

**THE REGULAR MEETING OF THE THIRTY-NINTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN
WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, MARCH 7, 2022 BY MAYOR TERBRACK**

PRESENT: Steve Baker Bridget Dean
 Dennis Hennen Ross Gavin
 Natalie Price Jessica Vilani
 Daniel Terbrack

APPROVAL OF AGENDA

Councilmember Price moved to approve the Agenda
Seconded by Councilmember Baker
Ayes: Dean, Gavin, Hennen, Price, Vilani, Baker, and Terbrack
Nays: None
Motion Approved.

INVOCATION: Deacon Dan Darga

PUBLIC COMMENT

Gary Leitner, Berkley, spoke about the Kenmore and Cornwall water main and pavement replacement project. He summarized a Zoom meeting that occurred regarding this back on February 9th. He spoke regarding the issues reducing the road width could create. He said this project creates a precedence for future road improvements in the City of Berkley. He said they are taking out the water main but not addressing the sewer line issue. He mentioned he is thankful the City sent out a letter and they are trying to work with the residents by not reducing the width of the road as much as what was initially discussed. He said this would still create issues. He said trees will also be taken down but he knows that some have to be taken down anyway. He said he wants the City to examine how many trees would need to be taken down if the street width was left at 25 feet. He also read some letters from other residents voicing their concern about this topic as well:

1. Mike and Donna Simmons, Berkley, have lived in the City for 18 years and wrote that narrowing the street would not be an improvement. The letter talked about all of the issues it could create. One of those issues they mentioned was reduced street parking. They also talked about how this would reduce property values, how the residents were given short notice, and how they were not asked their opinions. They also said they think there is a way for the City to accomplish what they need without having to disturb the street parking. They ended with asking to reconsider and think about how this would affect all of them.
2. Brian and Kim Healy, Berkley, wrote a letter discussing the issues attached to narrowing the road since they own a pop-up camper and a pickup truck. They also mentioned a potential way the City could accomplish what they need to do without having to narrow the street. He thanked everyone for their efforts looking into the situation, but he would like to see the City make the right decision for everyone.

Deborah Dorsch, Berkley, reiterated what was said previously regarding the Kenmore and Cornwall project saying that Kenmore 1 is the concern. She also put emphasis on the trees as well. She talked about owning a business at 12 Mile and Kenmore and only being allocated a certain number of parking spaces between five businesses. She provided an overview of the parking situation in that area and how the road improvement project would affect the parking situation on her street. She talked about how they are guaranteed to lose five trees but who knows how many trees they will actually lose. She said that some of the more mature trees should endure the project. She asked when this road width was initiated by the Public Safety Department and when did ordinances change to the specification with the road width. She

asked to have special considerations for the parking needs of Kenmore 1 because they are impacted by the business. She asked if they really need to lose some of the more mature trees.

Mark Birac, Berkley, voiced his concern about the Kenmore and Cornwall project and the issues this could cause in his neighborhood. He requested that a study is done and a solution is found to maintain the current street width while protecting the trees.

James Campbell, Berkley, voiced his objection on agenda item number one regarding the approval of the draft minutes for the February 7th City Council meeting. He said there was a public comment regarding the regular agenda item number four made by Kevin Blair, the attorney representing marijuana applicant, Lume. He said the minutes omit that Mr. Blair threatened "prolonged litigation as a co-litigant." He requested this be added to the minutes since it would be important part of the discussion they would have tonight.

Ryan Duffy, Berkley spoke about his concerns regarding the width and parking reduction for the Kenmore and Cornwall project. He said Berkley seems to have an issue with parking already. He addressed that taking away more parking will be an issue for major city events and delivery trucks blocking the road. He said they should make more of an effort to maintain the width and the sewers should be more of a concern. He said he is also concerned about the possible issue with the storm water runoff in the street because there would be less space on the street to contain the water.

Consent Agenda

Councilmember Baker moved to approve the following Consent Agenda, seconded by Councilmember Vilani:

APPROVAL OF THE MINUTES: Matter of approving the minutes of the 39th Regular City Council meeting on Monday, February 7, 2022.

ORDINANCE NO. O-01-22: Matter of considering the Second Reading and Adoption of an Ordinance of the Council of the City of Berkley, Michigan to rezone properties described as 2465 and 2475 Cambridge Road, Lots 123 and 124, except that portion now included in Coolidge Highway, of Hannan's West Royal Oak Subdivision; and 2466 and 2476 Columbia Road, Lots 125 and 126, except west 10.25 feet of Lot 125 and west 10.23 feet of Lot 126, of Hannan's West Royal Oak Subdivision from Coolidge District to Gateway District.

PROCLAMATION NO. P-02-22: Matter of proclaiming March 8th as International Women's Day and recognizing March 2022 as Women's History Month in the City of Berkley.

PROCLAMATION NO. P-03-22: Matter of proclaiming March 2022 as Severe Weather Month in the City of Berkley.

Ayes: Gavin, Hennen, Price, Vilani, Baker, Dean, and Terbrack
Nays: None
Motion Approved.

Regular Agenda

RECOGNITIONS/PRESENTATIONS: Matter of any recognitions or presentations from the Consent Agenda.

Mayor Pro Tem Dean read Proclamation No. P-02-22 into record.

MOTION NO. M-28-22: Matter of awarding the contract for the 2022 DPW Improvement Project to the lowest qualified bidder, Quadrate Construction, LLC. of Macomb Township, Michigan, in an amount of \$966,208. In addition, to allocate \$38,430 for construction engineering services to Hubbell, Roth & Clark and \$75,000 for construction contingencies.

Councilmember Gavin moved to approve Motion No. M-28-22

Seconded by Mayor Pro Tem Dean

Ayes: Hennen, Price, Vilani, Baker, Dean, Gavin, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-29-22: Matter of approving the “Berkley Days 2022” event beginning May 12, 2022 and ending on May 15, 2022 located at the Berkley Community Center, 2400 Robina. Approval is conditional upon the submission of required items and documents prior to event dates. The Council reserves the right to rescind the permit due to State and/or County health and pandemic protocols.

Councilmember Vilani moved to approve Motion No. M-29-22

Seconded by Councilmember Baker

Ayes: Price, Vilani, Baker, Dean, Gavin, Hennen, and Terbrack

Nays: None

Motion Approved.

Public Comment for Ordinance No. O-02-22:

John McNalley, Berkley, stated he does not have a vested interest in a marihuana dispensary. He talked about being a longtime resident and having all of his children graduate from Berkley High School. He voiced concern and requested the City does not increase the number of marihuana business licenses. He provided a residential point of view and talked about how he feels it would make their property values go down. He said he does not want there to be a business placed on the border of the City next to his house. He said he understands why the businesses are not being placed in other parts of the City, but he does not want one next to this house either since he has a family with grandchildren. He said he noticed that when he has driven by a dispensary in the City of Ferndale at night, there are armed guards walking around the parking lot. He said that shows it is not a safe business. He said if it was a good business, it could go next to the high school. He said if it can't go next to a school, it should not be next to his house either. He asked to please consider not increasing the number of licenses.

Andrew Agbay, Berkley, said he has no interest in a marihuana dispensary and knows they won't be by his house or business. He voiced his concern about the increase of the number of licenses and said he believes if there were three distinct winners, then they would only be voting on three licenses. He said he believes that voting to increase the number of licenses is based on fear that legal action will be taken against the City. He said he believes the attorneys are ultimately influencing City Council's decision to increase the number of licenses from three to five. He said that saying Hazel Park has six businesses is just a way for attorneys to justify having five in Berkley. He said the attorneys' ultimate goal is to influence the City to go from three to five. He said he understands that City Council wants to have this off their plates, but they should scale back the number of licenses and see there are two clear applicants that are winners. He said they could see how it goes with the two and then increase the number if it goes well. He said once they decide on five licenses, it can't be undone. He asked Council to ultimately reconsider changing the number of licensees from three to five.

James Campbell, Berkley, said he notices that City Council does things a little differently in Berkley. He said he didn't hear anyone second the motion for Berkley days and asked Mayor Terbrack how he resolved that motion. He referenced the February 7, 2022 meeting minutes about Council conducting an informal straw poll and said he had not heard that term at the Council meeting before. He said he looked it up in Robert's Rules of Order and it was not recognized there. He said there wasn't a motion in the straw poll. He said that seemed improper to him. He talked about how the previous speaker during public comment made a good point. He went on to say the Mr. Blair did threaten the community with a lawsuit whether they want to recognize it in the official record or not. He said if you go to Google and type “Attitude Wellness v,”

you can see a whole list of small Michigan communities that have been sued by them. He stated these communities are bullied by the attorney from Honigman Miller and said they are one of the top litigation firms in the state and Mr. Blair is a litigation partner. He said he is offended as a citizen of Berkley and the licenses are being treated as chattel, something to trade. He quoted an attorney from Honigman Miller, in "Crane's Detroit Business," "There's kind of a rush to be a business that has the most retail outlets" and then said that Lume Cannabis Attitude Wellness has 32 retail outlets in the State. He talked about the City of Royal Oak saying instead of having more licenses they are trying to reduce the number of licenses. He referenced the City of Royal Oak is also in litigation with Lume and Honigman Miller because they felt that unqualified applicants made it through the application process. He said he thinks there needs to be a moratorium on transfers of the licenses added to the ordinance.

Gerald Griffin, owner of GMG Public Affairs Consulting, said he does not have a vested interest in any of the dispensaries. He said he does work in the cannabis industry. He said they tried to be a marijuana applicant in the City but they could not come to an agreement as regards to real estate. He said city staff was excellent to work with during that process. He asked a question for Council to consider. He talked about how Council is considering to add two brand new licenses to their ordinance and according to the City's ordinance and state law they are required to have an application and merit-based process to do so. He said his contention is that you cannot award two new licenses simply to appease someone who is suing them. He said he worked in local government for 20 years and finds it unfortunate that this keeps happening. He said his client has never sued a municipality and stated there was a process for them to break their tie and the applicants did not like it. He said the City is violating State law because they are not going through the open application process again. He said there is no reference to a specific time period where they would stop and start the application process over again. He said they should open the application process back up and mentioned they are not on list of top scoring applicants but would like an opportunity to apply for a license again in the future. He said lawsuits are the detriment to the cannabis. He recognizes that this is a new industry. He would like for the industry to be treated like any other business that comes into the City. He said instead of capping the number of businesses to use zoning instead. He said he hopes to get some sort of response from the City regarding his questions.

Danny Amore, Berkley, stated he has a vested interest in one of the applications. He said he disagrees with the decision they are considering. He said we don't know what the right number of dispensaries in Berkley would be, but added the market typically decides. He said if five is not the right number, it would be too late since the businesses would be open and the result could be that some of those businesses could close down. He asked Council for time and consideration. He said the City spent about five-and-a-half months creating the ordinance, about six months defending it in court, and then about 20 minutes in the last meeting changing it. He said he wants Council to spend a little more time thinking about it. He talked about the three options Council thinks they have but said he believes they have many options. He provided some examples of other options. He said he doesn't think Council should make this decision so quickly tonight. He said if they do increase to five, they would have more per square mile than almost any other city in the state.

Christopher Klamkin, Berkley business owner, said he has a vested interest in a marijuana dispensary. He talked about how he put a lot of his family's time and money to earn the 315 points that he did when he applied. He does not agree with having five businesses in the City and thinks it is a bad move. He said to look at it from a real estate standpoint and that they would have the most marijuana businesses per square mile than any other city in the state. He said property values could go down. He encouraged Council to think about this as a realtor and as a resident. He said he does not think this is the right move at this point in time.

ORDINANCE NO. O-02-22: Matter of considering the First Reading of an Ordinance of the City Council of the City of Berkley, Michigan to Amend Section 30-807 of Article XV of Chapter 30, Marijuana Businesses, to increase the License Limit and to Modify Penalties.

Mayor Pro Tem Dean moved to approve Ordinance No. O-02-22

Seconded by Councilmember Price

Ayes: Vilani, Dean, Price, Terbrack

Nays: Baker, Gavin, Hennen

Motion Approved.

COMMUNICATIONS

COUNCILMEMBER BAKER: stated the next Historical Committee meeting is on Tuesday, March 8th. He said this month is the anniversary of the historical vote that decided to change Berkley from a village to a city. He said the Historical Museum is open Wednesdays 10 a.m.–1 p.m. and Sundays 2–4 p.m. He said to also visit the Historical Committee’s website, berkleyhistory.com. Councilman Baker said the Downtown Development Authority (DDA) will meet on Wednesday, March 9th. He thanked everyone that came out to the Frozen February Block Party on February 12th. He talked about the DDA events for the month of March. He said there will be a Downtown Leprechaun Scavenger Hunt that runs March 9th–31st. He said tickets are obtainable for the St. Patrick’s Day feast through The Fresh Collective Kitchen and will be available by March 12th. Another March event he mentioned was the Leprechaun Story Stroll from March 17th to 31st. He said the DDA will also be hosting, Leprechaun’s Day Out which will be March 17th – 20th. He said everyone can visit downtownberkley.com for more information. He quoted Joyce Meyer, “Patience is simply not the ability to wait, it’s how we behave while we are waiting.” He said there is so much to be thankful for and to take advantage of the friends and family in our lives. He said to not waste today while we are waiting. Councilman Baker told everyone to stay safe and to hug someone they love.

COUNCILMEMBER PRICE: shared a few committee updates. She said the Citizens Engagement Advisory Committee (CEAC) is currently developing a volunteer database in order to help connect volunteers with local organizations. She said if you are part of an organization that is in need of volunteers, you may submit your information to the CEAC through the Berkley Community Resources Facebook Group. Councilmember Price said the Library Board continues to review and prepare recommendations for updates to establishing ordinance. The next Library Board meeting will be in person on Wednesday, March 16th at 7 p.m. She said take-home kits will continue to be available this month and at the library and in-person story time will be available again starting next month. She said you can find out all the details under the events calendar on the library’s website.

COUNCILMEMBER HENNEN: said when the Zoning Board of Appeals (ZBA) last met, they were asked to interpret the City’s zoning ordinance related to home occupations. He said the Board made a very narrow decision that firearm transfers by type one federally licensed firearm dealers are not considered a retail use. He said that other types of retail sales from homes remain prohibited. He said that the home occupation ordinance really needs to be brought up to date and that the ZBA really struggled to come up with this interpretation. He also said at the last meeting, they approved a dimensional variance to add a rear addition for an ADA compliant bedroom and bathroom for a paraplegic man. He said the next ZBA meeting will be on Monday, March 14th and at that meeting, they will consider a dimensional variance to replace an existing home and attach it to an existing garage. Councilmember Hennen said the Tree Board met recently and reviewed its goals for 2022. He said some of the highlights include that they are continuing to look for more grant opportunities for the City and therefore, they want to conduct a canopy survey to see where they do and do not have trees so they can make better decisions where to plant more city trees. He said the Department of Public Works plans to test some porous sidewalk materials on two or three locations on Coolidge to see how well it performs and if it is something they would want to use in other areas of the City in the future. He said the next Tree Board meeting is on March 28th. Councilmember Hennen said he is serving on the SEMCOG Water Infrastructure Task Force for Southeast Michigan and said the purpose of this group is for regional planning to handle all things water-related. He said the goal is to have a completely updated plan by early 2023. He said the first meeting was last month that consisted of an introduction and brainstorming. He said the first big topic the group will tackle is regional stormwater infrastructure and cooperation. He said he invited the public works director and the city manager to attend that meeting. He said he serves on the Michigan Municipal League (MML) Municipal Services Committee and one of the topics at their last meeting was reviewing the State’s proposed budget. He said there was a strong emphasis on municipal funding and more

specifically, two things for extra funding were pensions, and also a special emphasis on water infrastructure. He said the emphasis on water infrastructure included lead piping and stormwater infrastructure which are two things the City has been hit hard with. Councilmember Hennen said the MML will continue to lobby those topics on their behalf.

MAYOR PRO TEM DEAN: provided some updates from the Parks and Recreation Department. She said that spring programming is now available and online for registration and anyone interested may visit their website at recreation.berklemich.org. She said registration for summer camp is now open.

COUNCILMEMBER GAVIN: stated the Environmental Advisory Committee (EAC) meeting was canceled last month and is scheduled to meet next on Thursday, March 17th at 6:30 p.m. on the second floor of the Public Safety building. He said the next Planning Commission meeting is on Tuesday, March 22nd at 7 p.m. in council chambers. He said the Planning Commission had a work session last week to discuss the elements for the DDA design guidelines and there would be some draft language on smaller ordinance changes at the March 22nd meeting.

COUNCILMEMBER VILANI: provided updates from the Berkley Area Chamber. She said the first update is geared toward businesses in the City. She said in late March, collections will take place for school staff appreciation bags and it is a great opportunity for local businesses and services to reach out to school staff. She said that drop-offs and due dates will be announced later in March. She said the Berkley University Series will take place on March 18th at the library. The topic for March is "How to avoid ID Theft and Bank Fraud." She said the speakers for this event include people from Vibe Credit Union and Public Safety. She said registration is available through berkleychamber.com. Councilmember Vilani said the American Legion will offer first and third Sunday breakfast platters from 9 a.m. to noon as well as a fish fry and bake sale on Fridays from 5 p.m. to 8 p.m. She said all proceeds will go to local veterans and community needs.

CITY MANAGER BAUMGARTEN: talked about his experience speaking to freshmen and senior environmental science classes this past week at Berkley High School. He said he told the classes the different things the City is doing to be more sustainable and environmentally conscious. He said he also discussed the great work the Department of Public Works has done over the past years. He said it was a pleasure to be able to do this.

ATTORNEY STARAN: spoke about being busy with litigation matters and the ordinance amendments that City Council had acted upon tonight. He said that on the news today, there was an announcement from the State Attorney General that Michigan, and its municipalities, will soon start reaping the benefits from the national opioid litigation settlement. He said Michigan's share of the money should be coming either the next quarter or the third quarter. He said Michigan's share of that settlement is about \$800,000,000. He said about half of that money is earmarked for the municipalities and Berkley included its participation in that settlement. He said the money that the City receives is earmarked for opioid prevention and education programs and will be happily received and put to good use to help the citizens.

MAYOR TERBRACK: said one of the fallouts of the pandemic is a loss of culture and identity because of being virtual for so long. He said the City has been able to sustain what makes Berkley unique which is caring for our neighbors and those in need. He said he is incredibly proud that they have been able to do that. He said Berkley Days will be back this year. He said correspondence from residents has been lower in the past, but in the last couple of meetings, residents are coming back because they want to be engaged. He emphasized that engagement is what matters. Mayor Terbrack asked everyone to continue to support the community whether it is the businesses or organizations that are trying to help. He said he would like to be able to safely celebrate the community and get back to some kind of normalcy and interpersonal contact when safe.

ADJOURNMENT

Councilmember Gavin moved to adjourn the Regular Meeting at 8:55 p.m.
Seconded by Mayor Pro Tem Dean
Ayes: Dean, Gavin, Hennen, Price, Vilani, Baker and Terbrack
Nays: None
Motion Approved.