

**MINUTES** of the **Regular Rochester Hills City Council Meeting** held at the City of Rochester Hills Municipal Building, 1000 Rochester Hills Drive, Rochester Hills, Oakland County, Michigan, on Wednesday, April 05, 2000 at 7:30 p.m.

**1. CALL TO ORDER**

**2. ROLL CALL**

President Melinda Hill called the Regular Rochester Hills City Council Meeting to order at 7:30 p.m. Michigan Time.

Present: President Melinda Hill, Members Bryan Barnett, John Dalton, Jim Duistermars, Lois Golden, Barbara Holder, Gerald Robbins

Absent: None

**QUORUM PRESENT**

Others Present: Pat Somerville, Mayor  
Marc Ott, City Administrator  
Beverly Jasinski, City Clerk  
Lawrence Ternan, City Attorney  
Bob Spaman, Treasurer  
H. W. Thornton, Fire Chief  
Dennis Andrews, Deputy Fire Chief  
Greg Walterhouse, Deputy Fire Chief  
Stephen Dearing, Traffic Engineer  
Alan Buckenmeyer, Parks Operations Manager  
Tom Dohr, Director of Public Services  
Bruce Halliday, Fleet Supervisor

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**10. PUBLIC HEARINGS/PETITIONERS REQUEST**

**10b. Proposed Zoning Ordinance Text Amendment (First Reading)** An Ordinance to amend Section 21.07, Uses Not Otherwise Included Within a Specific Use District, of the Zoning Ordinance of the City of Rochester Hills, Oakland County, Michigan, to apply in one-family residential detached condominium developments the same restrictions on roadside stands and markets and Christmas tree sales that apply in residential subdivisions, to clarify what products may be sold in connection with Christmas tree sales, to repeal the requirement that all produce sold at roadside stands or markets not located within a residential subdivision or condominium shall be grown on the immediate property or other property in the City owned or leased by the permit applicant, to repeal conflicting ordinances, and to prescribe a civil fine for violations. (Members received copy of memo from Deborah Millhouse, Acting Director of Planning/Zoning, with attachments.)

President Hill referenced materials contained in the Packet. She noted the Planning Commission recommended Denial of the proposed Ordinance Amendment.

(Enter Mr. Robbins 12:16 a.m., April 06, 2000)

Ms. Holder feels the residents of Rochester Hills want roadside stands, even though Rochester Hills no longer has vacant land for farming. She noted the Ordinance previously indicated produce had to be grown on the land at which it is sold, or grown in the City. She feels there are few individuals in Rochester Hills interested in pursuing the sale of produce at a roadside stand.

President Hill noted there are no restrictions pertaining to the size of a roadside stand.

Mr. Dalton reiterated the Planning Commission had conducted a Public Hearing and unanimously recommended City Council Deny the Amendment. Mr. Dalton offered a resolution to Deny the proposed Ordinance Amendment for First Reading, which was supported by Mr. Robbins.

Mr. Robbins expressed concern the Amendment did not address the issues that City Council wanted addressed and it still prohibits the sale of produce not grown on the property.

President Hill reported the Amendment eliminated Paragraph 3 in the Ordinance that indicates produce does **not** have to be grown on the property, or in the City. The Amendment would permit an individual to sell anything they want to truck in, but cannot be sold on property located in a subdivision or a residential condominium site.

Mr. Robbins expressed concern that a home located on a main road, which is part of a recorded residential subdivision, cannot operate a roadside stand, yet a roadside stand could be permitted across the street if the property qualified.

President Hill noted the language presented permits items trucked in, but limits qualified properties. She believes laws of the community should not be changed for one (1) individual situation. It was noted that matter had come before Council when Mr. Williams had been denied an opportunity to sell his goods. The language presented is merely a suggestion.

Mr. Robbins stated he had interpreted Councils position differently. He would like to maintain the character of the community by permitting roadside stands. He reiterated his concern that sales would be prohibited at homes located on a main road if the home is contained within a recorded subdivision.

Mr. Duistermars noted the Ordinance clearly identifies sale of produce.

Ms. Golden referenced licensing and permits related to merchants who were Honorably Discharged Members of the Armed Forces. She noted Mr. Williams is a Veteran and inquired as to tickets which had been issued to him.

President Hill reported the Ordinance strictly deals with zoning and land and the permitting of something happening on that land. She noted the state law referenced by Ms. Golden was not in question here; the issue is conducting the business on the property.

Ms. Golden clarified discussion and noted, the reason Mr. Williams ended up before a Judge was related to the zoning; not the business licensing.

Mr. Ternan indicated Ms. Golden was correct.

President Hill noted several nearby communities require that produce for sale be grown either on the property, or within the city.

Mr. Barnett inquired if velvet paintings would be permitted for sale.

Mr. Ternan reported the Mayor has the responsibility to enforce the ordinances even handed; therefore, ordinances should not be enforced in a discriminatory fashion. Mr. Ternan noted there may be instances where there are other factors to consider and the enforcement of laws does require discretion. He stated the Mayor=s responsibilities would be to enforce the law, unless there would be circumstances that would cause a prudent person to not enforce the law in a specific instance, but the specific instance should not be a matter of liking, or not liking, an individual.

President Hill noted City Council had directed the Planning Commission to look at this matter and the City Attorney brought the language forward to the Planning Commission for their discussion. The Planning Commission conducted their discussion, provided opinions, held a Public Hearing and recommended denial to City Council.

Mayor Somerville reported the Auburn Hills, Troy, Novi, Farmington Hills, Sterling Heights, Shelby Township and Oakland Township permit roadside stands in certain zoning Districts. She referenced the Peddler=s Act pertaining to veterans and expressed support toward the Amendment. She stated Mr. Williams owns ten (10) acres of land in the City and many individuals chose to obtain produce from him. Mayor Somerville noted Mr. Williams is more than seventy (70) years old.

Mr. Ternan reported the Peddler=s Law relates to the license aspect and not to zoning issues. He indicated three (3) courts have ruled in the City=s favor in that the Peddler=s Law does not prevent the City from enforcing its Zoning Ordinance as written.

Mr. Robbins inquired how the City could tell where the produce was grown. Mr. Robbins would like to allow all residences along a major thoroughfare the ability to operate a

roadside stand. He stated, in the past, if there would be a violation of an ordinance and City Council was working on the Ordinance, the Mayor was not obligated to enforce the ordinance because it was in Arevision.≡

President Hill reported a roadside stand could be just like a supermarket and neighbors do not want semi-trucks dropping off produce every night.

Mr. Ternan reiterated policy, if an ordinance would be denied for First Reading, it would not return to City Council for Second Reading.

Mr. Robbins inquired, if Council would like to see further changes, if it would be appropriate to send the Ordinance back to the Planning Commission, or to deny.

Mr. Ternan indicated there often is a question regarding changes to a proposed ordinance and if the change might be considered minor, opinions have been given that City Council would not have to re-advertise. Mr. Ternan feels, in this instance, if the change desired would be to open up roadside stands to recorded subdivisions and condominiums, the change would require re-advertising because it would have an impact and the public should be provided the right to know. He continued, if Council would like a change, there would be the option of sending the matter back to the Planning Commission and that it is re-advertised. Mr. Ternan noted another approach could be to vote on the Amendment as presented and, if this passes, the Planning Commission could be asked to take the next step toward additional revision. He reported this matter has been around for some time. There is a pending court case in the Court of Appeals. He indicated it would be a good idea that clarification of the City Council=s position be provided in respect to the issue that is presented tonight, rather than to refer everything to the Planning Commission and have it take another two (2) to three (3) months.

Mr. Robbins inquired, if the manner would be approved for First Reading and then returned to the Planning Commission for changes, if it would be the City Attorney=s opinion that changes looking for would require publication and a public hearing held.

Mr. Ternan indicated the matter would require publication and a second Public Hearing, which would take considerable time.

Mr. Robbins inquired if enforcement would be suspended on the issue because the Zoning Ordinance is under review.

Mr. Ternan stated the review process may justify no enforcement during the interim period of time, but there is a different circumstance regarding the court case. The matter is in the Michigan Court of Appeals and was up for argument next week and both sides requested the argument Postponed in order to provide an opportunity for the City Council to clarify whether the Ordinance would be changed, or not. Mr. Ternan reported the Court of Appeals issued an order this afternoon putting off the argument for a short period of time.

Mr. Ternan suggested, if City Council desired to change the Ordinance proposed, that the matter at hand be voted upon; therefore, provide clarity at this time. Further, if City Council feels the Ordinance is inconsistent for recorded subdivisions, that City Council initiate that matter as a second step. Mr. Ternan believes Mr. Robbins has indicated he was not objecting the Amendment proposed, but would like to see further Amendment to the Ordinance to provide consistency to include recorded subdivisions.

Concerns were expressed toward changing an ordinance for a particular individual or a particular set of circumstances.

The following is the vote on the motion on the floor:

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Resolution 2000-0125

**MOTION** by Dalton, seconded by Robbins,

**Resolved**, an Ordinance to Amend Section 21.07, uses not otherwise included within a specific use district, of the Zoning Ordinance of the City of Rochester Hills, Oakland County, Michigan, to apply in one-family residential detached condominium developments the same restrictions on roadside stands and markets and Christmas tree sales that apply in residential subdivisions, to clarify what products may be sold in connection with Christmas tree sales, to repeal the requirement that all produce sold at roadside stands or markets not located within a residential subdivision or condominium shall be grown on the immediate property or other property in the City owned or leased by the permit applicant, to repeal conflicting Ordinances, to prescribe a civil fine for violations, be **denied** for First Reading.

ROLL CALL VOTE:

Ayes: Dalton, Golden, Hill

Nays: Duistermars, Holder, Robbins, Barnett

Absent: None

**MOTION FAILED**

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Be it noted for the Record, the motion to **Deny** the matter for First Reading **Failed**.

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Resolution 2000-0126

**MOTION** by Robbins, seconded by Duistermars,

**Resolved**, an Ordinance to Amend Section 21.07, uses not otherwise included within a specific use district, of the Zoning Ordinance of the City of Rochester Hills, Oakland County, Michigan, to apply in one-family residential detached condominium developments the same restrictions on roadside stands and markets and Christmas tree sales that apply in residential subdivisions, to clarify what products may be sold

in connection with Christmas tree sales, to repeal the requirement that all produce sold at roadside stands or markets not located within a residential subdivision or condominium shall be grown on the immediate property or other property in the City owned or leased by the permit applicant, to repeal conflicting Ordinances, to prescribe a civil fine for violations, be accepted for First Reading.

**ROLL CALL VOTE:**

Ayes: Duistermars, Holder, Robbins, Barnett

Nays: Golden, Hill, Dalton

Absent: None

**MOTION CARRIED**

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