

REGULAR SESSION, BOARD OF PUBLIC WORKS AND SAFETY, MAY 11, 2020

The Board of Public Works and Safety of Plymouth, Indiana, met in Regular Session on May 11, 2020. The meeting was held in the Council Chambers, on the second floor of the city building, 124 N. Michigan St., Plymouth, Indiana.

Mayor Mark Senter called the meeting to order at 6:00 p.m. Senter presided for Board Members Duane Culp, Shiloh Milner, and Bill Walters. City Attorney Sean Surrisi and Clerk-Treasurer Jeanine Xaver were also present. As allowed by Governor Holcomb's Executive Order #20-04 and 20-09, Board Member Jeff Houin attended the meeting virtually.

Members Culp and Walters moved and seconded to approve the minutes of the last regular session of the Board of Public Works and Safety on April 27, 2020. The motion carried.

City Engineer Gaul presented a request from Windstream KDL, LLC for work in the city's right-of-way on Gibson Street for the new junior high school (UT-20-014). They are requesting to conduct directional boring across the street to install conduit at a depth of 36 inches. The financial guarantee amount is \$5,000.

Members Walters and Milner moved and seconded to approve UT-20-014 as presented, subject to the terms, notes and conditions outlined in the correspondence provided by City Engineer Gaul and the placement of the financial guarantees. Board Member Houin abstained from voting. The motion carried.

Gaul also provided an update on SW-19-044, regarding the alley drainage behind 400 N Michigan Street (First United Methodist Church). He said the city will be crack sealing the alley. Once this is complete it will be easier to calculate the storm water runoff.

Street Superintendent Marquardt said Rieth-Riley will begin milling on Ferndale Street on May 12th.

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City Attorney Surrisi presented Executive Order 2020-14, Regarding the Plymouth Public Library's Curbside Pick Up Program, and Executive Orders 2020-15 and 2020-16, Extension of Public Health Disaster Emergency Declaration, related to the COVID-19 response.

Board Members Culp and Milner moved and seconded to ratify Executive Orders 2020-14, 2020-15, and 2020-16. The motion carried.

City Attorney Surrisi reviewed the 911 Dispatch Fees for 2020. He said the current invoice is due by July 1st and there were some questions back in February regarding the amount that is due and how that invoice was calculated.

Councilman Houin said he read both City Attorney Surrisi's and Clerk-Treasurer Xaver's memorandums regarding this invoice. He feels legal arguments could be made for both sides, but ultimately feels the council should do what is best for the city and its residents. Houin said he does not think it is an unreasonable price considering what it would cost to staff and house our own dispatch services. Moving forward, he would like the lines of communication between the city and county to remain open and decisions clearly communicated between parties. Houin said he does support paying the current invoice as presented.

Councilman Culp agreed with Houin. There was discussion regarding whether or not the agreement needs to be amended each year. City Attorney Surrisi said the easiest way to look at the agreement is that it establishes the framework where the fee portion can be set each year. The subcommittee agrees on the annual fee at one of their quarterly meetings. Mayor Senter and Assistant Fire Chief Kinney are the city's representatives to this subcommittee. It was decided that following quarterly meetings, a report can be given to the board to keep them up-to-date on the decisions being made for the city.

Clerk-Treasurer Xaver reviewed the following information with the board:

EXCERPT FROM AUGUST 12, 2019 BOARD OF PUBLIC WORKS & SAFETY MEETING MINUTES

Police Chief Dave Bacon was present to discuss the funding for 2020 Central Dispatch through Marshall County. Councilman Houin said he reviewed the city's contract with the county regarding these services, which was originally approved in 2016 for services beginning in 2017. He said there have been no amendments to the original contract. Any review of the contract was to include the city and any amendment would have to be approved by the city. Houin said his interpretation is that the fee of \$127,987.00 in the original contract is still in effect for 2020, should have been in effect in 2017, 2018, and 2019, and will continue in the future until the board approves an amendment. In 2018, the city paid \$132,000 which is \$4,013.00 over the contracted amount. In 2019, the city paid \$158,111.00 which is \$30,124.00 over the contract amount. Houin said his stance is that the city should pay \$93,850.00 for services in 2020, which is \$127,987.00 (contracted amount) less the over payment for the last two years totaling \$34,137.00. Houin noted that there is an advisory board but he does not feel they have authority to make changes to the contract and he would like to see the sheriff come before the board if he wants to make any changes.

City Attorney Surrisi said the city does have representation on the advisory board and this city board would have approved the payment of the invoice and claims in 2018 and 2019 with the increased rates, which he feels is the city's agreement to pay those increased rates. However, he does think this warrants further investigation into how to proceed in the future.

Houin disagreed with Surrisi's opinion that by approving the submitted claim the Board of Works agreed to a newly negotiated contract.

Walters asked why the percentage calculated and paid by the city is different from the other entities in the county that are part of the dispatch services. He said he understands that the city will pay a higher rate because the call volume is larger for the city, but he does not understand the calculated percentages for each entity. Chief Bacon said he does not have an answer and is unsure how the county formulated these figures. Bacon noted that if broken down into a per call rate, the City of Plymouth is being charged two to three times more than the other entities for the same service.

There was additional discussion regarding the county's contributions to the dispatch services. At this point, that information is unknown because it is not disclosed on any of the information from the county. The police chief and fire chief representatives on the committee are unknown and Mayor Senter is the only representative from the city on the committee at this time.

Board Members Houin and Milner moved and seconded to have City Attorney Surrisi draft a letter to the sheriff stating that the city's stance is that the fee to be paid for dispatch services is as agreed upon in the original contract and if the sheriff wants to amend that, he needs to come before the board and discuss it. The motion carried.

MEMO

To: Mayor Senter
Council Members
City Attorney Surrisi

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Chief of Police Bacon
 Fire Chief Miller

From: Clerk-Treasurer Xaver
 Date: February 19, 2020
 Re: 911 Dispatch Fees

I received a bill from the Marshall County Sheriff for \$175,000 for the police and fire departments plus \$5,000 for Center Township and \$4,000 for West Township. We pay the fees for the townships as part of a separate agreement with them.

We discussed this last year at a public meeting and Jeff Houin stated that according to the Intergovernmental Agreement from 2016 between the city and the county, the county cannot increase the agreement unless it is agreed upon by both parties.

According to that interpretation of the contract, the city overpaid the contract by \$5,998 in 2018 and by \$39,346 in 2019. I have prepared a claim for \$87,417 for approval at the Board of Works meeting. This amount is the total of the original contract less the overpayments for the last two years.

Dispatch Fees Billed and Paid vs Contract										
Original Contract										
	Police	Fire	Center	West Twp						
	115,500	12,487	3,428	1,346						
Year	Contract				Due per	Charged by County and paid by city				
	Police	Fire	Center	West	Contract	Police	Fire	Center	West	by City
2017	115,500	12,487			127,987	115,500	12,487			127,987
2018	115,500	12,487	3,428	1,346	132,761	119,100	12,900	4,000	2,759	138,759
2019	115,500	12,487	3,428	1,346	132,761	150,528	14,581	4,083	2,915	172,107
2020	115,500	12,487	3,428	1,346	132,761		175,000	5,000	4,000	184,000
Amount overpaid by City										
	Police	Fire	Center	West	OVERPAID					
2018	3,600	413	572	1,413	5,998					
2019	35,028	2,094	655	1,569	39,346					
					45,344					
2020	115,500	12,487	3,428	1,346	132,761					
	(38,628)	(2,507)	(1,227)	(2,982)	(45,344.00)	less overpayment				
	76,872	9,980	2,201	(1,636)	87,417	2020 payment to county				

Xaver stated that if the Board Members intend for her to pay the higher amount, which she disagrees with, based on Councilman Jeff Houin's August 12, 2019 explanation of his interpretation of the agreement, then she needed a legal opinion from the city attorney to enter into the minutes and a vote from you at a public meeting to pay the higher amount.

May 12, 2020

Clerk-Treasurer Jeanine M. Xaver
124 N. Michigan St.
Plymouth, IN 46563

Sent By Email To: clerktreas@plymouthin.com

Office of the City Attorney
Sean Surrisi
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Legal Opinion Regarding Payments for Central Dispatch Services

Dear Clerk-Treasurer Xaver:

At your request, I'm providing you with the following legal opinion to demonstrate that the Intergovernmental Agreement for Marshall County and City of Plymouth for Dispatch Services ("Agreement" a copy of which is enclosed) does not require amendment to adjust the amount of annual fees payable by the City. Accordingly, payment of this year's invoice for dispatch fees is permissible and required under the agreement, and there was no overpayment for dispatch service in past years. My analysis is below.

Paragraph 15A. of the Agreement provides that "This agreement may be amended and modified only in writing signed by all parties." The parties to the Agreement are identified in the introductory paragraph on the first page as "Marshall County, Indiana" and "the City of Plymouth, Indiana". In executing the Agreement, the County is acting by and through its Board of Commissioners and the City is acting by and through its Mayor and Common Council. It's important to note that on our side of the equation the party is the City itself and not a specific board within the City. Under Indiana Code § 36-1-7-4, such an agreement could be approved by the executive of the government entities alone, if it is also approved by the Indiana Attorney General's office, but the Attorney General's approval isn't required if the agreement "is approved by the fiscal body of each party that is an Indiana political subdivision either before or after the agreement is entered into by the executive of the party". Of course, practically, the Council would need to be up to speed and supportive of any agreement like this to eventually authorize the necessary funding, but, in terms of the mechanics of the agreement itself, the Council was brought to the table to meet the statutory interlocal agreement requirements of not needing Attorney General approval. But as far as any approvals needed under the Agreement, any City approval is sufficient.

Paragraph 4 of the Agreement addresses payments for the dispatch service as follows "The funding for said service shall be supplemented by the City of Plymouth by the payment to the County of *an annual fee* as agreed to herein and as *may from time to time be amended or modified as is required and agreed upon by the parties.*" (emphasis added). Noting the highlighted text in the last sentence, it's evident that "an annual fee" has been "agreed to herein".

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Later in Paragraph 4, that agreed upon “annual fee” is identified as the Agreement provides “*The funding* to be provided by Plymouth *for the upcoming year is shown on the dispatch funding listing* for all local governmental units with Marshall County which is *attached* hereto and made a part hereof *as Exhibit “A”*. (emphasis added). So, the initial 2017 “annual fee” was set forth on “Exhibit ‘A’”. However, the agreement specifically contemplates that the “annual fee” “may from time to time be amended”. There’s an important distinction there that it’s the “annual fee” that is potentially amended and not the Agreement itself. Beyond identifying the initial “annual fee” amount, the Agreement wasn’t concerned with the amount of future “annual fee[s]” it merely established a process or framework by which amendments to those fees could be made on an annual basis by the agreement of the parties.

Paragraph 4 goes on to note “*Annual fees* payable from Plymouth to County *shall be mutually determined* and may include as a factor, among other things, the City’s percentage of calls to dispatch. That percentage, and other factors, including the overall costs and expenses for operation of the system, *shall be reviewed annually by the parties, and if necessary, the City’s payment* for dispatch services *shall be amended*.” (emphasis added). Again those provisions further support the reading of the Agreement that it’s the “payment” or “annual fee” amount that is contemplated to be amended by the parties each year. It also makes sense that the County Commissioners would not have designed an agreement that required them to separately approve amendments each year coming in from each of the towns, townships, etc. that are served by Central Dispatch. That’s a lot of needless work and legal review and costs, particularly for the other communities who don’t have an attorney on staff.

Also, noting that the fee identified was just for “the upcoming year”, again, supports the idea that the parties intended that amount to be later adjustable. If that wasn’t the case, it’d been a lot easier to just have said something like “the fee for dispatch services is \$ _____. The terms of this agreement may be amended by the written agreement of the parties.” Instead, the idea of the costs of this Central Dispatch operation being a moving target is baked in to the Agreement. The Agreement establishes the dispatch board to “oversee the financial and budgetary administration of dispatch”. We have two members on that board, Mayor Senter and Assistant Fire Chief Chad Kinney.

I also don’t think that it’s necessary to amend the Agreement to exactly reflect the new way in which the dispatch board is now calculating the annual fees. The current language in Paragraph 4 addressing the basis for establishing the fees is very broad. It uses the permissive language “may” when discussing the now abandoned factor of the “City’s percentage of calls to dispatch”. So just because they aren’t using that factor any longer doesn’t mean we necessarily need to change the Agreement to reflect the change. It doesn’t say they “shall” use that data point in establishing the fees. The listed items “may [be] include[d] as a factor, *among other things*” and “*other factors*”. (emphasis added). That language really covers any rationale for the annual fee that the dispatch board might use.

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to satisfy the interlocal agreement statute's requirement of fiscal body approval to avoid the need for Attorney General approval, the Council's express approval of the annual fee amendments wasn't required. The approval just generically needed to come from the party to the Agreement, the City of Plymouth. Claims for each of those years' Central Dispatch fee invoices were submitted to the City and approved by the Board of Public Works and Safety. That level of approval is sufficient to process the payment on our end and is sufficient under the terms of the Agreement. With respect to this year's payment, the Board of Public Works and Safety formally voted to approve the invoice at its meeting on May 11, 2020.

Please let me know if I can be of any further assistance.

Sincerely,



Sean Surrisi
Plymouth City Attorney

Enclosure: Intergovernmental Agreement for Marshall County and City of Plymouth for Dispatch Services

Board Members Houin and Culp moved and seconded to approve payment of the original invoice as it was presented. The original contract is in the amount of \$175,000 for the City, \$5,000 for Center Township and \$4,000 for West Township. The motion carried.

Xaver updated the board on the outstanding balance still due from unpaid utility bills that would have been disconnected in April, 2020 for non-pay. That balance is just short of \$4,400. Milner asked if the governor has extended the no utility-shut-off order for bills due June 4th. City Attorney Surrisi said we do not know at this time if that order will be extended. Milner asked if the city will be allowing payment plans for those that are falling behind. Xaver said she has drafted a letter which will go to those who have unpaid balances. The letter includes information for relief

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through United Way and will be asking those that have not been paying to try and start paying what they can.

Board Members Milner and Walters moved and seconded to allow the payroll for May 15, 2020 and the claims for May 11, 2020, as entered in Claim Register #2020. The motion carried.

Board Members Walters and Milner moved and seconded to accept the following communications that were received in the board's packets:

- Clerk-Treasurer's Memo RE 911 Dispatch Fees and 08/26/19 Board minutes
- Tree Request: 200 Alexander Street

There being no further business to discuss, Board Members Walters and Milner moved and seconded to adjourn the meeting. The motion carried and the meeting was declared adjourned at 6:28 p.m.

Jeanine M. Xaver, IAMC, CMC
Clerk-Treasurer

APPROVED:

Mark Senter
Mayor