

MINUTES
CITY COUNCIL CHARTER MEETING
May 3, 2010
5:30 pm
Council Chambers

MEMBERS PRESENT: Mayor Stiehm. Council Members Brian McAlister, Jeff Austin, Dick Pacholl, Steve King, and Marian Clennon. Council Member-at-Large Janet Anderson.

MEMBERS ABSENT: Council Member John Martin.

STAFF PRESENT: Jim Hurm, Tom Dankert, Jeanne Howatt, Jon Erichson, Craig Hoium, Steven Lang, David Hoversten, Brian Lovik, Kim Underwood, Ann Hokanson, and John Mueller.

OTHERS PRESENT: Post Bulletin, Austin Daily Herald. Public. Bonnie Rietz. Carlton Thompson, Jim Jorgenson, Roger Jorgenson, Jim Davis, Jim Sauer, Mike Schuster. Jim Mino, Sharon Wagner, Marv Repinski. Lisa Prehn.

Item No. 10, Approving \$2500 from Contingency Fund in support of the drug prescription disposal program will be moved up on the agenda following the consent agenda.

Moved by Council Member Austin, seconded by Council Member King, approving the agenda as amended. Carried.

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, approving the minutes of April 19, 2010. Carried.

Postal representatives announced, and Mayor Stiehm read a proclamation for, the annual Letter Carrier Food Drive Day scheduled for Saturday, May 8.

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, approving the consent agenda as follows:

Licenses:

Concrete: Cummings Concrete, LLC, Austin, MN

Concrete: Rick Bliss, Austin, MN

Excavation: Tru Green Irrigation, Lyle, MN

Food: Lim Lerum dba, Oriental Express, 501 Oakland Ave W, Austin, MN

Master Plumber: Lone Star Plumbing, Adams, MN

Tattoo Artist: Chad Iverson, Austin
 Tattoo Establishment: Ivy's Ink & Apparel, 111 11th Avenue NE, Austin
 Temporary Gambling (excluded bingo): American Legion Auxiliary, Mower
 County Fairgrounds, August 10-15

Claims:

- a. Pre-list of bills.
- b. Angela Rohde, 404 3rd Avenue SE. This claim has been referred to the city attorney to protect the city's interest.

Carried.

The Austin Area Drug Taskforce has discussed with the Committee-of-the-Whole a program for prescription drug disposal. The taskforce is requesting \$2500 from the City and County to run the program. County Attorney Kristen Nelson would use \$1000 of county funds for the program. The taskforce has also applied for a grant. Bonnie Rietz from the taskforce said the program would be run according to federal guidelines. The drop-off box would be located left of the Courthouse reception desk.

Moved by Council Member Pacholl, seconded by Council Member-at-Large Anderson approving \$2500 from Contingency Fund in support of the drug prescription disposal program. 6-0. Carried.

Prices for the seasonal asphalt supply were similar to 2009. The amount needed has been reduced 5% in response to the reduced 2010 budget. Bids are as follows:

Contractor	Base Bid	Mileage	Total
Ulland Bros. Inc.	\$275,000/5000 = \$55.00/ton	.40 x 19.7 = \$7.88	= \$62.88
Rochester Sand & Gravel	\$271,000/5000 = \$54.20/ton	.40 x 34.9 = \$13.96	= \$68.16

Moved by Council Member Austin, seconded by Council Member King, adopting a resolution awarding the bid to Ulland Bros. Inc. for seasonal asphalt supply. 6-0. Carried.

The City received bids for the annual supply of oil for street maintenance. The one bid is 10.7% over the 2009 amount.

Contractor	Base Bid
Flint Hill Resources	\$ 112,077.00

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution awarding the bid to Flint Hill Resources for annual oil supply. 6-0. Carried.

Council must hold a repeat hearing for the Lansing Township Sanitary Sewer project because the notice for the previous hearing was not published in the paper. The first resolution ordering the improvement must be rescinded also.

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution rescinding Resolution No. 13797, Ordering improvement, approving plans and specs, and ordering advertisement for bids – Lansing Township sanitary sewer project. 6-0. Carried.

A public hearing on the Lansing Township Sanitary Sewer project was held. Assistant City Engineer Steven Lang presented the PowerPoint on the Lansing Township Sanitary Sewer project. He noted that the assessment policies would be determined by Council at a later date.

Council Member Clennon questioned if the pumps required for certain properties could be used for future neighbors. Mr. Lang said ‘no’; the pumps are for single use.

Carlton Thompson, from the annexation area, who spoke at the April 5th meeting, again referred to a secret meeting in which a decision was made that certain people would not have to be annexed.

City Attorney David Hoversten replied, saying that mediation was held per a requirement of a State of Minnesota regulatory agency. He said that whenever there is a dispute between a township and a city, the entities are required to mediate. Therefore, the meeting was not secret. The meeting was not publicly noticed because it was not required to be. He noted that the meeting served its purpose to avoid extensive legal action. Both parties passed the terms pursuant to the mediation.

Mr. Thompson reiterated that some parties did not get the option to stay out. Mayor Stiehm said there are questions that are hard to answer but there is rationale to the outcome.

Mr. Thompson said some of the annexed property owners are poor and maintain substandard housing. “You voted us out of our happy homes,” he said.

Roger Jorgenson, from the same annexed area as Mr. Thompson, spoke to Council. He said they were told by the City that all areas would be annexed in or it would be found not feasible. If the proposal would have been voted down, they (the City) would not pursue the annexation. Mr. Jorgenson noted that the greatest majority wanted to install their own (septic) systems.

Mayor Stiehm noted that the petitioners came to the City initially.

City Engineer Jon Erichson said that the orderly annexation process is followed when the entities do not agree. The City of Austin received notice that some residents from Lansing Township petitioned the State so this was initiated by the residents. Mr. Erichson said typically, not all residents sign the petition. The original area requested to be annexed was a much larger area. Through mediation, the ultimate area was reduced to the current annexation. One stipulation of the mediation agreement is that the City of

Austin cannot initiate annexation in the ultimate area (the portion that was not annexed) for five years. Mr. Erichson noted that the basic cost has remained the same. The majority of the properties were included to make the project feasible. He noted that it is impossible to include some properties, skip some, service some, etc. He noted that there are a number of parcels that are not compliant so this area was going to get sewer by one entity or another; it was just a matter of who would provide.

An ad hoc committee asked area residents to fill out a ballot. Mr. Erichson noted that a high percentage of the people requesting city sewer service requested that it come from the City of Austin.

Jim Jorgenson, from the Ramsey Addition, asked what happens when the core group can't pay their assessment fees. He said that he is on Social Security, and two-thirds of that goes to the medical clinic. City Administrator Jim Hurm referred to the possibility of a deferment for (qualifying) seniors, though tonight's hearing is not for the assessments.

Mr. Jorgenson stated that he has a fairly new system which cost \$15,000. Another \$18,000 (the approximate cost of the assessment fee) is close to what the property is worth. Mayor Stiehm replied that every time a cost is reduced, the balance is given to the rest to pay.

Carlton Thompson said that the Township Board had stated that if they were to do the sanitary sewer installation, it would hardly cost anything (for the property owners).

Mr. Erichson noted that at one time during the development of the costs, the City's cost was lower. As for affordability, one of the last areas to be annexed was the Norman Park area in 2002/2003. Those assessments were \$17,000 - \$18,000. Looking at the costs, the short life expectancy of individual septic systems must be weighed as well. Mr. Erichson said he believed the sanitary sewer system is superior to septic systems.

Jim Davis of Royal Manor Addition spoke to Council. He argued that the Woodhaven area people had problem with the sewage. Now there are two separate systems proposed, and "I'm sure theirs (Woodhaven's) is going to cost more." He said he feels the Woodhaven residents should be assessed for theirs, and the east side of Cedar River for theirs. "We're subsidizing them."

Mr. Erichson said different options were reviewed. They could have been bid as one package, but rather they structured the bid for the best value for the residents paying for the system. That is why they are separating the project. He explained that the project is such that if one of the two parts were removed, it would have eliminated bidders. The bid was done this way to appeal to the greatest number of bidders. He added that the bid dates are a couple days apart. And everyone is assessed the same because they are receiving the same service. If the west side was to get a different assessment rate, the disparity would be difficult to explain to the neighbors.

Jim Sauer, who lives on 244th Street, asked Mr. Erichson how many septic systems the City has seen that are compliant. How many are compliant west of the river, and how many are compliant east of the river? Mr. Erichson said that he didn't think that the City has that information but that the area has had a number of sewer issues since 1995. He noted that one thing that drove this project now was the previous lack of enforcement. Finally, the MPCA became involved within the last 2-4 years – way before the annexation. The MPCA entered into four agreements with different property owners. Those property owners would receive a \$500 per month penalty if they are not compliant. The MPCA then stopped these procedures because of the (annexation) action occurring. The City Engineering Office has been involved with neighbors' complaints of illegal disposal. The noncompliance dated way before the City became involved.

Jim Davis alluded to Woodhaven Addition which, he believes, has the raw sewage issue. Their fines could pay for their system and then the residents on the east side of Cedar River could be left alone, he commented. City Engineer Jon Erichson said the City has set up a policy that if people can demonstrate that their septic system is acceptable, those property owners can wait five years to hook up. Mr. Davis said they were told they were going to get water, but they won't be getting water. In addition, they must pay for the disposal of their current system. And, now that we are annexed to the City of Austin, asked Davis, why can't we be serviced with fire hydrants? Mr. Erichson said that the original petition proposal was for sewer only; the City tried to mirror that request. Service of water was discussed, and some prices were presented. Each neighborhood was given an opportunity to respond, but it was found that the majority was not interested in water. Mr. Erichson said that some property owners on the west side of Cedar River could independently hook up immediately if they wanted to, considering their location.

Jim Jorgenson questioned why this is being pursued in consideration of the new jail/justice center being built and the current state of the economy. He asked where they think people will find the money to pay for it.

Mike Schuster from the Royal Manor Addition said the raw sewage is coming from the north.

Jim Davis said the raw sewage is coming from another neighborhood that the City left out (of the annexation).

No other comments were made.

Moved by Council Member Austin, seconded by Council Member King, adopting a resolution ordering improvement, approving plans and specs, and ordering advertisement for bids. 6-0. Carried.

The Austin City Charter has met prior to this council meeting and recommended to the City Council by unanimous vote several amendments to the Charter. The fourteen chapters of the Charter have been revised and redrafted into fourteen amendments. Separately, there will be three issues which will be submitted by the Charter Commission

to the electorate at the general election. The Council should set a hearing for June 7 to consider approval by ordinance. (Approval by ordinance of the city council must be unanimous.) The proposed, revised Charter will be submitted for publication prior to the hearing.

City Attorney David Hoversten noted that there are some errors that are not substantive, such as some references to the city clerk should be city recorder.

City Administrator Jim Hurm noted the following edited changes to the submitted copy which was included in the backup.

Page 6, §2.07 (N) should be 60 days rather than 30 days

Page 11, §3.06: reference should be 2.07 rather than 2.08

Page 18, §4.02: should be attested by city recorder

Page 18, §4.02: Sentence “In the event of a tie. . . .” should be removed

Page 18, §4.02: Reference to city clerk should be city recorder

Page 18: §4.02: “violation” spelling correction

Page 18: §4.02: 3rd para added phrase “With the exception of an emergency ordinance. . . .”

Page 18: §4.02: “means of the alleged violation” should be replaced with “newspaper”

Page 34: §10.10: “clerk” replaced with “treasurer”

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, adopting a resolution setting a public hearing for June 7 to consider amendments to the City Charter as recommended by the Charter Commission. 6-0. Carried.

A second reading on a draft ordinance which would provide regulations for the erection of wind energy conversion systems (WECS) was presented to Council. Community Development Director Craig Hoium stated that this latest version of the draft ordinance addresses siting and nuisance concerns. Mr. Hoium referred to the chart which would allow WECS in various districts as a conditional use. The ordinance addresses rotor size, maximum height and noise level. He noted that the draft ordinance increases the MPCA decibel limitations of 50-60 to 45-50, adding that the proposed ordinance in front of Council is modeled after an ordinance from Wisconsin.

Council Member-at-Large Anderson thanked Mr. Hoium for his work. She approves of the draft ordinance.

Council Member Clennon confirmed with Mr. Hoium that rotors could be roof-mounted.

Council Member King thanked Mr. Hoium for his work. He said he has no reasonable argument but stated he is opposed. He noted that he has received a lot of phone calls, all opposing. The sentiment whether it be the aesthetics or the noise is that people just don't want them in the city. He acknowledges there is a place for them, which is in the county, and he applauds people for getting off the electrical grid. But residents next to these systems are speaking of their property value and future effect on the sale of their homes. People don't want the look or the feel of WECS; they want trees.

Council Member-at-Large Anderson said that with the conditional use approach, every case will be looked at on its own merits. She reminded everyone that not every wind energy system is a turbine. She asked for Jim Mino to speak for the Planning Commission.

Jim Mino, 1301 19th Street SW and a member of the Planning Commission, said that he is not totally opposed to the WECS but is still opposed to them in residential districts. The Planning Commission went through the ordinance line by line. What was finally approved was not done by majority. The Planning Commission tried to come up with a compromise. With the allowance in residential districts, the Commission also went with a slightly stricter noise level which smaller units in residential districts could meet. He said that with new technology, hopefully the systems will become quieter and quieter. He added that he agrees with the property value argument.

Council Member Pacholl said that due to the size and cost, most people couldn't put them up anyway.

Council Member Austin said he believes there is a misconception and just doesn't see many residents are going to get them. Plus, this ordinance is a compromise.

Council Member McAlister compared this draft ordinance to an ordinance approved last year for outdoor heating systems, an ill-approved ordinance. While these systems may not be constructed everywhere, once one is approved you are going to hear about it, he noted. When one comes in, you're going to hear about it. The argument against is not necessarily rational but personal. Once this ordinance passes, they could be allowed and theoretically would be downtown, adjacent to schools, etc. He reminded everyone that a conditional use permit may not be turned down for no reason.

Sharon Wagner of Oak Park Village asked for clarification on the distance from her property. Mr. Hoiium stated that the tower must be set back from the property line equal to 1.1 times the WECS' height. Seventy-five feet is the height limitation for small WECS.

Marv Repinski encouraged Council to pass the ordinance.

Moved by Council Member Pacholl, seconded by Council Member Austin, for preparation of the ordinance. 3-3. Council Members King, Clennon and McAlister voted nay. Motion failed.

City Attorney David Hoversten advised Council that without an ordinance in place, there is no limitation on WECS – no height restrictions or anything. He said Council should seriously consider giving staff direction because they cannot indefinitely extend a moratorium. (Currently a 60-day moratorium is in effect on WECS. That moratorium ends June 28th.)

Mayor Stiehm asked Council if they would like a special meeting. Council Member Austin said it is basically open season; we are going to need an ordinance. He would like this item added to the next work session (May 17).

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution declaring the City's intention to reassess unpaid assessments on forfeited property. 6-0. Carried.

There are three requests to re-appropriate funds due to a couple of expenditures that were not accomplished in 2009, and also to adjust an amount for road materials. The requests are for Austin Public Library security cameras, Street Department bituminous material, and SIRT equipment.

Moved by Council Member Austin, seconded by Council Member McAlister, adopting a resolution approving Budget Adjustment #3. 6-0. Carried.

The City has received a request from Lisa Prehn, 911 1st Avenue SW, to construct a 6-foot-high privacy fence on the southwest part of her property. The Zoning Department received no objections to the request. Community Development Director Craig Hoium stated that Council has previously approved a similar request for property owners across the street with an alteration of a 45° angle as there was concern over obstructing vehicle and pedestrian traffic. There is no traffic involved with this request however.

Moved by Council Member Austin, seconded by Council Member Pacholl, approving the fence appeal submitted by Lisa Prehn, 911 1st Avenue SW. Carried.

REPORTS:

Council Member Clennon thanked Jeanne Howatt, Brenda Johnson of SEMLM, and Jim Hurm for their work in hosting the April 29th SEMLM meeting here in Austin.

Council Member Clennon noted that KSMQ will be celebrating Sesame Street's birthday on Saturday at the Nature Center.

Council Member Clennon gave her sympathies to a Maplewood officer killed in the line of duty.

Council Member King thanked Kim Underwood for a successful 3rd Annual Clean-up Day. He noted we are getting less litter each year, which means they are doing their job.

Council Member-at-Large Anderson reported that she attended the SEMLM dinner meeting. The focus was on economic development.

Lt. John Mueller announced that the Police Department will hold one of their two annual auctions on Saturday, May 15 at 10:00 am. There will be 200-300 bikes, 9-10 cars and computer products up for auction. He asked that citizens not park in Packer Arena.

Park & Rec Director Kim Underwood thanked citizens for helping at the 3rd Annual Clean-up Day.

The Park & Rec Department will be hosting an open house on May 10 from 4:30 to 6:30 for everyone who has questions on summer programs. Participants are the Austin Public Library, the YMCA, Austin Public Schools, Community Education, Salvation Army and Park & Rec. There will be success coaches from the schools to interpret as needed.

Moved by Council Member Austin, seconded by Council Member King, adjourning the meeting to May 17, 2010.

Adjourned: 7:26 pm

Approved: May 17, 2010

Mayor: _____

City Recorder: _____