hills.

2010-0454 Presentation of 2010 Community Heart Awards; Suzanne White, presenter

Attachments: [Agenda Summary.pdf](#)

Suzanne White, 1598 Parke, Executive Director of Holiday Helpers, introduced Theresa Mungioli and recognized her efforts in helping with the Holiday Helpers Program this year. She announced that the 2010 Holiday Helpers Program is in memory of Judy Bialk, a dedicated City employee who passed away this year. She introduced the Community Heart Award recipients:

- Meijer Corporation (Adams location)
- Michigan First Credit Union (located within the Meijers at Adams)

Both companies were recognized for their donations to the Holiday Helpers Program, noting that their generosity has taken care of most of the cost of the holiday food basket program.

Meijer Corporation was represented by Mr. Tom Livernois, Store Director, and Mr. Jeffrey Fisher, Assistant Store Manager, for the Adams Road location. Michigan First Credit Union was represented by Ms. Janet Ososki, Senior Vice President of Operations; Mr. Tony Mowers, Branch Manager; and Ms. Cheryl Ryder, Business Development Representative.

Theresa Mungioli, read a resolution from the Holiday Helpers organization recognizing the Community Heart Award recipients.

Presented.

CONSENT AGENDA

All matters under Consent Agenda are considered to be routine and will be enacted by one motion, without discussion. If any Council Member or Citizen requests discussion of an item, it will be removed from Consent Agenda for separate discussion.

2010-0417 2011 Annual Permit for Work on State Highways

Attachments: [Agenda Summary.pdf](#)
[MDOT Annual Permit Ltr.pdf](#)
[Annual Application.pdf](#)
[Resolution.pdf](#)

This Matter was Adopted by Resolution on the Consent Agenda.

Enactment No: RES0244-2010

Resolved, Whereas, the City of Rochester Hills hereinafter referred to as the

"GOVERNMENTAL BODY" periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT" for permits, hereinafter referred to as "PERMIT," to construct, operate, use and /or maintain utility or other facilities, or to conduct other activities, on, over, and under State trunkline right of way at various locations within and adjacent to its corporate limits;

Now therefore, in consideration of the DEPARTMENT granting such PERMIT the GOVERNMENTAL BODY agrees that:

1. It will fulfill all permit requirements and will indemnify, save harmless, represent and defend the State of Michigan, Michigan Transportation Commission, and the DEPARTMENT and all officers, agents, employees and those contracting governmental bodies performing permit activities for the DEPARTMENT according to a maintenance contract:

from any and all claims and losses occurring or resulting to any and all persons, firms, or corporations furnishing or supplying work, services, materials, or supplies to the GOVERNMENTAL BODY as the result of the GOVERNMENTAL BODY's installation, construction, operation, or maintenance activities which are being performed under the terms of the PERMIT on, over, and/or under the State trunkline right of way; and

from any and all claims of every kind of injuries to, or death of, any and all persons, and for loss of or damage to property, and environmental damage or degradation, and from attorney's fees and related costs arising out of, under, or by reason of the GOVERNMENTAL BODY's installation, construction, operation or maintenance activities which are being performed under the terms of the PERMIT on, over, and/or under the state trunkline right of way, except claims resulting from the direct negligence or willful acts of omissions of said DEPARTMENT performing permit activities.

from any and all claims made by any and all persons, firms, or corporations furnishing or supplying materials, supplies, work, or services on, over, and/or under the State trunkline right of way pursuant to an agreement with the State of Michigan, the DEPARTMENT and/or the Michigan Transportation Commission, as a result of the GOVERNMENTAL BODY's failure to move or otherwise relocate its facilities in a timely manner after being requested to do so by the DEPARTMENT.

2. Any work performed for the GOVERNMENTAL BODY by a contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL BODY and not as a contractor or agent of the DEPARTMENT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL BODY. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL BODY, or their subcontractors or any other person not a party to the PERMIT without its specific prior written consent and notwithstanding the issuance of the PERMIT.

3. The GOVERNMENTAL BODY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers,

agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.

4. It will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State trunkline right of way resulting from the installation, construction, operation and/or maintenance of the GOVERNMENTAL BODY's facilities according to a PERMIT issued by the DEPARTMENT.

5. With respect to any activities authorized by PERMIT, when the GOVERNMENTAL BODY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.

6. The incorporation by the DEPARTMENT of this indemnification resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.

7. This indemnification resolution shall continue in force from this date until cancelled by the GOVERNMENTAL BODY or the DEPARTMENT with no less than thirty (30) days prior written notice to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL BODY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

Be It Further Resolved, that the following position(s) are authorized to apply to the Michigan Department of Transportation for the necessary permit to work within State trunkline right of way on behalf of the GOVERNMENTAL BODY.

Paul G. Shumejko, P.E., PTOE -Transportation Engineer
Paul M. Davis, P.E. - Acting DPS Director
Tracey A. Balint P.E. -Project Engineer

2010-0443 Request for Adoption of Resolution authorizing the Mayor or his agents to make application to the Road Commission for Oakland County (RCOC) for the necessary permits for posting road closures and detours for the 2010 Christmas Parade to be held on Sunday, December 5, 2010

Attachments: [Agenda Summary.pdf](#)
[Road Closure Info.pdf](#)
[Resolution.pdf](#)

This Matter was Adopted by Resolution on the Consent Agenda.

Enactment No: RES0245-2010

Whereas, the Cities of Rochester Hills and Rochester jointly host an annual Christmas season parade conducted under the auspices of the Rochester Regional Chamber of Commerce; and

Whereas, the parade route begins on Rochester, south of Tienken Road in the City of

Rochester Hills, and proceeds south along Rochester Road to Third Street in downtown Rochester; and

Whereas, staging this event requires closing certain State and County routes and using others for posted detour routes; and

Whereas, the two cities coordinate parade planning by dividing responsibility for obtaining necessary permits, with the City of Rochester Hills applying to the Road Commission for Oakland County for the detour and the closure of Walton at Livernois, and the City of Rochester applying to the Michigan Department of Transportation for the closure of Rochester Road from E Second Street to Tienken Road.

Resolved, that the Rochester Hills City Council authorizes the Mayor or his agents to make application to the Road Commission for Oakland County for the necessary permits for posting road closures and detours; and

Be It Further Resolved, that the parade detour routes be scheduled for Sunday, December 5, 2010, between the hours of 12:30 p.m. and 4:00 p.m. on Livernois, Avon, Rochester, and Tienken Roads; and

Now, Therefore, Be It Resolved, that the City of Rochester Hills will faithfully fulfill all permit requirements, and shall save harmless, indemnify, defend, and represent the Board of County Road Commissioners against any and all claims for bodily injury or property damage, or any other claim arising out of or related to operations authorized by such permit(s) as issued; and

Be It Further Resolved, that a certified copy of this Resolution be filed with the City Clerk of Rochester Hills, Oakland County, Michigan and with the Road Commission for Oakland County, Waterford, Oakland County, Michigan.

Passed the Consent Agenda

A motion was made by Webber, seconded by Pixley, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

ORDINANCE FOR ADOPTION

2009-0437 Acceptance for Second Reading - an Ordinance to amend Sections 118-98 and Map 118-B of Chapter 118, Historical Preservation, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to eliminate the noncontiguous Historic District identified as 2371 S. Livernois, Parcel No. 15-27-151-003, and repeal conflicting Ordinances

Attachments: [Agenda Summary.pdf](#)
[Ordinance Amendment.pdf](#)
[101810 Agenda Summary.pdf](#)
[Suppl Noncontiguous District Map - Elim 2371.pdf](#)
[HDSC Final Report 090910.pdf](#)
[SHPO Comments 082710.pdf](#)
[Minutes HDSC 090910.pdf](#)
[Minutes HDSC 081210.pdf](#)
[2002 Survey Sheets.pdf](#)
[1978 Survey Sheets.pdf](#)
[Letter Mangla 082410.pdf](#)
[Memo HDSC Actions Taken 080410.pdf](#)
[Email SHPO 073010.pdf](#)
[Minutes HDSC 051310.pdf](#)
[Letter Mangla 051210.pdf](#)
[Memo HDSC 050710.pdf](#)
[Minutes CC 041210.pdf](#)
[041210 Resolution.pdf](#)
[041210 Agenda Summary.pdf](#)
[Minutes HDSC 031110.pdf](#)
[Memo HDSC Actions Taken 030310.pdf](#)
[Letter Kidorf 020810.pdf](#)
[Motion CC 102609.pdf](#)
[Minutes CC 102609.pdf](#)
[Minutes HDSC 011410.pdf](#)
[Minutes HDSC 111209.pdf](#)
[Preliminary Report 2371 S. Livernois.pdf](#)
[Request to Delist 101309.pdf](#)
[City Visions Report 100509.pdf](#)
[Title Insurance 092809.pdf](#)
[Museum Documentation.pdf](#)
[Minutes HDSC 111104.pdf](#)
[Minutes PC 011805.pdf](#)
[Memo HDSC 110309.pdf](#)
[102609 Agenda Summary.pdf](#)
[102609 Resolution.pdf](#)
[101810 Resolution.pdf](#)
[Resolution.pdf](#)

A motion was made by Yalamanchi, seconded by Pixley, that this matter be Accepted for Second Reading and Adoption by Resolution. The motion CARRIED by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

Enactment No: RES0246-2010

Resolved, that an Ordinance to amend Sections 118-98 and Map 118-B of Chapter 118, Historical Preservation, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to eliminate the noncontiguous Historic District identified as 2371 S. Livernois, Parcel No. 15-27-151-003, and repeal conflicting Ordinances is hereby accepted for Second Reading and Adoption, and shall become effective on Friday, November 19, 2010, the day following its publication in the Rochester Post on Thursday, November 18, 2010.

NOMINATIONS/APPOINTMENTS

- 2010-0432 Request to Confirm the Mayor's reappointments of Stephen McGarry and Stephanie Morita, and the appointment of Del Stanley to the Brownfield Redevelopment Authority for three (3) year terms to expire on November 13, 2013

Attachments: [Agenda Summary.pdf](#)
[McGarry CQ.pdf](#)
[Morita CQ.pdf](#)
[Stanley CQ.pdf](#)
[Resolution.pdf](#)

Mr. Webber mentioned that as the Council Liaison to the Brownfield Redevelopment Authority (BRA), he has had the pleasure of working with Mr. McGarry and Ms. Morita and commented that both individuals certainly represent the community well. He stated that he looks forward to working with Mr. Stanley on the BRA.

A motion was made by Yalamanchi, seconded by Brennan, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

Enactment No: RES0247-2010

Resolved, that the Rochester Hills City Council confirms the Mayor's reappointments of Stephen McGarry and Stephanie Morita, and the appointment of Del Stanley to the Brownfield Redevelopment Authority for three (3) year terms to expire on November 13, 2013.

NEW BUSINESS

- 2010-0446 Request for a Transfer of Class C License from Maximum Management, Inc. (Bourbon Jake's), located at 1711 E. Auburn Road to David Dedvukaj Investments, LLC (Fresco Wood Oven Pizzeria) located at 1218 Walton Blvd., and to transfer the classification to a Tavern License

Attachments: [Agenda Summary.pdf](#)
[Application.pdf](#)
[Resolution.pdf](#)

In attendance for the applicant were Ms. Lisa Hamameh, Attorney for Adkison, Need & Allen, PLLC, and Mr. David Dedvukaj, representative of David Dedvukaj Investment, LLC.

Mr. Yalamanchi questioned whether the request was for a straight transfer of the existing liquor license.

Mr. Klomp noted that the request is for a Tavern License.

Ms. Hamameh noted that a Tavern License encompasses the sale of beer and wine only. While the license purchased included a dance/entertainment permit and Sunday sales, the applicant is not requesting those provisions be included.

Mr. Webber questioned whether the applicant would have the ability to activate the dance/entertainment or Sunday sales portion of the license at a future date.

Ms. Hamameh responded that the license would have to be reclassified as a Class C License in the future, and this could not be done without City Council approval.

A motion was made by Yalamanchi, seconded by Webber, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

Enactment No: RES0248-2010

Resolved, that the request to transfer ownership of 2010 Class C licensed business, located at 1711 E. Auburn, Rochester Hills, Michigan 48307, Oakland County from Maximum Management, Inc. to David Dedvukaj Investments, LLC; transfer location to 1218 Walton, Rochester Hills, Michigan 48307, Oakland County; and transfer the classification to a Tavern License be considered for approval.

2010-0450 Request to Accept the Entertainment Permit Agreement between the City of Rochester Hills and Northstar Theater Partners, LLC, 200 Barclay Circle, Rochester Hills, Michigan

Attachments: [Agenda Summary.pdf](#)
[Entertainment Permit Agreement.pdf](#)
[What Each Rating Means.pdf](#)
[Edwards Ltr 083110.pdf](#)
[Resolution.pdf](#)

*In attendance for the Applicant were **Mr. Paul Glantz**, Manager, Northstar Theater Partners, LLC; **Mr. Scott Edwards**, Attorney for Carlin, Edwards, Brown & Howe, PLLC; and **Mr. Jon Goldstein**, General Partner, Northstar Theater Partners, LLC.*

Mr. Edwards stated that the proposed Entertainment Agreement was drafted with input from City Attorney John Staran and is tailored to the theater location.

Mr. Rosen questioned whether the Agreement contains a provision that the theater will not show NC-17 rated movies.

Mr. Edwards confirmed that NC-17 movies will not be shown.

Mr. Webber thanked the applicants for their investment in the City, noting that the Emagine brand name brings a lot of excitement.

President Hooper requested the applicants provide a brief synopsis of the improvements being made and questioned what the price-point will be for tickets.

Mr. Glantz responded that a substantial capital investment is being made to the theater, including the installation of stadium seating, modern sound systems and 100-percent digital projection capabilities throughout the venue. He noted that screen sizes will be expanded as well, and some of the larger auditoriums will be excavated to improve sight lines. The lobby is being extensively renovated,

with new restrooms and the installation of equipment for high-quality food products, including a woodburning pizza oven. Each auditorium will feature a luxury seating area, including high-back leather rocking chairs with tables between every two seats. He stated that pricing will be competitive for the market, with the luxury seating areas commanding a \$2.50 surcharge, of which \$1.50 will go to the film companies. The standard seating areas will feature velour seats and 48-inch row spacing to expand comfort. He noted that the former Star Theater featured a configuration for approximately 3,200 seats, while the new theater will have 1,900 seats.

Mr. Pixley questioned how many people the theater will employ.

Mr. Goldstein responded that up to 75 people will be employed, including part-time help.

Mayor Barnett commented that Emagine is making a multi-million dollar investment in the facility and noted that the company wishes to be a contributing member of the community in working with charitable organizations. He questioned whether the theater has a projected opening date.

Mr. Glantz responded that substantial work is ongoing and stated that the City's Building Department has been very accommodating in allowing construction to move forward with partial plans. He mentioned a possible opening date between December 10th to December 17th, and stated that plans are underway for a December 21st benefit for local charities.

A motion was made by Webber, seconded by Pixley, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

Enactment No: RES0249-2010

Whereas, the Rochester Hills City Council accepts the Entertainment Permit Agreement between the City of Rochester Hills and Northstar Theater Partners, LLC, 200 Barclay Circle, Rochester Hills, Michigan.

Now, Therefore, Be It Resolved, that the Mayor and the City Clerk are hereby authorized to execute and deliver the agreement on behalf of the City.

2010-0451 Request to Transfer ownership of an escrowed 2010 Class C License with Entertainment Permit located at 449 N. Main, Milford, Michigan from SOC Group, Inc. to Northstar Theater Partners, LLC, located at 200 Barclay Circle, Rochester Hills, Michigan

Attachments: [Agenda Summary.pdf](#)
[Application.pdf](#)
[Resolution.pdf](#)

A motion was made by Yalamanchi, seconded by Brennan, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

Enactment No: RES0250-2010

Resolved, that the request to transfer ownership of an escrowed 2010 Class C licensed business with Entertainment Permit, located at 449 N. Main, Milford, Michigan 48381, Oakland County from SOC Group, Inc. to Northstar Theater Partners, LLC; transfer location (governmental unit) under MCL 436.1531(1) to Hampton Village Shopping Center, 200 Barclay Circle, Store #FS1, Rochester Hills, Michigan 48307, Oakland County; and request new official permit (entertainment) for weekdays, 2:30 a.m. to 7:00 a.m. and Sundays 2:30 a.m. to 12:00 p.m.

2010-0447 Request to Schedule a Public Hearing to consider a PA 328 Tax Exemption for Bright Automotive

Attachments: [Agenda Summary Exemption Approval.pdf](#)
[Bright_PA328_Application.pdf](#)
[Bright Analysis 5 Years.pdf](#)
[Agenda Summary.pdf](#)
[Resolution.pdf](#)

Dan Casey, Manager of Economic Development, stated that Bright Automotive is proposing to locate a technical center in Rochester Hills. He explained that the company has applied to the State for Michigan Environmental Growth Authority (MEGA) tax credits, and approval by the MEGA Board is expected to occur next week. As MEGA tax credits require a local match, Council will have an opportunity to review the proposed project and investment at the Public Hearing, if approved, on November 22, 2010.

He stated that the exemption requested is a two-year Public Act 328 (PA 328) Tax Exemption, which is a personal property tax exemption. He noted that prior to 2008, the City was not eligible to approve PA 328 Exemptions, as this type of exemption was reserved for core or distressed communities, or those on the fringes of a distressed community, to be used as a redevelopment tool. A 2008 amendment to PA 328 extended the option for MEGA projects to any community in Michigan.

He explained that PA 328 Exemptions only apply to new equipment, and not to that which is transferred, used or sold through a brokerage. The project must be located in an eligible district, which could be an Industrial Development District, Brownfield Authority District, or a Local Development Finance Authority (LDFA) District. Renaissance Zones are also eligible locations for projects. The proposed project is located within the LDFA District and the requested abatement will be 100 percent exemption of tax on the eligible equipment only, not the real property. City Council makes a decision on the abatement on behalf of all jurisdictions. He commented that PA 328 requires City Council to afford the other taxing jurisdictions the opportunity to comment at the Public Hearing and noted that unlike other notices, the Public Hearing Notice is not required to be published in the paper.

He stated that the term of the abatement is typically negotiated between the community and the company. The company has requested the PA 328 exemption, and is proposing a five-year lease with an extension of five years. The Administration is recommending the PA 328 Abatement be considered for a period of no more than two years. He explained the differences between a PA 198 exemption and a PA 328 exemption, noting that during the first five years of

abatement, the PA 328 abatement will cost a little more to all taxing jurisdictions than a PA 198 exemption would. Upon renewal of the lease, however, the PA 328 abatement would become a benefit to the City in the sixth year.

President Hooper requested information on the proposed project's location and what type of personal property will be brought into the facility.

Mr. Yalamanchi questioned whether the project would encompass research and offices.

Mr. Casey responded that the proposed project is located in University Technology Park, next to Borg Warner and Volkswagen's building, with primarily engineering facilities and some sales in the headquarters. The firm is relocating from Indiana to a building that has been vacant for a little more than a year. Originally constructed as a 63,000 square foot call center for Chrysler, Chrysler's lease was thrown out during bankruptcy proceedings and the company left the facility. He mentioned that the equipment proposed is primarily computers and software, and the proposed investment is approximately \$12 million over a five-year period. He explained that the majority of the investment will not fall under the PA 328 abatement.

A motion was made by Yalamanchi, seconded by Webber, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

Enactment No: RES0251-2010

Whereas, Bright Automotive is requesting that City Council approve a tax exemption of its personal property for a period of two years under PA 328, the General Property Tax Act, for property to be located at 3851 Hamlin Road, also known as Tax Parcel No. 15-30-103-002, and further described as:

T3N, R11E, SEC 30 PART OF NW 1/4 BEG AT PT DIST N 00-02-21 E 316 FT & N 00-10-40 W 687.43 FT & N 84-49-37 E 228.56 FT FROM W 1/4 COR, TH ALG CURVE CONCAVE ELY, RAD 849.12 FT, CHORD BEARS N 37-38-05 E 730.68 FT, DIST OF 755.34 FT, TH N 26-52-52 W 30 FT, TH ALG CURV CONCAVE SELY, RAD 879.12 FT, CHORD BEARS N 76-31-46 E 408.24 FT, DIST OF 412 FT, TH N 89-58-13 E 285.85 FT, TH S 45-00-59 E 176.82 FT, TH S 00-01-47 E 45.51 FT, TH S 20-33-07 W 295.77 FT, TH S 61-42-54 W 295.77 FT, TH S 82-38-57 W 883.55 FT TO BEG EXC BEG AT PT DIST N 00-02-21 E 316 FT & N 00-10-40 W 687.43 FT & N 84-49-37 E 228.56 FT & N 82-38-57 E 883.55 FT & N 61-42-54 E 295.77 FT & N 20-33-07 E 295.77 FT & N 00-01-47 W 45.51 FT & N 44-01-47 W 126.97 FT FROM W 1/4 COR, TH ALG CURVE TO LEFT, RAD 1963 FT, CHORD BEARS S 84-33-37 W 182.29 FT, DIST OF 182.35 FT, TH S 81-55-56 W 67.73 FT, TH N 80-47-39 E 162.39 FT, TH ALG CURVE RIGHT, RAD 917.93 FT, CHORD BEARS N 83-19-29 E 80.52 FT, DIST OF 80.55 FT, TH S 44-01-47 E 11.87 FT TO BEG 13.06 A 7-27-09 FR 001; and

Whereas, Public Act 328, of 1998, as amended, requires that the City Assessor and taxing jurisdictions be afforded an opportunity to be heard at a public hearing.

Resolved, that the Rochester Hills City Council hereby schedules the Public Hearing for City Council's Regular Meeting of November 22, 2010; and

Be It Finally Resolved, to send a certified copy of the notice to all taxing jurisdictions and

the City's Assessor no later than Monday, November 15, 2010.

- 2010-0445** Request for Approval of a transfer of employment for Ovonyx Technologies, Inc. located at 2956 Waterview Drive

Attachments: [Agenda Summary.pdf](#)
[Ovonyx Relocation Ltr.pdf](#)
[Resolution.pdf](#)

Dan Casey, Manager of Economic Development, stated that this tax abatement was requested by Ovonyx Technologies and granted by City Council in 2007. He explained that at the time, Ovonyx was a spin-off of Energy Conversion Devices (ECD) and City Council granted the abatement for six years. He noted that the original abatement application cited the retention of 22 jobs and the creation of 10 new positions in addition to the investment amount. Based on reports filed with the City every year since the abatement began, 22 positions were retained and two of the ten new positions were created. He pointed out that the period of time for job creation has not yet expired. He mentioned that Ovonyx was co-located in ECD's headquarters where ECD had significant laboratory equipment that Ovonyx needed; however, they had no control of ECD's lease arrangement with the building owner. He reported that ECD has chosen not to renew its lease, which expires at the end of this year. ECD will be relocating two of the three facilities the company has in Rochester Hills, keeping a research and development facility on the same street.

At the time that the abatement was approved, because Ovonyx did not have control of the lease for the facility, a condition in the original Development Agreement was included which stated that the City has the ability to agree to transfer the Industrial Facilities Exemption Certificate (IFT) for Ovonyx to another facility in Rochester Hills, should it become necessary. The Development Agreement also states that company would be allowed to move outside of the community with City Council's blessing, if they had demonstrated a reasonable effort to remain in Rochester Hills. He stated that Ovonyx has notified the City that it intends to relocate outside of Rochester Hills, moving a portion of its operations to a facility at Wayne State University and a portion to a location in Troy. Taxes which were abated on this IFT to date were \$49,000 for all jurisdictions; and the City's portion was \$17,000. He commented that a representative for Ovonyx was in attendance to review the company's efforts to remain in Rochester Hills and how the decision was made to relocate to other communities.

Karen Connolly, Chief Financial Officer, Ovonyx, Inc., stated that the company was appreciative of the tax abatement that was approved. She commented that Ovonyx was founded ten years ago in Rochester Hills and is still in a development stage. She noted that the product's long development path includes ECD semiconductor memory technology and is still not to a stage of commercialization, with no products in the market currently using the technology. She explained that funding operations is challenging and cash flow must be managed very carefully. She stated that the firm currently has a \$3 million burn rate; and noted that since receiving the abatement, the firm has gone through two cost reductions including a reduction of employees. She stated that in the past three years, the company has gone from 35 employees to only 15, with ten employees remaining in Michigan. She commented that while the company has been unable to meet job creation or retention expectations, Ovonyx is pleased to still be in business.

She explained that this new type of semiconductor memory technology includes the manufacturing of silicon wafer devices and requires very specific fabrication facilities, and ECD's decision not to renew its lease has a significant impact on Ovonyx's operations. She reported that Ovonyx explored taking over the entire lease on the building; however, the 50,000 square foot facility was far too large, as Ovonyx currently occupies less than 5,000 square feet. She explained that it was cost-prohibitive for a company still in development stage to consider a facility four-to five-times larger than needed. A potential co-tenant relationship was explored as well; however, while initially promising, that company determined it was not feasible. She pointed out that it is prohibitive to consider purchasing ECD's current equipment. She explained that ECD invested approximately \$10 million in the initial construction of the facility and the opportunity for Ovonyx to build its own wafer fabrication facility is simply out of reach financially. In addition, research is time-sensitive and Ovonyx cannot have that level of disruption in its operations.

She explained that few choices exist for wafer fabrication facilities available for Ovonyx to consider. She stated that Wayne State University can provide the facilities and equipment that the company requires and will allow the relocation of Ovonyx's current equipment. She noted that this equipment is subject to the abatement in question. She explained that Ovonyx was notified unofficially in May of 2010 that ECD would be moving. ECD's plans were finalized over the summer. Ovonyx held initial meetings with Wayne State University over the summer. Ovonyx must vacate the building by the end of December of this year and wishes to minimize downtime.

She reiterated that Ovonyx did make a good-faith effort to stay in Rochester Hills. She noted that Ovonyx did make \$3 million out of the proposed \$4 million in investment, and held off making the remaining investment as the economic downturn began.

Council Discussion:

Mr. Pixley questioned whether Council's decision will apply to all jurisdictions.

Mr. Casey responded that it would.

Mr. Yalamanchi questioned whether Ovonyx is a subsidiary of ECD.

Ms. Connolly responded that it is a separate company; however, ECD co-founded the business and is Ovonyx's largest shareholder.

Mr. Yalamanchi stated that he recognizes the challenges that Ovonyx is going through and questioned whether the company explored a relationship with Oakland University (OU).

Ms. Connolly responded that a relationship with OU was not explored as the OU does not have wafer fabrication facilities to accommodate the company's needs.

Mr. Yalamanchi stated that he was in favor of recapturing the abated taxes. He stated that while he wishes the company the best, from a business perspective and in the interest of the residents he cannot agree to forgive the abated taxes. He commented that if he did vote for the abatement with the provision that the company could relocate, he takes full responsibility for that vote; however, he would not have knowingly agreed to the inclusion of that clause.

President Hooper concurred with Mr. Yalamanchi, commenting that while the City wants the company to be successful, businesses cannot be expected to experience no consequences when the proposed investment or jobs do not occur. He stated that while he appreciated the explanation of the company's thought process in making its decision to leave Rochester Hills, there is a responsibility to repay those taxes that were abated.

Mr. Brennan questioned who owns the building and whether Ovonyx had discussions directly with the building's owner.

Mr. Casey responded that Joel Nosenchuk owns several buildings in the University Park area including the building Ovonyx is in.

Ms. Connolly responded that as a sub-tenant of ECD, Ovonyx did not have discussions with the owner. She explained that ECD had not formally notified the owner that the company was not extending the lease and requested that Ovonyx not interact directly with the owner. Ovonyx worked with ECD to explore renegotiating lease rates, noting that the rate ECD negotiated ten years ago was much higher than rates are today. Ovonyx used a lower lease rate in its modeling analysis to determine whether to relocate.

Mr. Webber questioned whether the clawback provision could be exercised if Ovonyx stayed in the building but did not create the required number of jobs.

Mr. Casey responded that City Council would have the opportunity to review the investment amount and the number of jobs that were created or retained and potentially reduce the abatement in accordance with the current Abatement Policy.

Mr. Webber questioned whether Troy was extending any incentive to Ovonyx.

Ms. Connolly responded that the equipment which is subject to the abatement is located at Wayne State and four employees will be located there. Four employees will be located at offices in Troy, and two will travel back and forth. Troy was selected as a neutral location to minimize travel time.

Mr. Rosen questioned whether the reason for the decision to move was driven by the location of the wafer processing facilities and if the company would remain in Rochester Hills if the facilities remained here.

Ms. Connolly stated that this was absolutely correct, noting that ECD's own business has changed to the point that wafer processing is no longer a core businesses for them. She explained that under the terms of their lease, ECD is responsible to restore the building to its original condition and is selling off the very equipment that Ovonyx has been using.

Mr. Casey reported that ECD intends to demolish most of the lab space and convert it back to the way it was when the company first leased the building.

Mr. Rosen commented that it appears that Ovonyx has made a reasonable good-faith effort to remain in Rochester Hills and stated that the City is obligated not to penalize the company.

Mr. Yalamanchi questioned whether there is additional penalty beyond the repayment of the abated taxes.

Mr. Casey responded that there is interest for the length of time that the taxes have not been repaid.

Mr. Yalamanchi stated that while he understands the business case, he would move that Ovonyx be asked to repay the past abated taxes. He would be willing to forego the penalty.

President Hooper restated Mr. Yalamanchi's motion that the City would grant the company's request to relocate, but would require the repayment of past taxes due.

Mr. Yalamanchi concurred with this restatement.

Ms. Connolly commented that a reference made in the Agenda Summary to the penalty in Section 9 of the Development Agreement states that no repayment of the past abated taxes would be required. She stated that this reference is different than the question of whether there is a penalty on top of the taxes.

Mr. Casey stated that in Section 9 of the Development Agreement penalty does refer to the repayment of taxes. He noted Council has the ability to grant Ovonyx the right to relocate without being penalized a repayment of the taxes.

Mr. Yalamanchi reiterated that he would grant Ovonyx's request to move, with the condition that they repay the abated taxes.

Mr. Pixley questioned whether there was any discussion with the owner of the building about continuing the lease at a lower market rate or if discussions were held with ECD regarding the possibility of taking over the equipment.

Ms. Connolly responded that she could not speak for ECD, nor was she privy to their discussions or negotiations on extending their lease. She noted that there was some informal interaction through ECD to extend the lease for Ovonyx's portion of the building; however, it was communicated to her that the owner was looking for a lease for the entire facility.

A motion was made by Yalamanchi, seconded by Brennan, that this matter be Adopted by Resolution, with the condition that the company repays the abated taxes. The motion CARRIED by the following vote:

Aye 6 - Brennan, Hooper, Klomp, Pixley, Webber and Yalamanchi

Nay 1 - Rosen

Enactment No: RES0252-2010

Whereas, the Rochester Hills City Council approved a request by Ovonyx Technologies, Inc. ("Ovonyx") for an Industrial Facilities Exemption Certificate on September 12, 2007 for personal property only for a period of six years, and

Whereas, the City and Ovonyx entered into a Development Agreement that provided for a provision in Section 9 that would allow the Council to grant a relocation of the company's personnel and equipment to another community under conditions without penalty of repayment of past abated taxes, and

Whereas, Ovonyx is requesting that it be granted permission to leave the community due to the expiration of the lease at 2956 Waterview Dr., and

Whereas, Ovonyx is not seeking a transfer of the Industrial Facilities Exemption Certificate ("IFT") to another community in Michigan.

Now, Therefore, Be It Resolved, that pursuant to Section 9 of the Development Agreement between the City of Rochester Hills and Ovonyx Technologies, Inc., that City Council hereby grants the company's request to relocate, with the condition that the company repays the abated taxes, and

Be It Finally Resolved, City Council requests that the State Tax Commission (the "Commission") terminate Industrial Facilities Exemption Certificate #2007-447 due to the relocation of the property outside of the Industrial Development District, and further requests that City Administration forward this Resolution to the Commission no later than December 31, 2010.

2010-0416 Request for Purchase Authorization - Parks and Forestry: Blanket Purchase Order for tree maintenance services in the amount not-to-exceed \$213,000.00 through October 31, 2013; JH Hart Urban Forestry, Sterling Heights, MI

Attachments: [Agenda Summary.pdf](#)
[Proposals Tabulation.pdf](#)
[Resolution.pdf](#)

Gerry Lee, Forestry Operations Manager, noted that funds for the blanket purchase order come from Local and Major Roads, Pathways and General Fund-Forestry. He stated that JH Hart has reduced their two-person crew rate by 39 percent over the prior contract with the City. He expressed confidence in recommending the firm, noting that they know the City's needs and expectations, and provide consistent quality work.

President Hooper questioned why the low bidder was not being recommended.

Mr. Lee responded that the low bidder, Alpine Tree Service, is based in Newaygo, Michigan, over 170 miles away. He stated that the firm has no municipal experience, has equipment over 10 years old with no backup, and has only five full-time employees. He commented that the Administration does not believe the firm could provide the service level required and questions their availability on weekends and holidays. He noted that he could not envision the firm

adequately responding to storm and emergency calls, or one-day job calls.

President Hooper disclosed that while he works in the construction industry, he has had no discussions with this firm, has not participated in the bid process, and does not have any financial interest in the firms involved. He stated that as such, he sees no reason to recuse himself from this item.

Mr. Pixley questioned how the proposals were compared among the bidders and questioned whether a decision had to be made tonight.

Mr. Lee responded that the two-person rate is the most significant for comparison as approximately 84 percent of the work is done by a two-person crew. He noted that when comparing the estimated days of work for two-person crews, there is less than a \$4,000 difference per year between the two low bidders. He stated that he could not recommend bringing Alpine forward. He explained that the previous contract with JH Hart expired as of October 31, 2010.

President Hooper questioned what would happen if a decision was deferred to the November 22, 2010 Regular City Council Meeting.

Mr. Lee responded that the City would not call in for any tree maintenance services unless an emergency occurred.

Mr. Yalamanchi commented that JH Hart has a lower hourly rate than all other bidders with the exception of Alpine. He questioned whether Mr. Lee had an idea of what the total hours required for each category would be.

Mr. Lee responded that he estimated 571 total crew hours, divided between approximately 481 for a two-man crew, 41 for a three-man crew, 40 for a four-man crew and 10 hours for a one-man crew.

Mr. Yalamanchi questioned whether log pickup was included in arriving at the total estimate.

Mr. Lee responded that he did not expect more than two days of log pickup time.

Mr. Brennan questioned how long the City has been using JH Hart and whether the firm could be approached to see if a lower rate could be negotiated.

Mr. Lee noted that the City has used the firm since 2003. He stated that as they already came down 39 percent for their two-man rate, he sees their quote as a survival rate.

President Hooper commented that the Administration does not see the low bid as a responsible bidder to enter into a contract with.

Mr. Lee concurred.

Mr. Yalamanchi noted that the overall blanket could be reduced as the actual annual cost is estimated only to be approximately \$43,000.

Mr. Lee noted that the estimated annual cost was based on last year's hours and commented that there is a variability from year to year in the number of storms.

Mr. Yalamanchi questioned whether the not-to-exceed amount could be reduced to approximately \$50,000 per year.

President Hooper noted that the Budget process controls the total cost, and approving this three-year Blanket Purchase Order tonight would lock in prices.

Mayor Barnett concurred that Council controls the total cost in the Budget process. He stated that he has confidence in Mr. Lee's expertise in knowing which firm will provide the service level to meet the needs of the Forestry Department, which is down in staffing again this year.

Mr. Rosen mentioned that with the exception of Davey Tree, which had a much higher bid, all the other firms were quite far from Rochester Hills and stated that travel time would impact productivity.

A motion was made by Pixley, seconded by Klomp, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

Enactment No: RES0253-2010

Resolved, that the Rochester Hills City Council hereby authorizes a Blanket Purchase Order to JH Hart Urban Forestry, Sterling Heights, Michigan for tree maintenance services in the amount not-to-exceed \$213,000.00 through October 31, 2013.

2010-0444 Request for Purchase Authorization - DPS/ENG: Cost Participation Agreement for construction of Adams Road from South Boulevard to Auburn Road in amount of City's share not-to-exceed \$255,500.00; Road Commission for Oakland County (RCOC)

Attachments: [Agenda Summary.pdf](#)
[Cost Participation Agreement.pdf](#)
[Resolution.pdf](#)

Paul Davis, Acting Director of DPS/Engineering, stated that the Road Commission for Oakland County (RCOC) drafted the Cost Participation Agreement pursuant to Council's decision on September 20, 2010 to agree to Auburn Hills' request to participate in the project to a share of the cost up to \$275,000. He explained that the grant money available is determined to be \$539,000, reducing the City's contribution to a not-to-exceed cost of \$255,500. He summarized that the work includes center turn lane improvements, three-foot paved shoulders, signal improvements at the intersection of South Boulevard and Adams Road to comply with Americans With Disabilities Act requirements, two Smart Bus pads, a lengthening of the taper at the intersection, and pavement overlay.

A motion was made by Webber, seconded by Yalamanchi, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 7 - Brennan, Hooper, Klomp, Pixley, Rosen, Webber and Yalamanchi

Enactment No: RES0254-2010

Resolved, that the Rochester Hills City Council hereby approves the Cost Participation Agreement for construction between the Road Commission for Oakland County, City of Auburn Hills and City of Rochester Hills for the construction of Adams Road from South Boulevard to Auburn Road, authorizes the amount of the City's share in the not-to-exceed amount of \$255,500.00 and further authorizes the Mayor to execute the agreement on behalf of the City.

COUNCIL COMMITTEE REPORTS

Sister City Committee - Rochester:

Mr. Webber reported that the Sister City Committee - Rochester met on October 20th and had a good dialogue on shared services and upcoming road projects that will affect both communities.

Police and Road Funding Technical Review Committee (PRTRC):

Mr. Webber reported that last week's PRTRC meeting included an update from Captain Michael Johnson, Oakland County Sheriff's Office, regarding police services in the community.

Rochester Area Youth Assistance (RAYA):

Mr. Klomp reported that RAYA extends its appreciation to the City for approving Community Development Block Grant funding and the organization has formally requested reimbursement for funds from last year.

ANY OTHER BUSINESS

NEXT MEETING DATE

Regular Meeting - Monday, November 15, 2010 - CANCELLED; Regular Meeting - Monday, November 22, 2010 - 7:00 p.m.

ADJOURNMENT

There being no further business before Council, President Hooper adjourned the meeting at 8:47 p.m.

*GREG HOOPER, President
Rochester Hills City Council*

*JANE LESLIE, Clerk
City of Rochester Hills*

*MARY JO WHITBEY
Administrative Secretary
City Clerk's Office*

Approved as presented at the January 10, 2011 Regular City Council Meeting.