

**CITY OF NILES  
REGULAR CITY COUNCIL MEETING MINIUTES  
MONDAY, FEBRUARY 13, 2017**

The meeting was called to order by Mayor Nicholas Shelton in the City Council Chambers, 1345 East Main Street, Niles, Michigan at 6:00 p.m., February 13, 2017.

**PRESENT:** Council Members Gretchen Bertschy, Georgia Boggs, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede (6:04), William Weimer and Nicholas Shelton

**ABSENT:** John DiCostanzo

**STAFF:** Casperson, Dunlap, Huff, Lamb, Landgraf, Millin, Ray, Wise

**AUDIENCE:** 12

**CITIZEN PARTICIPATION:** None

**CONSENT AGENDA:**

1. Consideration of approving the City Council Minutes of January 23, 2017.
2. Consideration of approving the Bills dated February 7, 2017.
3. Consideration of approving a request from Mainly Marathons of New Mexico for use of South Riverfront Park beginning the afternoon of May 28<sup>th</sup> and ending the afternoon of May 29<sup>th</sup>, 2017 until approximately 2:00 pm and permit them to setup travel trailers and use the park overnight.

**Council Member Weimer** moved, **Council Member Skalla** supported, **MOTION CARRIED**, to approve Items 1-3 on the Consent Agenda as submitted.

**ROLL CALL: AYES:** Bertschy, Boggs, Durm, McAfee, Skalla, Weimer

**NAYS:** None **ABSENT:** DiCostanzo, VandenHeede, **ABSTAIN:** None

**ADMINISTRATOR'S REPORT:**

**Introduction of Items for Discussion**

**Items for Council Action**

4. Consideration of adopting a resolution to recognize Niles Junior Baseball, Inc. as a nonprofit agency operating in the city in order for the group to receive a gaming license.

**CITY OF NILES RESOLUTION FOR  
CHARITABLE GAMING LICENSES**

(Required by MCL 432.103(k)(ii))

**Resolution #2017-02/2006**

At a Regular meeting of the Niles City Council called to order by Mayor Nick Shelton on February 13, 2017 at 6:00 p.m. the following resolution was offered:

Moved by **Council Member Weimer** and supported by **Council Member Bertschy** that the request from **Niles Junior Baseball, Inc.** in the City of Niles, County of Berrien asking that they be recognized as a nonprofit organization operating in the community for the purpose of obtaining a charitable gaming license, be considered for approval.

**ROLL CALL:**

**AYE:** Bertschy, Boggs, Durm, McAfee, Skalla, Weimer

**NAY:** None **ABSENT:** DiCostanzo, VandenHeede **ABSTAIN:** None

**RESOLUTION # 2017-02/2006 DECLARED ADOPTED**

5. Consideration of adopting a resolution to approve Michigan Department of Transportation Contract #16-5562 to approve a street improvement project for Sycamore Street from Thirteenth Street east to Seventeenth Street along with other qualified work for this construction season using estimated federal funds of \$100,100.00 and an estimated \$38,500.00 of match funds from the Department of Public Works' Major Street Fund.

**CITY OF NILES**

**STATE OF MICHIGAN**

**DEPARTMENT OF TRANSPORTATION**

**SIGNATURE AUTHORIZATION**

**RESOLUTION #2017-02/2007**

**Councilmember Bertschy** offered the following resolution and moved for its adoption, supported, by **Councilmember Boggs**.

**BE IT RESOLVED** that the City Council of the City of Niles does hereby authorize *the Mayor and Clerk* to sign any necessary documents for the Michigan Department of Transportation Contract Number 16-5562 for the purpose of resurfacing work along Sycamore Street from Thirteenth Street east to Seventeenth Street; including asphalt curbs, and construction of handicapped ramps, and storm water drainage improvements; and all together with necessary related work on behalf of the City of Niles.

**ROLL CALL:**

**AYE:** Bertschy, Boggs, Durm, McAfee, Skalla, VandenHeede, Weimer

**NAY:** None **ABSENT:** DiCostanzo **ABSTAIN:** None

**RESOLUTION #2017-02/2007 DECLARED ADOPTED.**

6. Consideration of adopting a Performance Resolution for Governmental Agencies as a requirement of the maintenance contract the City has with the Michigan Department of Transportation in order to authorize and designate city officials to apply for permits to work within the MDOT right of way.

**CITY OF NILES  
STATE OF MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
PERFORMANCE RESOLUTION FOR GOVERNMENTAL AGENCIES  
RESOLUTION #2017-02/2008**

**Councilmember Weimer** offered the following resolution and moved for its adoption, supported, by **Councilmember Bertschy**.

**RESOLVED WHEREAS**, the City of Niles hereinafter referred to as the "GOVERNMENTAL AGENCY, "periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT, "for permits, referred to as "PERMIT, "to construct, operate, use and/or maintain utilities or other facilities, or to conduct other activities, on, over, and under State Highway 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 AGENCY agrees that:

1. Each party to this Agreement shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Agreement, as provided by law. This Agreement is not intended to increase either party's liability for, or immunity from, tort claims, nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.
2. If any of the work performed for the GOVERNMENTAL AGENCY is performed by a contractor, the GOVERNMENTAL AGENCY shall require its contractor to hold harmless, indemnify and defend in litigation, the State of Michigan, the DEPARTMENT and their agents and employee's, against any claims for damages to public or private property and for injuries to person arising out of the performance of the work, except for claims that result from the sole negligence or willful acts of the DEPARTMENT, until the contractor achieves final acceptance of the GOVERNMENTAL AGENCY. Failure of the GOVERNMENTAL AGENCY to require its contractor to indemnify the DEPARTMENT, as set forth above, shall be considered a breach of its duties to the DEPARTMENT.
3. Any work performed for the GOVERNMENTAL AGENCY by the contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL AGENCY and not as a contractor or agent of the DEPARTMENT. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL AGENCY, or their subcontractor or any other person not a party to the PERMIT without the DEPARTMENT'S specific prior written consent and notwithstanding the issuance of the PERMIT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL AGENCY.
4. The GOVERNMENTAL AGENCY shall take not 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 judgement for money damages.

5. The GOVERNMENTAL AGENCY will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State Highway Right of Way resulting from the installation construction, operating and/or maintenance of the GOVERNMENTAL AGENCY'S facilities according to a PERMIT issued by the DEPARTMENT.
6. With respect to any activities authorized by a PERMIT, when the GOVERNMENTAL AGENCY 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.
7. The incorporation by the DEPARTMENT of this resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.
8. This resolution shall continue in force from this date until cancelled by the GOVERNMENTAL AGENCY or the DEPARTMENT with no less than thirty (30) days prior written notice provided to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL AGENCY 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 DEPARTMENT for the necessary PERMIT to work within State Highway Right of Way on behalf of the GOVERNMENTAL AGENCY.

**ROLL CALL:**

**AYE:** Bertschy, Boggs, Durm, McAfee, Skalla, VandenHeede, Weimer

**NAY:** None **ABSENT:** DiCostanzo **ABSTAIN:** None

**RESOLUTION #2017-02/2008 DECLARED ADOPTED.**

7. Consideration of approving a Traffic Order Request to prohibit parking on the west side of Front Street (M-139) between Wayne Street and Howard Street from 2:30 am until 6:00 am to accommodate permitted after-hours activities in the park and the business developments in the area.

VandenHeede asked if a parking variance was required for Front Street Pub. It was explained that the footprint of the building did not change and located in the DDA district.

**Council Member Skalla** moved, **Council Member VandenHeede** supported, **MOTION CARRIED**, to approve a Traffic Order Request to prohibit parking on the west side of Front Street (M-139) between Wayne Street and Howard Street from 2:30 am until 6:00 am to accommodate permitted after-hours activities in the park and the business developments in the area.

**ROLL CALL:**

**AYE:** Bertschy, Boggs, Durm, McAfee, Skalla, VandenHeede, Weimer

**NAY:** None **ABSENT:** DiCostanzo **ABSTAIN:** None

**TRAFFIC ORDER 342**

**APPOINTMENT TO BOARDS:** None

**CITY ATTORNEY'S REPORT:** None

**COUNCIL MEMBER'S REPORT:**

**Council Member VandenHeede** suggested that the Ordinance Committee meet to discuss the proposed Mobile Truck

Ordinance February 27. Council Member VandenHeede also announced that public forum to discuss the Marijuana Ordinance has moved to Niles High School on February 23, 2017 at 6:00pm.

**Council Member McAfee** invited everyone to Mt. Olive Missionary Baptist Church, 2262 Moulder Drive, Niles, to celebrate Black History Month on Sunday, February 19, 2017 at 3:30pm.

**MAYOR'S REPORT:** Mayor Nick Shelton also wanted to remind people to attend the public forum to discuss Medical Marijuana.

**ADJOURNMENT**

Council Member Weimer moved to adjourn at 6:23pm.

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Linda Casperson, Niles City Clerk

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Date Approved