

**AGENDA  
STORM WATER UTILITY  
COMMITTEE**

**WEDNESDAY, OCTOBER 12, 2011  
ROOM 202  
4:30 P.M.**

***Anthony Nudo, Chairman  
G. John Ruffolo, Vice Chairman  
Steve Bostrom***

***Patrick Juliana  
Jan Michalski  
Ray Misner***

**A. APPROVAL OF MINUTES**

A-1 Approval of minutes of special meeting held on October 3, 2011.

**C. REFERRED TO COMMITTEE**

C-1 Proposed Ordinance to Create Section 1.06 (of the Code of General Ordinances) Entitled "Ethics Board" and to Repeal and Recreate Various Sections of Chapter 30 (of the Code of General Ordinances) Entitled "Code of Ethics". *(also referred to Public Safety & Welfare Committee, Finance Committee, L/P Committee and Public Works Committee)*

**INFORMATIONAL:**

1. Storm Water Utility Budget Line 501-09-50106-219-824
2. Fund for Lake Michigan Request for Formal Grant

CITIZENS COMMENTS RELATED ONLY TO JURISDICTION OF STORMWATER UTILITY COMMITTEE

STAFF COMMENTS

ALDERMAN COMMENTS

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE CALL 653-4050 BEFORE NOON ON THE DATE INDICATED FOR THIS MEETING.

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

STORM WATER UTILITY COMMITTEE  
- MINUTES -

MONDAY, OCTOBER 3, 2011  
6:30 P.M.

Anthony Nudo, Chairman  
G. John Ruffolo, Vice Chairman  
Steve Bostrom

Patrick Juliana  
Jan Michalski  
Ray Misner

A special meeting of the Storm Water Utility Committee was held on Monday, October 3, 2011 in Room 202 of the Municipal Building. The following members were present: Chairman Anthony Nudo, Vice Chairman G. John Ruffolo, Aldermen Steve Bostrom, Jan Michalski and Ray Misner. Alderman Patrick Juliana arrived during discussion of item C-2. The meeting was called to order at 6:30 pm. Staff members in attendance were Mike Lemens, Shelly Billingsely, Jeff Warnock, Carol Stancato, Mayor Bosman, Frank Pacetti and Alderman David Bogdala.

- A-1 Approval of minutes of regular meeting held on August 31, 2011.  
*It was moved by Alderman Misner, seconded by Alderman Ruffolo to approve. Motion passed 5-0.*
- C-1 Acceptance of Project 10-1017 39<sup>th</sup> Avenue Reconstruction (30<sup>th</sup> Street to 24<sup>th</sup> Street) which has been satisfactorily completed by Payne & Dolan, Inc., Kenosha, Wisconsin, in the amount of \$1,401,112.51. **(District 5)**  
*It was moved by Alderman Misner, seconded by Alderman Bostrom to approve. Motion passed 5-0.*
- C-2 Proposed Resolution to Amend the the City of Kenosha Capital Improvement Program for 2010 by Decreasing SW10-004 "Flood Control Management" in the amount of \$35,000 and Increasing SW93-005 "Curb and Gutter" in the amount of \$35,000 for a net change of \$0.  
*It was moved by Alderman Misner, seconded by Alderman Bostrom to approve. Motion passed 5-0.*
- C-3 Disbursements for the month of August 2011.  
*It was moved by Alderman Ruffolo, seconded by Alderman Bostrom to receive and file. Motion passed 6-0.*
- C-4 Approval of Change Order for Project 11-1208 Sidewalk & Curb/Gutter Repair. *(also referred to Finance and Public Works Committee)*  
*It was moved by Alderman Juliana, seconded by Alderman Ruffolo to approve. Motion passed 6-0.*

INFORMATIONAL:

1. 2011 Fall Yardwaste Curbside Collection – Alderman Michalski commented on Alderman giving out coupons. Coupons can be picked up at City Hall and printed off the city's website. Alderman Ruffolo said this is the third year of offering coupons and it is even more important now to have relief to people using them. Alderman Nudo commented that he would like to look at expanding curbside pickup.
2. Public Participation Events – Alderman Nudo expressed a special thank you to Pastor Griffith and Pastor Gudmundson. Alderman Nudo also invited Alderman Bogdala speak.
3. Discussion regarding Storm Water Utility Budget Line 501-09-50106-219-824 – After much discussion it was determined that this item should be on the next agenda. Alderman Bogdala requested that the members of the Finance Committee be carbon copied.

ADJOURNMENT - There being no further business to come before the Storm Water Utility Committee, it was moved, seconded and unanimously approved to adjourn the meeting at 7:07 pm.

Draft 09/12/11

BY: ALDERPERSON PATRICK JULIANA

**TO CREATE SECTION 1.06 A.A. OF THE CODE OF GENERAL ORDINANCES ENTITLED "ETHICS BOARD" AND TO REPEAL AND RECREATE VARIOUS SECTIONS OF CHAPTER 30 OF THE CODE OF GENERAL ORDINANCES ENTITLED "CODE OF ETHICS"**

The Common Council of the City of Kenosha, Wisconsin, do ordain as follows:

**Section One: SECTION 1.06 A.A. of the Code of General Ordinances for the City of**

Kenosha, Wisconsin, is hereby created as follows:

**1.06 A.A. ETHICS BOARD.**

**1. Title.** There is hereby created an Ethics Board.

**2. Purpose.** The purpose of the Ethics Board is to render advisory opinions regarding the application of the City of Kenosha Code of Ethics, receive and investigate verified complaints alleging violations of the Code of Ethics, conduct hearings concerning alleged violations of the Code of Ethics, and make written findings of fact conclusions of law, determinations and recommendations regarding violations of the Code of Ethics.

**3. Members.** There shall be five (5) members who are residents of the City, one of whom shall be an attorney licensed to practice law in this State. Members of the Ethics Board shall not be elected officials, persons appointed to elective office, full-time appointed officials, or City employees, nor shall they be currently serving on any other City Board, Commission or Authority. All members shall be appointed by the Mayor and confirmed by the Common Council.

**4. Term.** The term of members shall be five (5) years, which shall be staggered by creating initial terms for a period of one (1), two (2), three (3), four (4) and five (5) years, respectively.

**5. Officers.** The Board shall elect a chairperson and a vice-chairperson from among its members at its initial meeting and annually at its first meeting of each calendar year.

**6. By-Laws.** The Board may, from time to time, adopt by-laws and rules of procedure fixing the time and place of meeting, prescribing the manner of keeping records, and treating other matters.

**7. Duties.** The Board shall have the duties specified in Chapter 30 of the Code of General Ordinances as may be amended from time to time.

**Section Two: Sections 30.08 through 30.13 of the Code of General Ordinances for**

the City of Kenosha, Wisconsin are hereby repealed.

**Section Three: Sections 30.08 through 30.20 of Chapter XXX of the Code of General**

Ordinances for the City of Kenosha, Wisconsin are hereby created as follows:

### **30.08 ADMINISTRATION AND ENFORCEMENT**

Except as otherwise provided in this Chapter, the Code of Ethics shall be administered and enforced by the Ethics Board.

### **30.09 ADVISORY OPINIONS**

Any covered person or the Office of the City Attorney may make a written request of the Ethics Board for an advisory opinion regarding the propriety of any matter or matters to which the covered person is or may become a party. Any appointing officer, with the consent of the prospective appointee, may make a written request of the Ethics Board for an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The Ethics Board shall review a written request for an advisory opinion and advise the person making the request. Advisory opinions of the Ethics Board shall be in writing. It shall be prima facie evidence of intent to comply with the Code of Ethics when a person making a written request for an advisory opinion abides by the advisory opinion of the Ethics Board provided the material facts are as stated in the advisory opinion request.

The identity of the person requesting the written advisory opinion, the request for an advisory opinion, any documents or records obtained or filed in connection with the request for an advisory opinion and any written advisory opinion of the Ethics Board shall not be made public and shall be closed in whole to public inspection unless the individual requesting the advisory opinion consents in writing to make public the individual's identity, the request, documents, records and/or advisory opinion. Meetings of the Ethics Board at which deliberations and actions are taken in connection with a written request for an advisory opinion shall not be open to the public. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person waives the confidentiality of the request for an advisory opinion, documents or records obtained or prepared by the Ethics Board, including the Ethics Board advisory opinion, in connection with the request for an advisory opinion. Notwithstanding the foregoing, the Ethics Board may, but is not obligated to, make public a summary of an advisory opinion after making sufficient alterations in the summary to prevent disclosing the identities of individuals involved in the opinion.

### **30.10 COMPLAINTS**

**A. Filing of Complaints.** Any person may file a complaint against any covered person alleging a violation of the Code of Ethics with the Ethics Board. The complaint shall be filed with the City Department of Human Resources. The complaint shall be in writing and shall be verified. A separate written verified complaint shall be requested for each named covered person. The complaint shall state with specificity the date of the alleged offense, the provision of the Code of Ethics alleged to have been violated, and the facts and circumstances upon which the allegations are based. Allegations shall be deemed to be made upon personal knowledge unless stated as being made upon information and belief.

**B. Sufficiency of Complaints.** Within ten (10) working days of the receipt of the verified complaint, the Ethics Board shall forward by regular mail to the accused covered person a copy of the verified complaint and a general statement of the applicable provisions of the Code of Ethics. Within twenty (20) working days after mailing, the Ethics Board shall meet to determine whether based upon the face of the verified complaint sufficient facts are alleged to constitute a violation of the Code of Ethics. If the Ethics Board determines that the verified complaint does not allege facts sufficient to constitute a violation of the Code of Ethics, the Ethics Board shall dismiss the complaint and notify the complainant and the accused covered person. If the Ethics Board determines that the verified complaint was brought for harassment purposes, the Ethics Board shall so state.

If the Ethics Board determines that the verified complaint alleges facts sufficient to constitute a violation

of the Code of Ethics, the Ethics Board shall conduct an investigation. The Ethics Board shall authorize any investigation by a motion which shall state the nature and purpose of the investigation and the actions or activities to be investigated. Upon adoption of a motion, the Ethics Board shall notify each accused covered person who is the subject of the investigation. Within ten (10) working days of the adoption of the motion, the Ethics Board shall forward by regular mail a copy of the motion to each accused covered person identified in the motion together with a notice informing the accused covered person that he or she is the subject of the investigation together with a general statement of the applicable provisions of the Code of Ethics involved in the investigation. Service of the notice is complete upon mailing.

If during the course of an investigation, the Ethics Board finds probable cause to believe that a violation of the Code of Ethics other than one contained in the verified complaint has occurred, the Ethics Board may amend the complaint upon its own motion to include such violations and to conduct an investigation. Within ten (10) working days of the adoption of the motion amending the complaint, the Ethics Board shall forward by regular mail to the accused covered person a copy of the motion, the amended complaint and a general statement of the applicable provisions of the Code of Ethics involved in the amended complaint and investigation. Service is complete upon mailing.

**C. Limitations.** No action may be taken by the Ethics Board on any complaint which is filed with the Ethics Board later than two (2) years after a violation of the Code of Ethics is alleged to have occurred. Any complaint, investigation or prosecution regarding violations of the Code of Ethics initiated prior to the effective date of this ordinance and any proceedings arising therefrom shall proceed pursuant to the provisions of Chapter XXX in effect prior to the effective date of this Ordinance and shall be unaffected by the adoption of this Ordinance.

### **30.11 POWERS**

Pursuant to any investigation or hearing conducted under this Chapter, the Ethics Board has the power to:

**A.** Require any person to submit in writing such reports, documents, information and answers to questions in connection with the proceedings conducted under this Chapter as the Ethics Board may prescribe, such submission to be made within such period and under oath or otherwise as the Ethics Board may determine.

**B.** Require all persons who are the subject of the investigation or hearing to execute releases, authorizations and/or waivers to permit the Ethics Board to obtain information and documents in connection with the proceedings conducted under this Chapter as the Ethics Board may prescribe.

**C.** Administer oaths and issue subpoenas signed by the chairperson, or vice-chairperson in the absence of the chairperson, compelling the attendance and testimony of individuals and the production of any documentary evidence relating to the investigation or hearing being conducted.

**D.** Request and obtain from the Wisconsin Department of Revenue copies of state income tax returns and access to other appropriate information under Section 71.78 Wis. Stats. regarding all persons who are the subject of the investigation or hearing.

**E.** Retain the services of a court reporter, investigator, outside legal counsel, or other experts and staff as may be necessary from time to time in the administration of this Chapter.

### **30.12 PROBABLE CAUSE OF VIOLATION**

Upon conclusion of the investigation, the Ethics Board shall make a determination of whether or not

probable cause exists to believe that a violation of the Code of Ethics has occurred. If the Ethics Board determines that no probable cause exists, the Ethics Board shall send written notice of such determination to the accused covered person and the complainant as soon as practicable. If the Ethics Board determines that there is probable cause to believe that a violation of the Code of Ethics has occurred, the Ethics Board shall issue written findings of fact and conclusions setting forth the basis for the probable cause finding which may also contain a referral to the district attorney recommending further investigation and possible prosecution and /or an order setting a date for a hearing to determine whether a violation of the Code of Ethics has occurred. The notice of hearing, probable cause findings and conclusions and a copy of the complaint shall be served upon the accused covered person. The hearing shall be held within forty-five (45) days after the date it is ordered unless the accused covered person petitions for and the Ethics Board consents to a later date. The Board of Ethics shall provide the accused covered person or his or her counsel exculpatory evidence in the possession of the Ethics Board.

### **30.13 INVESTIGATION AND HEARING PROCEDURE**

The Ethics Board shall have the power to adopt by-laws and rules of procedure, including those related to the manner of conducting investigations and hearings. Any hearing before the Ethics Board shall be presided over by the chairperson or vice-chairperson in the absence of the chairperson. The Ethics Board may retain counsel and other experts and staff as needed in accordance with its by-laws to assist and advise the Ethics Board. The accused covered person may be represented by counsel. The accused covered person may present evidence, call and examine witnesses and cross-examine any witnesses called. All witnesses shall be sworn and all testimony shall be recorded by a court reporter. Upon request the Ethics Board shall issue subpoenas to compel the attendance of witnesses. The formal rules of evidence will not apply although basic principles of relevance, materiality, hearsay and probative value will be observed. The Ethics Board shall not find a violation of the Code of Ethics except upon a preponderance of the evidence admitted at the hearing. The hearing shall be conducted in closed session unless the accused covered person requests in writing that the hearing be open to the public.

### **30.14 DETERMINATIONS**

Deliberations of the Ethics Board during or following a hearing shall be in closed session. Unless otherwise extended, within forty-five (45) days following the conclusion of the hearing, the Ethics Board shall issue written findings, determinations, orders and recommendations. If the Ethics Board determines that no violation of the Code of Ethics occurred, the Ethics Board shall as soon as practicable send written notice of such determination to the accused covered person and the complainant. If the Ethics Board determines that a violation of the Code of Ethics has occurred, the findings and determinations may contain one or more of the following orders or recommendations:

**A.** In the case of a covered person who is a City officer as defined by Wisconsin Statute a recommendation that the City officer be reprimanded, censured, suspended or removed from office. The recommendation shall be made to the appropriate disciplinary authority who may reprimand, censure, suspend or remove the City officer from office.

**B.** In the case of a covered person who is a City employee a recommendation that the City employee be discipline or discharged. The recommendation shall be made to the appropriate disciplinary authority.

**C.** An order requiring the covered person to conform his or her conduct to the Code of Ethics.

**D.** A recommendation that the City Attorney commence a civil forfeiture action in Municipal Court for a violation of the Code of Ethics..

E. A recommendation that the district attorney investigate and/or prosecute.

Notwithstanding the foregoing, no covered person subject to the jurisdiction of the Civil Service Commission or the Board of Police and Fire Commissioners shall be suspended or removed other than in accordance with the rules and regulations thereof.

### **30.15 REIMBURSEMENT OF LEGAL EXPENSES**

In the event a complaint against an accused covered person is dismissed in its entirety the Ethics Board, the accused covered person shall be paid by the City for the reasonable cost of the defense upon assigning to the City any cause of action to recover the legal expenses incurred by the accused covered person from the complainant. The City in its discretion may pursue such assigned cause of action to recover the legal expenses from the complainant where the complaint has been dismissed in its entirety by the Ethics Board.

### **30.16 PUBLIC INSPECTION OF RECORDS**

Except as provided in this Section, all records in the possession of the Ethics Board shall be open to public inspection at all reasonable times. The following records in the possession of the Ethics Board are not open to public inspection:

A. Records obtained in connection with a request for an advisory opinion other than summaries of advisory opinions that do not disclose the identity of individuals requesting such opinions. The Ethics Board may however, make such records public with the consent of the person requesting the advisory opinion. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person is deemed to have waived the confidentiality of the request for an advisory opinion and of any record obtained or prepared by the Ethics Board, including the advisory opinion, in connection with the request for an advisory opinion.

B. Records obtained or prepared by the Ethics Board in connection with an investigation, except that the Ethics Board shall permit inspection of records that are made public in the course of a hearing by the Ethics Board to determine if a violation of the Code of Ethics has occurred. Whenever the Ethics Board refers investigation and hearing records to the appropriate disciplinary authority under Section 30.14 the records may be made public in the course of prosecution initiated under this Ordinance.

### **30.17 FAILURE TO COOPERATE**

The failure of any accused covered person to cooperate with the Ethics Board in the investigation, hearing and disposition of complaints filed under this Ordinance shall be deemed a violation of the Code of Ethics subject to enforcement as provided in this Ordinance.

### **30.18 SEVERABILITY**

If any provision of this Ordinance is invalid or unconstitutional, or if the application of this Ordinance to any person or circumstances is invalid or unconstitutional, as finally determined by a court of record, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

### **30.19 PENALTY**

In addition to any other action, any covered person who violates the Code of Ethics shall be subject upon conviction to a forfeiture of not more than One Thousand (\$1,000.00) Dollars plus the cost of prosecution

for each violation, including actual reasonable attorney fees and expenses, and in the event of failure to make timely payment thereof shall be committed to the County Jail for a period not to exceed thirty (30) days.

**Section Four:** This Ordinance shall become effective upon passage and publication.

ATTEST: \_\_\_\_\_ City Clerk

APPROVED: \_\_\_\_\_ Mayor

Passed:

Published:

Drafted By:  
JONATHAN A. MULLIGAN  
Assistant City Attorney

Info 1



STREET DIVISION  
JOHN H. PRIJIC  
SUPERINTENDENT

ASSISTANT CITY ENGINEER  
SHELLY BILLINGSLEY, P.E.

SOIL EROSION SPECIALIST  
CHRIS PAGELS

**DEPARTMENT OF STORMWATER UTILITY**  
**MICHAEL M. LEMENS, P.E., INTERIM DIRECTOR**

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140  
TELEPHONE (262) 653-4050 · FAX (262) 653-4056

October 7, 2011

To: Anthony Nudo, Chairman  
Stormwater Utility Committee

From: Michael M Lemens, P.E.  
Interim Director of Public Works

Cc: Mayor Bosman

*[Handwritten signature and date: 10-7-11]*

Frank Pacetti  
City Administrator

Carol Stancato  
Director of Finance

David Bogdala  
District 17 - Finance Committee, Chairman

Commissioners of the Finance Committee

Subject: INFORMATIONAL ITEM – *Stormwater Utility Budget Line 501-09-50106-219-824*

**BACKGROUND INFORMATION**

The Stormwater Utility Commission has requested this item be continued onto the October 12<sup>th</sup> Committee meeting and the Finance Committee notified of the discussion.

**RECOMMENDATION**

Informational / Discussion Only – No Action Required

Info 2



STREET DIVISION  
JOHN H. PRIJIC  
SUPERINTENDENT

ASSISTANT CITY ENGINEER  
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**DEPARTMENT OF STORMWATER UTILITY**  
**MICHAEL M. LEMENS, P.E., INTERIM DIRECTOR**

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TELEPHONE (262) 653-4050 · FAX (262) 653-4056

October 7, 2011

To: Anthony Nudo, Chairman  
Stormwater Utility Committee

From: Michael M Lemens, P.E. *[Signature]*  
Interim Director of Public Works

Subject: INFORMATIONAL ITEM *Fund for Lake Michigan Request for Formal Grant*

**BACKGROUND INFORMATION**

Staff has received an informal invitation to complete the application for the Fund for Lake Michigan. Staff submitted an intent to apply in August of 2011. Staff is waiting for the formal invitation and then will submit the application to complete more intense river monitoring of the Pike River for water quality.

**RECOMMENDATION**

Informational / Discussion Only – No Action Required