

Council Chambers  
Hillsdale City Hall  
97 N. Broad St.  
Hillsdale, MI 49242  
[www.cityofhillsdale.org](http://www.cityofhillsdale.org)

February 15, 2016  
7:00 p.m.  
(517)437-6441

## CITY COUNCIL MINUTES

City of Hillsdale  
Regular Meeting

### **Call to Order and Pledge of Allegiance**

Mayor Scott Sessions opened the meeting with the Pledge of Allegiance.

### **Roll Call**

Mayor Scott Sessions called the meeting to order.

Councilmembers present:	Scott M. Sessions, Mayor Brian Watkins, Ward 1 Timothy Dixon, Ward 2 Bruce Sharp, Ward 3 *Emily Stack-Davis, Ward 3 Patrick Flannery, Ward 4
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Councilmembers absent:	Adam Stockford, Ward 1 Matthew Bell, Ward 4
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Also present were: City Manager David Mackie, City Clerk Stephen M. French, City Attorney John Lovinger, City Attorney Tom Thompson, Kay Freese (HR), Police Chief Scott Hephner (HCPD), Fire Chief Kevin Pauken (HCFD), Mary Wolfram (HPG), Mike Barber (BPU), Glen White (MSCPA), Jake Hammel (BPU), Penny Swan, Jason Walters (Patriot Aviation), Jeff King (Aero Data), Andy Barrand (HDN), Greg Bailey, Joe Posten, Jon Paul Rutan, and Shirley VanArsdale.

### **Excused Absences**

Council Member Watkins moved, seconded by Council Member Flannery, to approve the absence of Council Member Bell and Council Member Stockford. Motion carried unanimously.

### **Approval of Agenda**

Council Member Watkins moved, seconded by Council Member Flannery, to approve the February 15, 2016 meeting agenda as presented. Motion carried unanimously.

### **Public Comment**

Jon Paul Rutan, 2228 Pond Brook Drive, objected to the proposed changes to Sections 5 and 7 of the city's social media policy. Mr. Rutan stated it was his understanding that people had no expectation of privacy while attending a public event and a photograph of a person at a city event could be shared on social media without prior authorization from that individual. Mr. Rutan also questioned the language in Section 7 which stated "employees and other individuals should have no expectation of privacy while using any City communication equipment or facilities for any purpose."

Penny Swan, 205 North Manning, objected to the proposed changes to the city's Social Media Policy and questioned if the policy would even allow citizens to repost newspaper articles that referenced the City of Hillsdale. Ms. Swan questioned the term "individuals" that was in the policy and noted the policy could affect her Constitutional rights. Ms. Swan noted the importance of open communication and transparency in local government.

\*Council Member Stack-Davis arrived at 7:07 p.m.

Jeff King, AeroData, discussed the BPU Review Committee Report and stated his public comments on July 14, 2015 were not accurately portrayed in the report. Mr. King stated that he, nor anyone else at the meetings, had never said the utility rates of a private provider would be less expensive than rates offered by a publically owned and operated provider. Mr. King stated comments offered by the public need to be accurately portrayed in the permanent records of the city, especially when important actions are taken based on those comments. Mr. King stated

important questions remained after the report was finalized including the city's position with the utility, the liquidity of the asset, and the city's investment into the Endicott Generating Station.

### **Consent Agenda**

- A. Approval of Bills from Claims of January 28, 2016: Payroll \$129,824.07; Claims \$77,379.60
- B. Committee Reports
  - 1. Cemetery Board Minutes of February 3, 2016
- C. Council Minutes of February 1, 2016
- D. January 2016 Code Enforcement Report

Council Member Watkins moved, seconded by Council Member Flannery, to approve the Consent Agenda as presented.

Roll call:	Stack-Davis	Yes
	Dixon	Yes
	Flannery	Yes
	Sharp	Yes
	Watkins	Yes
	Mayor Sessions	Yes

Motion passed 6-0.

### **Communications/Petitions**

There were no communications or petitions.

### **Introduction and Adoption of Ordinance/Public Hearing**

There were no ordinances or public hearings for consideration.

### **Old Business**

- A. BPU Review Committee Report

City Manager Mackie presented the committee report which included Dr. Gary Wolfram's paper entitled "Improving Michigan's Electric Utility Industry" and other exhibits. City Manager Mackie objected to the statements made by Mr. King earlier in the meeting regarding this subject.

Council Member Sharp noted the BPU rate per kilowatt was \$0.11, while the corresponding rate from Consumers Energy was \$0.16. Council Member Sharp stated the BPU was staffed with local employees which allowed a faster response to outages and other emergencies. Council Member Sharp stated he was not in favor of selling the BPU in an effort to raise revenue for other city initiatives.

Council Member Stack-Davis stated the report lacked any analysis of the current leadership and employee structure that had recently been streamlined. Council Member Stack-Davis encouraged further review and research of the issue from persons or organizations outside of the committee, who may be able to provide an unbiased point of view on the subject. Council Member Stack-Davis stated the report was not fully conclusive, but was helpful to initiate future discussions.

Council Member Flannery indicated the report was helpful, but also stated the report should have included discussion regarding the change in management and the recent efficiencies that had been implemented. Council Member Flannery encouraged future Councils review this issue at regular intervals, as the BPU was the largest investment of the city.

Council Member Stack-Davis stated critical decisions regarding the future of the BPU should also include the expected impact of the Endicott Generating Station closure.

Dr. Gary Wolfram noted discussions regarding the change in the organizational structure and the Endicott plant closure were not included in the report, as the report had been completed prior to those announcements. Dr. Wolfram discussed the differences of selling an asset into a competitive market versus selling into a regulated monopoly. Dr. Wolfram stated proposed changes to the utility industry at the state level could impact future recommendations on the BPU sale.

Mayor Sessions thanked all of the committee members for their time and efforts involved in the development of the report.

## B. Council Vacancy/Special Election

City Manager Mackie reviewed the upcoming election dates and the corresponding filing deadlines for those elections that could be utilized to fill the existing Council vacancy. Responding to a question from Council Member Dixon, City Manager Mackie stated there had been interest by some residents in running for the vacant Ward 2 seat.

Council Member Sharp stated that any further changes to the City Council membership should be finalized or announced in a timely manner to minimize the time a Council seat remained vacant.

Council Member Watkins encouraged the Council to develop rules that could automatically implement an election sequence in the case of a Council vacancy. Council Member Watkins stated the rules for procedure would eliminate the ambiguity and uncertainty to determine an appropriate election date to fill a Council vacancy.

City Clerk French stated the filing deadline for the August 2016 election was April 19, 2016.

City Manager Mackie stated city staff could develop a timeline for the 2016 election dates to conduct a special election for any Council vacancies, and provide that information to Council at the March 7<sup>th</sup> meeting.

## New Business

### A. Resolution to Declare a Public Nuisance: 48 Greenwood St.

Council Member Watkins moved, seconded by Council Member Flannery, to adopt a resolution declaring the property at 48 Greenwood Street to be a public nuisance and ordering the violation thereon abated within 60 days.

Roll call:	Stack-Davis	Yes
	Dixon	Yes
	Flannery	Yes
	Sharp	Yes
	Watkins	Yes
	Mayor Sessions	Yes

Motion passed 6-0.

### B. BPU: Purchasing Power Agreement and Resolution

Mr. Glen White, General Manager of the Michigan South Central Power Agency, (MSCPA) reviewed the staff recommendation to authorize American Municipal Power (AMP) to acquire bids and execute contracts to purchase 25 megawatts in three, distinct purchase power agreements (PPA's). Mr. White noted the ever-changing price of power on the open market required AMP to negotiate on behalf of the City of Hillsdale, as the actual purchase contract required a prompt response once the price was offered. Mr. White stated each of the three contracts would begin in January 2018 and individually conclude in 2020, 2025, and 2030 and would involve all of the members of the MSCPA, with the City of Hillsdale utilizing approximately three megawatts per hour. Mr. White noted the purchases were for on-peak purchase periods from 7:00 a.m. through 11:00 p.m. Monday-Friday.

Mr. White referenced the MSCPA Capacity Portfolio and noted the City of Hillsdale's capacity would soon increase by approximately 11 megawatts when the city's power plant generators were finished being refurbished. Mr. White also detailed the Hillsdale Hydro Resources capacity and the increase of power that the city had realized due to the new investments in hydro power generation.

Responding to a question from Council Member Watkins, Mr. White stated the Endicott Power Plant had produced only at minimum levels (20-25 megawatts per hour) throughout the past couple of years due to market conditions. Mr. White noted the generation from the new hydro investments would negate the power lost when the Endicott plant was completely shuttered. Mr. White stated due to new loads being anticipated in the Coldwater area, the PPAs were recommended to limit MSCPA's exposure to the hourly markets.

Mr. White stated the power purchase with the PPAs would not originate from dedicated sources, such as coal plants, natural gas, or nuclear plants. Mr. White indicated the contracts were for the purchase of specific amounts of power, not contracts for the purchase of power from specific locations. Mr. White stated the contract was an energy-only deals, and did not contract the city to a specific capacity or energy producing machine.

Council Member Flannery moved, seconded by Council Member Watkins, to adopt a resolution authorizing the execution of the 2018-2030 Fixed Volume Energy Supply schedule with American Municipal Power (AMP).

Roll call:	Stack-Davis	Yes
	Dixon	Yes
	Flannery	Yes
	Sharp	Yes
	Watkins	Yes
	Mayor Sessions	Yes

Motion passed 6-0.

#### C. Records Retention Schedule

City Clerk French recommended the City Council adopt the following General Record Retention and Disposal schedules that had been approved for use by the State of Michigan:

1. #11 (Local Law Enforcement Agencies, updated 08-02-2005)
2. #17 (Michigan Public Libraries, updated 01-18-2005)
3. #18 (Local Fire and Ambulance Departments, updated 03-06-2007)
4. #24 (City and Village Clerks, updated 11-05-2008)
5. #26 (Local Government Human Resources, updated 10-07-2008)

Council Member Stack-Davis moved, seconded by Council Member Flannery to adopt a resolution adopting the listed General Record Retention and Disposal schedules.

Roll call:	Stack-Davis	Yes
	Dixon	Yes
	Flannery	Yes
	Sharp	Yes
	Watkins	Yes
	Mayor Sessions	Yes

Motion passed 6-0.

#### D. MDOT

Airport Manager Walters presented a recommended contract with the Michigan Department of Transportation (MDOT) for the purchase of new weather reporting equipment at the Hillsdale Airport. Mr. Walters stated the existing equipment is over thirty years old and replacement parts have become very hard to locate as the system has become obsolete. Mr. Walters stated the total cost of the equipment would be \$70,000, of which the City of Hillsdale would be responsible for 10% of the costs.

Council Member Sharp moved, seconded by Council Member Stack-Davis, to adopt a resolution approving a contract between the Michigan Department of Transportation (MDOT) and the City of Hillsdale for the State and Local Airport project to install weather reporting equipment replacing AWOS components be approved by the City Council and authorize the Mayor and City Clerk signatures.

Roll call:	Stack-Davis	Yes
	Dixon	Yes
	Flannery	Yes
	Sharp	Yes
	Watkins	Yes
	Mayor Sessions	Yes

Motion passed 6-0.

#### E. Social Media Policy

Human Resources Director Freese reported city staff had reviewed the existing 2012 social media policy and had recommended changes to that policy to update the terms and conditions of usage. Ms. Freese stated the policy had been reviewed both by the City Manager and by City Attorney Thompson.

Attorney Thompson stated the policy was primarily directed to employees of the City of Hillsdale, while a separate section of the policy was devoted to elected officials, volunteers, and appointees to various boards & commissions. Attorney Thompson noted recent United States Supreme Court rulings recognized a public employee's First Amendment rights to free speech to engage in communication as a citizen in regards to matters of public concern. However, Attorney Thompson noted the employee's speech "could not interfere with the efficient and effective

provision of public service by that governmental entity.” Attorney Thompson stressed that city employees should not infer that their social media communication is being done on behalf of, or representing, the city. Attorney Thompson also stated employees are prohibited from posting any information that is illegal, harassing, or any other information that could place the City in a legally compromising position.

Attorney Thompson reported the draft social media policy included elected officials, appointed officials, and those who are otherwise affiliated with the city in some capacity. Attorney Thompson stated those groups of people were included in the policy because people might think those individuals may speak on behalf of the city, and the items placed on-line are representative of the city’s position. Attorney Thompson stated the social media policy would be seen as a guideline for users to make a distinction between an individual’s views or opinions, and not necessarily what the city’s views are.

Attorney Thompson reiterated that the requirement to include a distinction between one’s individual views and those “official” view of the city would not be required for posts or attachments which are clearly not affecting the city. Attorney Thompson used an example that a family photograph or video posted on a social media site would clearly not have to include such a distinction because the post does not have any reference to the city.

Attorney Thompson then discussed that city employees could be disciplined for violation of the social policy; however, discipline or other mechanisms for elected officials, appointed officials, and those who are otherwise affiliated with the city in some capacity were not included in the policy. Attorney Thompson stated the policy relied on other measures, such as the election process, to address elected officials who may violate the policy. Attorney Thompson noted violations of the policy by members of the city’s boards and commissions could result in the member being removed by the City Council.

Attorney Thompson also presented information on the need for a barrier for use of the city logo or direct links to the city’s website, to help distinguish between the official position of the city, and the information or opinions posted by individual citizens.

Council Member Stack-Davis questioned if a city employee would violate the proposed social media policy if they posted on their personal Facebook page that “the City Council made a lot of bad decisions tonight.” Attorney Thompson stated the post would generally not violate the proposed social media policy, if the language was clearly posted as an expression of a personal opinion of the employee as a private citizen, and not made in their capacity as an employee of the city, and their comments was made about an issue of public concern, not one that addressed a personal concern. Attorney Thompson stated the statement could violate the policy depending on the nature of the matter and if the comment interfered with the efficient and effective provision of public service.

Council Member Stack-Davis also questioned the assertion that the Mayor was the spokesperson for the City of Hillsdale. Attorney Thompson stated the Mayor, by default, was the person able to speak on behalf of the city. However, Council had the authority to appoint any Council Member or staff representative to speak as a representative of the city on any number of issues. Attorney Thompson noted the importance of having a single voice to represent the city so that the public understood the differences between the view of the city and the personal views of individuals who may have an opposing view of that issue.

Council Member Sharp noted that he did not believe in the use of social media and encouraged any citizen to contact him using other means to discuss matters pertaining to the city.

Council Member Stack-Davis noted the distinct differences in the policy between city employees and “elected officials, appointed officials, and those who are otherwise affiliated with the city in some capacity.” Council Member Stack-Davis noted the policy could be improved by separating the policy in two, distinct sections between employees and elected/appointed board members.

Council Member Watkins commented the policy seemed confusing and encouraged city staff to clarify certain language in the policy to simply its message. Council Member Watkins stated the city’s policy was very similar his employer’s policy, but Toyota’s policy language was much easier to understand and the policy included examples for employee reference and clarity. Council Member Watkins also discussed the importance of having city employees and board members share certain social media posts about the city to increase participation and transparency about the community.

Attorney Thompson reviewed Section 5 of the draft policy which discussed the restricted use of photographs taken of city employees and other individuals without the prior consent of those individuals. Attorney Thompson noted individuals “own” their right to their image and unauthorized photographs cannot be generally posted on social media sites without permission. Attorney Thompson noted other restrictions involving posting photographs, including those pictures that include children, for example.

Council Member Stack-Davis recommended the adoption of the policy be delayed until the next March 7, 2016 meeting so that the policy could be separated into one policy for employees and one policy for elected/appointed board members.

Council Member Watkins voiced support for the delay and stated the split should be fairly easy to accomplish. Council Member Watkins stated the policy could also be separated and clarification language could be added after Council adopted the policy.

Council Member Stack-Davis moved, seconded by Council Member Flannery, that the adoption of the social media policy be delayed until the March 7, 2016 meeting so that the policy could be separated into one policy for employees and one policy for elected/appointed board members.

Roll call:	Stack-Davis	Yes
	Dixon	No
	Flannery	No
	Sharp	No
	Watkins	No
	Mayor Sessions	No

Motion failed by a vote of 5-1.

Prior to a vote on the motion, Council Member Dixon discussed the differences between the two groups that had been described in the policy and noted his opinion that the appointed board members should be deemed more as employees in the policy, than grouped with the city's elected officials.

Council Member Watkins voiced support for the split of the policy into two, separated groups, but stated the split could be completed following the adoption of the staff recommendation at the current meeting. Council Member Watkins stated the presentation or layout of the policy would not change the impact or meaning of the policy.

City Manager Mackie read a statement received from Council Member Stockford regarding the proposed policy. Council Member Stockford objected to the policy in general, but voiced support that any social media policy to be applicable to everyone, whether they are employees, elected, or appointed. Council Member Stockford voiced support for the draft policy as submitted and encouraged Council to approve the policy at the current meeting.

Council Member Stack-Davis stated that if there were issues with an appointed board member violating social media policy, it should be the responsibility of the mayor to address the concern and intervene on behalf of the city.

Council Member Watkins voiced support to adopt the social media policy as presented, but to then clarify language in the policy using examples or different wording.

Mayor Sessions stated his support for the comments offered by Council Member Watkins and encouraged immediate approval of the policy as submitted, with clarifying language to follow at a later date.

*\*Following Mayor Sessions comments, the roll call was read on Council Member Stack-Davis' motion.*

Council Member Watkins moved, seconded by Council Member Sharp, to adopt the revised Social Media Policy as submitted, with authorization of the Mayor and City Clerk signatures.

Roll call:	Stack-Davis	No
	Dixon	Yes
	Flannery	Yes
	Sharp	Yes
	Watkins	Yes
	Mayor Sessions	Yes

Motion passed 5-1.

#### F. Dial-a-Ride (DART) Funding

Finance Director Tew provided information on a proposed resolution to seek financial assistance from MDOT under Act 51 for public transportation and the DART program. Ms. Tew detailed the funding sources for DART for the 2016-17 fiscal year that included federal funding of 18.5%, state funding of 35.76%, and local funds of 45.74%. Ms. Tew also noted the resolution would designate herself as the city's Transportation Coordinator.

Responding to a question from Council Member Stack-Davis, Finance Director Tew stated the revenues from riders were fairly consistent from year-to-year, although ridership tended to increase during the winter months and decrease during the summer months. Ms. Tew also reported the General Fund transfer funding to DART was lower than in previous years.

Council Member Stack-Davis voiced her objection to the resolution and stated the use of General Fund dollars could be allocated to more pressing needs in the city.

Council Member Watkins moved, seconded by Council Member Flannery, to adopt a resolution of intent to apply for state formula operating assistance for fiscal year 2016-2017 under Act No. 51 of the Public Acts of 1951, as amended

Roll call:	Stack-Davis	No
	Dixon	Yes
	Flannery	Yes
	Sharp	Yes
	Watkins	Yes
	Mayor Sessions	Yes

Motion passed 5-1.

Prior to voting on the motion Council Member Sharp noted the importance of DART, and noted some in the community relied on the program for their only means of transportation.

Council Member Stack-Davis noted the importance of the DART program, but also discussed more fiscally responsible options including volunteer groups, neighbors, churches, and other organizations that could be available to provide this service.

#### G. Land Division Application – Gows Comm 4 Hill LLC

Mayor Sessions introduced the staff report as presented and noted the application had been recommended for approval by the City Assessor and Zoning Administrator.

Council Member Watkins moved, seconded by Council Member Flannery, to adopt a lot division application from Gos Comm 4 Hill, LLC to divide part of lot 132 and part of lot 131 Block 31 of the South Addition to the City of Hillsdale (currently all assessed as parcel #006-426-328-20).

Roll call:	Stack-Davis	Yes
	Dixon	Yes
	Flannery	Yes
	Sharp	Yes
	Watkins	Yes
	Mayor Sessions	Yes

Motion passed 6-0.

#### City Manager's Report

City Manager Mackie thanked everyone for their comments and discussions on very important issues that had been presented at the meeting.

City Manager Mackie reported the March 7, 2016 Council Meeting agenda will include a report on the actual costs associated with brush and leaf pickup throughout the city.

City Manager Mackie requested Council Members provide feedback to his office regarding the Landscaping Ordinance that had been referred back to the Planning Commission at the January 18, 2016 Council Meeting.

#### General Public Comment

Mr. Joe Posten, 49 Carriage Park, publically commended the police and fire personnel who responded to his home on February 4, 2016 for a medical emergency. Mr. Posten stated the care provided by the personnel was shown with exceptional dignity and respect toward his family. Mr. Posten also discussed on-going issues with the Dial-A-Ride program and his inability to receive prompt transportation services from the program when requested.

Mr. Jeff King, Aerodata, objected to the social media policy that had been adopted earlier in the meeting. Mr. King stated the policy seemed to be over-reaching and too restrictive on city employees and appointed board members. Mr. King stated that he didn't disagree with the policy,

but felt further discussion and thought was needed by Council prior to its approval. Mr. King also stated he felt it was illegal for the policy to be applicable to elected Council Members.

Ms. Penny Swan, 205 North Manning, objected to the adopted Social Media Policy and stated any changes made to the policy should be done prior to final adoption by the Council.

#### **Council Comments**


Council Member Sharp encouraged the City Manager Mackie to investigate the issues raised by Mr. Posten and the Dial-A-Ride program.

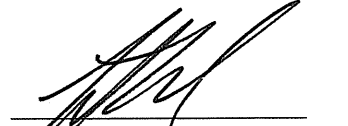
Council Member Watkins noted employment with the city was "at-will" and the intent of the social media policy was not to terminate someone's employment, but to establish guidelines for an employee's posts on social media relating to the City of Hillsdale.

#### **Adjournment**

Motion by Council Member Watkins, seconded by Council Member Sharp, to adjourn the meeting. Motion passed unanimously.

The meeting adjourned at 8:50 p.m.

  
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Scott M. Sessions, Mayor

  
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Stephen M. French, City Clerk