

**MINUTES OF THE COMMON COUNCIL
DECEMBER 17, 2013**

A meeting of the Common Council of the City of Oneida, NY was held on the seventeenth day of December, 2013 at 6:30 o'clock P.M. in Council Chambers, Oneida Municipal Building, 109 N. Main Street, Oneida, NY.

Meeting was called to order by Acting Mayor Alden M. Smith

PRESENT: Councilors Brahim Zogby, David Cimpi, Helen Acker, James Chamberlain and Thomas Simchik

ALSO PRESENT: City Attorney Nadine Bell
City Clerk Susan Pulverenti
City Engineer Jon Rauscher
Civil Service Officer Peg Margo
Director of Planning and Development Cassie Rose
Director of Parks and Recreation Lucas Griff
Fire Chief Kevin Salerno
Police Chief David Meeker
Public Safety Commissioner Doug Lippert
Councilor Elect Michael Bowe
Councilor Elect Erwin Smith

OLD BUSINESS

Oneida Rail Trail

Joe Magliocca, Oneida said the Rail Trail Committee has not yet received any notifications about the TEP grant that was applied for. He displayed the new trail markers and said they are continuing to work with many different contact groups to make the trails system a reality. Acting Mayor Smith said he chatted with Mayor Carla DeShaw of Canastota and she did not have much info on our trail systems and asked Mr. Magliocca to reach out to her.

Moved by Councilor Simchik
Seconded by Councilor Acker

RESOLVED, that the minutes of the special meetings November 26, 2013 and December 10, 2013 and the regular meeting of December 3, 2013 are hereby approved.

Ayes: 6
Nays: 0

MOTION CARRIED

Moved by Councilor Chamberlain
Seconded by Councilor Cimpi

RESOLVED, that Warrant No. 24, checks and ACH payments in the amount of \$352,916.37 as audited by the Voucher Committee is hereby approved for payment in the usual manner at the discretion of the Comptroller.

Ayes: 6
Nays: 0

MOTION CARRIED

Moved by Councilor Cimpi
Seconded by Councilor Simchik

RESOLVED, that check #49825 in the amount of \$264.40 (Oneida Office Supply) as audited by the Voucher Committee is hereby approved for payment in the usual manner at the discretion of the Comptroller.

Ayes: 5
Nays: 0
Abstain: 1 (Acker)

MOTION CARRIED

MONTHLY REPORTS

RESOLUTION 13-308

Moved by Councilor Acker
Seconded by Councilor Cimpi

RESOLVED, that the monthly reports from the Chamberlain, City Clerk, Comptroller, City Engineer, Director of Planning and Development, Fire Chief, Police Chief, and Recreation Department are hereby received and placed on file.

Ayes: 6
Nays: 0

MOTION CARRIED

Acting Mayor Smith expressed his thanks for the monthly reports, noting they are extremely useful.

VOID BALANCE OF WATER ACCOUNT

RESOLUTION 13-309

Moved by Councilor Simchik
Seconded by Councilor Cimpi

WHEREAS, Common Council Resolution 97-158 authorized the Water Superintendent to install a water service on City owned vacant land located on Wilson Street for use by the Rainbow Garden Club of Oneida, **and**

WHEREAS, per said Resolution the Madison County Day Treatment for Developmentally Disabled People were responsible for the payment of water usage, **and**

WHEREAS, the Madison County Day Treatment is no longer renting 226 Wilson Street, the service to the garden has been turned off and the water service reverts to a City owned account, **now therefore be it**

RESOLVED, that the remaining balance of \$20.00 for account 51-18202899 be void as it now a City property.

Ayes: 6
Nays: 0

MOTION CARRIED

AMUSEMENT DEVICE LICENSE

RESOLUTION 13-310

Moved by Councilor Cimpi
Seconded by Councilor Simchik

RESOLVED, that the Amusement Device License Application from Neil's Vending LLC, Abbie Deraway, 6734 Strain Road, Munnsville, NY be hereby approved.

Ayes: 6
Nays: 0

MOTION CARRIED

SURPLUS ITEMS

RESOLUTION 13-311

Moved by Councilor Acker
Seconded by Councilor Simchik

WHEREAS, per NFPA structural fire fighting ensembles shall be retired no more than 10 years from the date of manufacture, and the Fire Department has ten sets of turnout gear from the late 1980's and 1990's to be disposed of, **and**

WHEREAS, the Rotary collects old firefighting turnout gear to distribute to less fortunate countries that fight fires in street clothes and shorts, **and**

WHEREAS, the Fire Department has an unused old low band radio system consisting of two base units, mobile units and portables, which is of little or no value because the County has taken out the frequencies, **and**

WHEREAS, many of the local Fire Departments has been donating these unused radio systems to the American Red Cross, **now therefore be it**

RESOLVED, that the Common Council does hereby approve the donation of the outdated turnout gear to the Rotary and the outdated radio system to the American Red Cross.

Ayes: 6
Nays: 0

MOTION CARRIED

Acting Mayor Smith said the he is pleased to see that our outdated surplus items can be put to good use for those less fortunate and gave kudos to those involved with making this happen.

AUTHORIZE MEDICARE PART B REIMBURSEMENT PAYMENTS TO RETIREES

RESOLUTION 13-312

Moved by Councilor Acker
Seconded by Councilor Simchik

RESOLVED, that the City Comptroller be, and hereby is authorized and directed, throughout the period from January 1, 2014 to June 30, 2014, to make payments to all eligible retired City employees for reimbursement of the cost of Medicare Part B coverage in accordance with the provisions regarding such reimbursement as set forth in the current contracts of CSEA, Inc., Local 1000 AFSCME and Oneida Paid Firefighters Association Local 2692.

Councilor Zogby – Yes
Councilor Cimpi – Yes
Councilor Smith – Yes
Councilor Acker – Yes
Councilor Chamberlain – Abstain
Councilor Simchik – Yes
MOTION CARRIED

**PROPOSED LOCAL LAW TO ESTABLISH A
PUBLIC NUISANCE ABATEMENT PROGRAM IN THE CITY OF ONEIDA**

RESOLUTION 13-313

Moved by Councilor Acker
Seconded by Councilor Zogby

WHEREAS, no other agency has the legal authority or jurisdiction to approve or directly undertake the enactment of a local law in the City of Oneida, **now therefore it is**

RESOLVED, that the proposed Local Law No. 6 of 2013 to establish a Public Nuisance Abatement Program in the City of Oneida is hereby received and placed on file, **and it is further**

RESOLVED AND DETERMINED, that the enactment of proposed Local Law No. 6 of 2013 is an unlisted action, such that there are no other involved agencies within the meaning of the New York State Environmental Quality Review Act (SEQR) with respect to the proposed enactment of said Local Law, with the result that the Common Council shall act as lead agency in this matter; **and it is further**

RESOLVED, that a Public Hearing on proposed Local Law No. 6 of 2013 is hereby scheduled for January 7, 2014 at 6:30 p.m. in the Common Council Chambers, 109 N. Main Street, Oneida.

**A LOCAL LAW TO ESTABLISH A PUBLIC NUISANCE
ABATEMENT PROGRAM IN THE CITY OF ONEIDA**

Be it enacted by the Common Council of the City of Oneida as follows:

SECTION 1.

The Code of the City of Oneida is hereby amended to include a new Chapter 122, titled “Public Nuisance Abatement,” which shall read as follows:

“CHAPTER 122. PUBLIC NUISANCE ABATEMENT.

§ 122-1 PURPOSE.

It is hereby declared to be the policy of the City of Oneida to provide for the proper use of real property to prevent illegal, unhealthful, hazardous or dangerous conditions. By this Chapter, the Common Council of the City of Oneida seeks to establish a procedure

for the City of Oneida to effectively abate those dangers which constitute a nuisance to public safety, health, life and property, and to assess the cost of abatement against those individuals who knowingly conduct, maintain, allow or permit the existence of a public nuisance and the real properties on which such activity occurs.

§ 122-2 DEFINITIONS.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed:

PREMISES. Real property or a building or structure, or any part thereof.

PUBLIC NUISANCE. Includes, but shall not be limited to:

1. Any building, structure or real property used for the illegal use, possession or distribution of a controlled substance or marijuana, as defined by the State Penal Law.
2. Any building, structure or real property used for prostitution as defined by the State Penal Law.
3. Any building, structure or real property used for indecent or obscene performances and/or promotion of obscene material as defined by the State Penal Law and this Code.
4. Any building, structure or real property used for illegal gambling activity as defined by the State Penal Law.
5. Any building, structure or real property used for the commission of illegal possession, use or sale of firearms or weapons as defined by the State Penal Law.
6. Any building, structure or real property used for the illegal sale, manufacture or consumption of alcohol beverages as defined by the State Alcohol Beverage Control Law.
7. Any building, structure or real property wherein there exists or has occurred a criminal nuisance, as defined by the State Penal Law.
8. Any building, structure or real property used for loitering, as defined by the State Penal Law.
9. Any building, structure or real property wherein an occupant, guest or business invitee commits criminal activities involving assault, gang assault, harassment or disorderly conduct as said criminal activities are defined by the State Penal Law.

OWNER. The owner(s) or landlord(s) of a building, structure or real property, including his or her agent.

TENANT. The Lessee or occupant of a building, structure or real property. For purposes of this Chapter, the term "Tenant" shall include an occupant of one (1) or more rooms in a rooming house or a residence, not including a transient occupant, of one (1) or more rooms in a hotel for thirty (30) consecutive days or longer.

ILLEGAL DRUG ACTIVITY. The use or possession of a controlled substance or marijuana, as defined by the State Penal Law.

CRIMINAL CONVICTION. The entry of a plea of guilty or a verdict of guilty for one (1) or more counts as set forth in an accusatory instrument.

§122-3 NUISANCE FORBIDDEN.

No owner, operator, manager or tenant of premises shall knowingly conduct, maintain, permit or allow the existence of a public nuisance at the premises.

§122-4 PRESUMPTION OF A PUBLIC NUISANCE.

The following shall constitute a presumption of a public nuisance:

- A. Notice by first-class mail or personal service, from the City of Oneida, of the activities entailing a public nuisance to the owner, operator, manager or tenant of premises shall be *prima facie* evidence of knowledge of a public nuisance.
- B. The existence of two (2) or more criminal convictions for any of the activities set forth in the definition of a public nuisance in § ___-2 at any premises within the two (2) year period prior to the commencement of a civil action and/or administrative hearing shall be *prima facie* evidence of the existence of a public nuisance.
- C. The existence of two (2) or more incidents of the following activities at any premises within the one (1) year period prior to the commencement of a civil action and/or administrative hearing shall be *prima facie* evidence of the existence of a public nuisance:
 1. Service of a Search Warrant on the premises where controlled substances, marijuana and/or weapons are seized.
 2. Finding of illegal controlled substances or illegal firearms or weapons on the premises.
 3. Investigative purchases of illegal controlled substances on the premises by Law Enforcement Agencies or their agents.

§122-5 SUMMONS AND COMPLAINT FOR CIVIL ACTION.

- A. At the direction of the Common Council of the City of Oneida, the City Attorney may bring and maintain a civil action in the name of the City to abate a public nuisance and shall commence a civil action by filing a summons and complaint in the manner required by the New York State Civil Practice Laws and Rules.
- B. The summons and complaint shall name as defendant(s) at least one (1) of the owners of some portion of or of some interest in the property, as set forth in the last filed tax roll, and shall describe the owner's premises by tax map number and/or street address.

- C. The summons and complaint may also name as defendant any owner, operator, manager or tenant of the premises.
- D. The complaint shall allege the facts constituting the public nuisance.
- E. The complaint shall be accompanied by an Affidavit, to affirm that the owner or his agent had notice of the public nuisance and an opportunity to abate the public nuisance.
- F. Because the public nuisance is conducted, maintained, permitted or allowed in the City of Oneida, the venue of such action shall be in Madison County.
- G. In rem jurisdiction over the premises shall be completed by affixing the summons to the premises and by mailing the summons and complaint by certified or registered mail, return receipt requested to the person in whose name the real property is recorded as determined by the last filed tax rolls.
- H. Defendant(s), other than the record property owner of the premises, shall be served with the summons and complaint in the manner required by the New York State Civil Practice Laws and Rules.
- I. With respect to any action commenced or to be commenced, the City Attorney may file a Notice of Pendency pursuant to the New York State Civil Practice Laws and Rules.

§122-6 CIVIL PENALTY.

If, upon the trial of an action for a public nuisance or upon a motion for summary judgment, a finding is made that defendant(s) have conducted, maintained, permitted or allowed a public nuisance, a penalty may be awarded in an amount not to exceed \$1,000.00 for each day it is found that the defendant(s) conducted, maintained, permitted or allowed the public nuisance after notice to abate had been given by the City.

§122-7 PERMANENT INJUNCTION.

- A. If, upon the trial of a civil action for a public nuisance or upon a motion for summary judgment, a finding is made that defendant(s) have conducted, maintained, permitted or allowed a public nuisance, a permanent injunction may be granted.
- B. A permanent injunction may prohibit defendant(s) from conducting, maintaining, permitting or allowing the public nuisance.
- C. A permanent injunction may authorize agents of the City to remove and correct any condition(s) in violation of this Code. The judgment may further order that the cost of removing and correcting the violation(s), plus a charge of 50% as compensation to the City for administration and supervision expenses, be charged against defendant(s) and awarded to the City. The judgment may further order that the cost of removing and correcting the violation(s), plus the charge of 50% as compensation to the City for administration and supervision expenses, shall constitute a lien against the real property and shall be collected in the same manner

as provided by law for the collection of real property taxes within the City.

- D. A judgment ordering a permanent injunction may direct the closing of the premises by the Oneida City Police Department, to the extent necessary to abate the public nuisance.
- E. A judgment awarding a permanent injunction shall provide for all costs and disbursements allowed by the New York State Civil Practice Laws and Rules and for the actual costs, expenses and disbursements of the City in investigating, bringing and maintaining the action.

§122-8 CLOSING OF PREMISES.

- A. If the judgment of a civil action directs the closing of the premises, the Oneida City Police Department shall serve the judgment upon defendant(s) in the manner required by New York State Civil Practice Laws and Rules and shall post a copy of the judgment upon one (1) or more of the doors at entrances of the premises or in a conspicuous place on the premises.
- B. In addition, the Oneida City Police Department shall affix upon one (1) or more of the doors at entrances of the premises or in a conspicuous place on the premises, a printed notice stating "Closed by Court Order" in block lettering of sufficient size to be observed by anyone intending to enter the premises.
- C. Mutilation or removal of the posted judgment or notice, while it remains enforced, will be considered a separate violation and shall be punishable pursuant to Section 55.10(3)(a) of the State Penal Law.
- D. The Oneida City Police Department may then command all persons present in the premises to vacate the property. After the premises are vacated, the Oneida City Police Department may secure the premises.
- E. The closing directed by the judgment shall be for a period as the Court may direct but in no event shall the closing period exceed one (1) year from the posting of the judgment.
- F. A closing by the Oneida City Police Department shall not constitute an act of possession, ownership or control by the City.

§122-9 PRELIMINARY INJUNCTION.

Upon a motion or order to show cause from the City Attorney and pending an action for a permanent injunction, a preliminary injunction enjoining the public nuisance may be granted for any of the relief obtained by a permanent injunction.

§122-10 TEMPORARY RESTRAINING ORDER.

Pending a motion or order to show for a preliminary injunction, a temporary restraining order or temporary closing order may be granted, without notice to defendant(s), for any of the relief obtainable by a permanent injunction.

§122-11 ADMINISTRATIVE HEARING.

As an alternative or in addition to commencing a civil action, whenever there is *prima facie* evidence of a public nuisance at any premises within the City, the City Attorney may, at the direction of the City of Oneida Common Council, initiate an administrative hearing in accordance with the following procedure:

- A. A notice of the hearing shall be served on all owners of the premises as determined by the last filed tax roll and may also be served on any known operator, manager and/or tenant of the premises. The notice shall be served in the manner required by the New York State Civil Practice Laws and Rules.
- B. The notice shall allege the facts constituting the public nuisance and shall contain a time and place for a hearing to be held before a panel.
- C. The hearing panel shall consist of a member to be appointed by the Code Enforcement Officer, a member to be appointed by the Chief of Police and a member to be appointed by the Fire Chief. Each appointing authority shall be authorized to appoint his/herself or any member of his/her staff to the hearing panel.
- D. At the time and place designated in the notice, the City Attorney shall present all relevant evidence and/or witnesses demonstrating the existence of a public nuisance at the premises and as to appropriate remedies. The owner, operator, manager and/or tenant of the premises shall have the right to examine such evidence and shall cross-examine any witnesses presented. The owner, operator, manager and/or tenant of the premises may present any relevant evidence and/or witnesses as a defense. The City Attorney shall have the right to examine such evidence and cross-examine any witnesses presented by the owner, operator, manager and/or tenant of the premises.
- E. Within five (5) business days of the hearing, the panel shall provide a finding of fact to the Mayor. The finding of fact shall state whether there is *prima facie* evidence of the existence of a public nuisance at the premises. The panel shall further provide a written recommendation of remedies to abate the public nuisance.

§122-12 ADMINISTRATIVE REMEDIES.

- A. To abate a public nuisance, the Mayor, upon receipt of a finding of fact and recommendation from the panel, shall have the power:
 - 1. To issue a Decision and Order suspending the Certificate of Occupancy for the premises for a period not to exceed one (1) year;
 - 2. To issue a Decision and Order directing the closing of the premises by the Oneida City Police Department, to the extent necessary to abate the public nuisance, pursuant to the procedures set forth in § 122-8.
 - 3. In conjunction with, or in lieu of, the foregoing powers, to issue a Decision and Order for various measures to be taken by the

owner, operator, manager and/or tenant of the premises, to the extent necessary to abate the existing public nuisance and to ensure the prevention of future public nuisance actions from occurring at or near the premises, which shall include, but shall not be limited to:

- a. Requiring the owner, operator, manager and/or tenant to modify and improve the premises to deter further and future public nuisance activity; and/or
 - b. Directing subsequent purchaser(s) to comply with the provisions of any Orders of Suspension for the Certificate of Occupancy, unless or until the subsequent purchaser appears before the hearing panel with an appropriate plan to avoid further incidents of public nuisance for the panel to review and make recommendations.
- B. The Decision and Order shall be served upon the owner, operator, manager and/or tenant of the premises in a manner similar to that described in § 122-11(A) herein.
- C. Nothing within this section shall limit the authority of the Mayor to take such other and further actions deemed necessary to abate any existing public nuisances to the extent necessary to ensure the protection of the health, safety and welfare of the general public.

§122-13 SEVERABILITY.

If any clause, sentence, paragraph, word, section or part of this Chapter shall be adjudged by any Court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined to in its operation to the clause, sentence, paragraph, word, section or part thereof, directly involved in the controversy in which said judgment shall have been rendered.”

SECTION 2. EFFECTIVE DATE

This Local Law shall be effective upon filing with the office of the Secretary of State.

Ayes: 6

Nays: 0

MOTION CARRIED

Joe Magliocca, Oneida said this proposed Local Law is great and noted it is modeled after the City of Rome. These problems put a strain on the City’s public safety resources and there has to be consequences for repeat offenders. He asked the Council to strengthen their reserve at the upcoming Public Hearing as there may be a lot of opposition to this change, but this one needs to go through. This type of behavior has a ripple effect in our community. Mr. Magliocca said repeated criminal activity is the single largest obstacle to revitalization of downtown. Mayor Smith said he agreed with Mr. Magliocca’s comments and said a top priority in his tenure is to do everything in his power to make Oneida a better place to live in and that means dealing with the behaviors that have plagued this City for far too long. The Mayor said he sees this as a multi-prong attack, and this is one aspect of it, and there will be more codes enforcing,

which is another piece of that. Acting Mayor Smith stated that we want to have a community where we can be proud of who and what we are.

BUDGET TRANSFERS FOR CLOSE OUT OF CAPITAL PROJECTS

RESOLUTION 13-314

Moved by Councilor Simchik
Seconded by Councilor Cimpi

RESOLVED, to approve the following budget transfers to close out capital projects:

<i>Amount</i>	<i>From</i>	<i>To</i>
\$1,228.69	005.5410.0400 (2012 Sidewalk)	005.9550.0900 (Transfer to General)
\$10,137.81	005.8110.0467 (2001 Kenwood Sewer)	005.9552.0900 (Transfer to Sewer)
\$29,190.64	005.5110.0410 (2009 San Sewers)	005.9552.0900 (Transfer to Sewer)
\$300.00	005.8110.0412 (N. Main Pump)	005.9552.0900 (Transfer to Sewer)
\$10,137.81	005.8110.0467 (Kenwood Sewer)	005.9552.0900 (Transfer to Sewer)

Ayes: 6
Nays: 0

MOTION CARRIED

BUDGET TRANSFERS

RESOLUTION 13-315

Moved by Councilor Acker
Seconded by Councilor Cimpi

RESOLVED, to approve the following budget transfers:

<i>Amount</i>	<i>From</i>	<i>To</i>
\$2,500	001.3410.0412 (Alarm Maintenance)	001.3410.0306 (Fuel)
\$13,041	001.5142.0411 (Veh. Maint)	001.9060.0805 (Health Insurance)
\$2,291.51	001.5142.0315 (Salt & Sand)	001.1989.0400 (Printing)
\$4,013.49	001.1364.0400 (Property Acquired)	001.8020.0101 (Planning Salaries)

\$3,467.64	001.3410.0200 (Fire Equipment)	001.8020.0101 (Planning Salaries)
\$354.50	001.3410.0437 (Printing)	001.8020.0101 (Planning Salaries)
\$30,000	001.3410.0101 (Fire Reg Salaries)	001.3410.0102 (Fire Overtime)
\$3,700	001.3410.0101 (Fire Reg Salaries)	001.3410.0306 (Fire Fuel)
\$1,372.86	001.3410.0444 (Fire Office Tech)	001.9030.0801 (Social Security)
\$3,122.82	001.3410.0409 (Fire Equip Maint)	001.9030.0801 (Social Security)
\$6,000	001.3410.0106 (Fire Sick BB)	001.9030.0801 (Social Security)
\$999.23	001.3410.0104 (Fire Holiday)	001.9030.0801 (Social Security)
\$382.30	001.3410.0108 (Fire Marshall OT)	001.9030.0801 (Social Security)
\$675.36	001.3410.0407 (Fire Chief's Expense)	001.9030.0801 (Social Security)
\$830.39	001.3410.0403 (Fire Contracts)	001.7521.0401 (Kallet Water)
\$1,384.37	001.1420.0419 (Litigation)	001.1420.0403 (Contract)
\$60.23	001.3410.0303 (Fire Department Foam)	001.1420.0403 (Contract Attorney)
\$812.99	001.3410.0317 (Fire Clothing)	001.1420.0411 (Attorney Negotiations)
\$9,000	003.8110.0329 (Ferrous Sulfate)	003.8110.0401 (WWTP National Grid)
\$8,500	001.5110.0103 (DPW Retirement)	001.1620.0401 (City Hall National Grid)
\$4,500	001.5110.0103 (DPW Retirement)	001.7521.0400 (Kallet National Grid)
\$3,000	001.5120.0314 (DPW Road Materials)	001.1620.0401 (Building National Grid)

\$1,092.08	001.5110.0448 (Arterial Maint)	001.9030.0801 (Social Security)
\$2,000	001.5110.0448 (Arterial Maint)	001.1410.0101 (Clerk Salaries)
\$4,500	001.5132.0101 (Central Garage)	001.5110.0101 (DPW)

Year-end shortage transfers

Ayes: 6

Nays: 0

MOTION CARRIED

2014 WATER RATES & WATER SERVICE CHARGES

RESOLUTION 13-316

Moved by Councilor Cimpi
Seconded by Councilor Simchik

RESOLVED, that the 2014 Water Rates and Water Service Charges, attached hereto, be approved.

Ayes: 6

Nays: 0

MOTION CARRIED

WAIVE RULE TO ACCEPT AGENDA ITEMS

RESOLUTION 13-317

Moved by Councilor Cimpi
Seconded by Councilor Simchik

RESOLVED, that per Resolution 08-180 adopted by the Common Council on August 19, 2008, the provisions of the procedure to accept agenda items is hereby waived.

Ayes: 6

Nays: 0

MOTION CARRIED

WAIVER OF MINIMUM WATER/SEWER SERVICE FEE

RESOLUTION 13-318

Moved by Councilor Acker
Seconded by Councilor Cimpi

WHEREAS, Alan J. Hall, Sr. and Sally M. Hall are the fee owners of real property situated within the Inside District of the City of Oneida at 324 Pearl Street, Tax Map No. 30.81-1-31 ("Property"); **and**

WHEREAS, the Property, by means of account number 51-17100900, is supplied with water and sewer services provided by the City of Oneida; **and**

WHEREAS, for properties situated in the Inside District, the minimum charge for having water service active and available for 10 – 91 days during a billing cycle is \$20.00 per quarter and the minimum charge imposed for being connected to the sewer system and having water service active is \$5.50 per quarter, resulting in a total minimum quarterly charge of \$25.50; **and**

WHEREAS, because the minimum charge covers administration costs, such charge is imposed without regard for actual water consumption. Consequently, as set forth in the Water Department Rules and Regulations, to avoid the imposition of a minimum charge the customer needs to contact the City of Oneida Water Department and arrange to have their water service turned off; **and**

WHEREAS, during the flood event of June 2013, the Property sustained significant damage, requiring the emergency evacuation of its occupants; **and**

WHEREAS, despite evacuating the Property, the owners neglected to contact the City of Oneida Water Department to arrange for their water service to be turned off, resulting in the receipt of a quarterly billing statement that included the aforementioned minimum service fee; **and**

WHEREAS, to date, the Property remains structurally unsound and uninhabited, without any water usage; **and**

WHEREAS, because of the extenuating circumstances presented by the June 2013 natural disaster and to minimize further hardship sustained by the owners of 324 Pearl Street, Tax Map No. 30.81-1-31, the Common Council wishes to waive the minimum water service fee, in the amount of \$25.50, for account number 51-17100900, for the fourth quarter of 2013, **now therefore be it**

RESOLVED, that the City of Oneida Common Council does hereby approve the waiver of the minimum water/sewer service fee, in the amount of \$25.50, for account number 51-17100900, for the fourth quarter of 2013.

Councilor Zogby – Yes

Councilor Cimpi – Yes

Councilor Smith – No

Councilor Acker – Yes

Councilor Chamberlain – No

Councilor Simchik – Yes

MOTION CARRIED

Councilor Chamberlain said, while he certainly understands the hardships incurred by the residents in the flooded area, he doesn't agree with doing this on an individual basis. This is a rule and regulation that the City has had. It sets a bad precedent, as others have paid the fee or will be paying the fee. Councilor Acker said the impact of the flood was huge and some people didn't realize they had to call the Water Department to have their water shut off. Councilor Acker said we have to be humanitarians. Councilor Cimpi said the City has to have compassion for its residents. Councilor Chamberlain said he is not sure where it would stop and questioned how the Council is going to look at each individual case that comes up. The Mayor said his only concern is there is a significant amount of people who have paid this fee.

The Water Superintendent said the flood happened in June and this is the December bill. The water policy is no different than any other utility; you deactivate your cable, your phone service, your garbage, your gas and electric when you no longer need the service. There are a lot of services that people receive on a

continual basis until they cancel the service. If you don't want car insurance any more you have to call and say, I sold the car and I don't want insurance anymore. Councilor Acker said this was not a normal situation. Water Superintendent Smolinski said residents affected by the flood have already received blanket adjustments to their bills and the turn-off fees were waived, and this was done immediately to try to help those affected by the flood. The Water Superintendent said handling each request individually is very time consuming and he does not have enough staff to handle that.

The City Attorney said the City cannot waive fees, as it is considered "gifting" someone; however, there is a limited exception when it comes to extenuating circumstances. This Resolution is written with that in mind. It is legally inappropriate to waive a fee without those extenuating circumstances. Attorney Bell said she reached out to NYCOM for an opinion and they agreed the flood is the best time to have a waiver of fees. Councilor Zogby said there needs to be an emergency plan to allot for better communications with residents, particularly in emergency situations. The Mayor said he is awaiting the After Action Report from the County.

NEW BUSINESS

Councilor Chamberlain noted that the house on the corner of Sherman Street and North Lake Street has been torn down. He thanked City Chamberlain Nancy Andrews for all her efforts in securing the title.

Councilor Acker stated the 2014 calendars for the Oneida Public Library are available for \$10 each.

Joseph Magliocca, Oneida, thanked the Oneida Fire Department for their speedy response to a small fire at his residence.

Acting Mayor Smith extended his thanks to outgoing Councilor Dave Cimpi for his contributions to the City and this community. The Acting Mayor said many decisions made by Councils have ramifications for a long time. It takes real dedication and the spirit of support for the community to even consider being a Councilor; it has its demands and pressures. Councilor Cimpi received a round of applause from the audience in honor of his two terms in office.

Acting Mayor Smith said the meeting to close-out the year will be held on Tuesday, December 31 at 8:00 a.m. in the Common Council Chambers.

Motion to adjourn by Councilor Chamberlain

The regular meeting is hereby adjourned at 7:16 p.m.

CITY OF ONEIDA

Susan Pulverenti, City Clerk