

MINUTES
CITY COUNCIL CHARTER MEETING
October 6, 2003
5:30 P.M.
Council Chambers

MEMBERS PRESENT: Mayor Rietz, Council Members Jorgenson, Koch, Pacholl, Goodnature, Christopherson, Chamberlain, and Nordin

MEMBERS ABSENT: None

OTHERS PRESENT: Austin Daily Herald. Austin Post Bulletin. Public.

Added to the agenda: A motion approving parking restriction on 2nd Street and 4th Avenue NE; A resolution approving wine and Sunday wine on-sale licenses for Maria Leon dba Mi Tierra, 107 3rd Avenue NE; and A resolution approving an indemnification agreement between Hormel Foods and the City of Austin.

Moved by Council Member Christopherson, seconded by Council Member Nordin, adopting the agenda as amended. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Pacholl, approving the council minutes of September 15, 2003. Carried.

Moved by Council Member Christopherson, seconded by Council Member Nordin, approving the consent agenda as follows:

Licenses:

Cab Driver: Fred Paulson, 1208 17th Street NE

Master Plumber: Christianson Plumbing & Heating, PO Box 388, Albert Lea, MN

Claims:

- a. Pre-list of bills.
- b. Marie Fett, Waltham, MN. This claim has been referred to the city attorney to protect the city's interest.
- c. Clayton Proechel, 711 9th Avenue SE. This claim has been referred to the city attorney to protect the city's interest.
- d. Jesse Azura, 304 2nd Avenue SW. This claim has been referred to the city attorney to protect the city's interest.

Carried.

Council received bid results for the Wastewater Treatment Plant equipment. City Engineer Jon Erichson said this is in connection to the main lift station upgrade, which Council approved approximately four months ago. Two bids were received. Mr. Erichson recommended the bid from Vulcan Industries.

Bidder	Bid Amount
Vulcan Industries	\$147,277.00
U.S. Filter	\$199,500.00

Moved by Council Member Christopherson, seconded by Council Member Nordin, awarding the bid to Vulcan Industries. 7-0. Carried.

Council received bid results for flood housing asbestos abatement, City Project 5-C-03, Phase II. This is part of the flood housing acquisition. The City is required to have asbestos removal. Fifteen houses are involved with this project. City Engineer Jon Erichson recommended the bid from Safe Air, which is located in the Cities. Safe Air was contractor on the Phase I bid also. Bid results are as follows:

Contractor	Bid Amount
Safe Air Systems LLC	\$26,193.90
Mavo Systems	\$29,420.00
Asbestrol, Inc.	\$36,999.00
Southern Minn. Env. Technologies, Inc.	\$44,081.00

Moved by Council Member Pacholl, seconded by Council Member Nordin, awarding the bid to Safe Air. 7-0. Carried.

A public hearing was held on final assessment for sidewalk replacement, Project 3-C-03. The City replaced blocks which were not replaced in 2002 in an area bounded by Oakland Avenue West, 14th Street NW, 4th Avenue NW and 4th Street NW. Construction was done during the summer. An informational meeting on the assessments was held on September 30; no properties owners showed. Assessments transferred to the County Auditor will be for 10 years at 6% interest. Total cost of the project is \$98,857.25.

Moved by Council Member Christopherson, seconded by Council Member Nordin, approving the final assessment. 7-0. Carried.

A public hearing was held relating to the vacation of public right-of-way in Bel Air 2nd Addition. This proposed street vacation is at 1st Avenue NW, adjacent to the User's property. The right-of-way dead-ends to Westcott Field. City Engineer Jon Erichson said there were some concerns from the property owners to the east, which is the Austin School District. Mr. Erichson said Council should table the hearing to the next council meeting to address all concerns.

Moved by Council Member Pacholl, seconded by Council Member Jorgenson, tabling the public hearing to October 20, 2003. Carried.

City Engineer Jon Erichson requested Council authorize applying for the Greater Minnesota Business Development Public Infrastructure Program. The application primarily is for outstate Minnesota industrial park, and the City would use the grant for Phase II of the Cook Farm infrastructure. Total estimated cost of the project (Phase II) is \$1,840,000. The grant amount is \$500,000. Council Member Nordin inquired about receiving more funding. City Engineer Jon Erichson said in order to qualify, applications had to total 200 points. If we applied for any more than \$500,000, we would lose points and not be eligible for the grant. Any more points and the City would not be eligible to receive any part of the grant; however, the City can apply for additional phases of the grant at any time. Council Member Christopherson asked how the grant might affect our bonding. Mr. Erichson said if the grant is received, it would reduce designated funds from the Building Fund, freeing up those dollars.

Moved by Council Member Nordin, seconded by Council Member Christopherson, adopting a resolution authorizing the Mayor and City Recorder to sign the Greater Minnesota Business Development Public Infrastructure Program Application. 7-0. Carried.

City Engineer Jon Erichson requested Council to pass a resolution and maintenance agreement between the City and MnDOT for maintenance of TH 105 within city limits (Oakland Avenue west to I-90 and 12th Street SW to the Turtle Creek Bridge (11th Avenue SW). The majority of the maintenance is for snowplowing. The State pays by per-lane mile. This is the same agreement as last year's. Council Member Pacholl asked who is responsible for TH 105 south of the Turtle Creek Bridge. Mr. Erichson said the State does it, unless the City arrives there first. Mayor Rietz asked if expenses were covered by this agreement. Mr. Erichson said expenses are not totally covered, but the alternative is to have MnDOT take over the maintenance and he believes that 12th Street SW would not be on their priority list.

Moved by Council Member Pacholl, seconded by Council Member Christopherson, adopting a resolution authorizing the Mayor and City Recorder to sign an agreement between the City and MnDOT for routine maintenance of TH 105. 7-0. Carried.

Director of Administrative Services Tom Dankert presented a Letter of Agreement from Allco Finance on the lease/lease-back program for the Wastewater Treatment Plant. This involves a long-term lease/lease-back to equity investors who wish to purchase the tax title of our Wastewater Treatment Plant for their tax depreciation benefit. The investors would then give the City cash upfront. The proposed transaction has been reviewed and approved by the legal firm of Dorsey and Whitney and by Tom Grundhoefer, the lead attorney for the League of Minnesota Cities. The City would still own and run the facility, employees would still be the City's employees, and there would be no effect on capital improvement or bond issuance that is currently in process or future bond issuance. If the Letter of Agreement is approved, the next step is to hire an appraiser for the Wastewater Treatment Plant and

collector system. The Letter does not commit to any transaction, and all costs are paid by Allco Finance and its equity investors. Mayor Rietz reported that the Council had a good discussion on this proposal, and she asked for individual comments. Council Member Nordin noted that this is not a final decision. The Council can find out more information and enter the agreement at a later point. Council Member Koch noted that his viewpoint was a philosophical one; it does not matter to him if this is legally or ethically correct: a private company should not acquire the city's assets for their benefit. He stated that the tax base would then be shifted from companies to the taxpayers. Council Member Christopherson said he echoed Council Member Koch's sentiments. He said he had some reservations, and would like more information. He noted that he would like to see the federal viewpoint on this matter. This is a 30-year commitment, and he is not ready for a positive vote. Council Member Chamberlain noted that Council all wrestled with this matter. (Could something so wrong be right?) Council Member Chamberlain noted three questions on the matter. One, is it legal. He is satisfied that it is. Two, is it safe, meaning little or no risk? And three, would it benefit the City and what would that benefit be? He stated he does not have all the answers yet, but noted that the purpose of the Letter of Agreement is for the purpose of obtaining information. Council Member Chamberlain said he would support this. Council Member Pacholl said he has communicated with citizens wondering if this is going to be another SMMPA situation from about 20 years ago, which was not a good situation. Council Member Pacholl said he would like it made clear that if anything goes wrong, the City of Austin is indemnified; it is his understanding that the City will not lose a dime. Council Member Wayne Goodnature said, as council members, they must represent the best interest of the city. He noted that we are a city, but essentially we are also a large corporation. He also noted that this is a legal transaction in every sense of the process, whether you agree or not. This is a way for investors to buy our facility as a depreciating item for their tax benefit. This is a way for the City to obtain a large sum of money to be invested toward Austin. It is a solid business decision. Council Member Jorgenson clarified that this would not be a selling transaction; it is a lease proposal. Council Member Koch noted that \$2 million seems like a lot of money, but over 30 years it is a lot smaller, and this should be compared to the risk involved. City Attorney David Hoversten clarified the meaning of the agreement. It is actually a hybrid document or a letter of intent. It would allow the project to proceed with good faith. It is legally binding in that Allco would be responsible for appraisals and legal fees, such as consulting with our bond counsel. It also states that Allco would have the exclusive right to the transaction for a period of 24 months.

Moved by Council Member Nordin, seconded by Council Member Goodnature authorizing the Mayor and City Recorder to sign a Letter of Agreement from Allco Finance on the lease/lease-back program for the Wastewater Treatment Plant. 5-2. Carried. Council Members Christopherson and Koch voted nay.

Director of Administrative Services Tom Dankert presented a resolution approving a loan to the Austin Port Authority not to exceed \$150,000 which would be used to help pay off outstanding bonds on the Spec Building and Walker Building. These bonds are callable Feb 1, 2004. The loan would be paid off by revenues from the Walker Building's monthly

lease, sales of land, and any other Port Authority balances. The loan would be for 4.0% simple interest and would not exceed five years.

Moved by Council Member Jorgenson, seconded by Council Member Koch, adopting a resolution approving a loan between the Austin Port Authority and the City of Austin for prepayment of bonds. 7-0. Carried.

City Engineer Jon Erichson presented an agreement to lease unused portions of the Cook Farm for a farming operation. The farming operation is limited to alfalfa in order to minimize disruptions that might occur due to development. The land has been leased at \$55 per acre, which is approximately \$8,000 per year. The lease has been drafted on a per-acre basis, with the option to continue development and with the ability to get out of the agreement if the City so chooses. With the proposed Cook Farm industrial site development, approximately 40 acres will be removed from the operation, plus another five to seven acres are being set aside for leaf collection.

Moved by Council Member Christopherson, seconded by Council Member Nordin, adopting a resolution approving the Cook Farm land rental. 7-0. Carried.

Approximately 60 residents appealed their street improvement assessments for year 2000 projects. This initial number was eventually reduced to eight residents, and these assessments appeals went to District Court. The case has been heard and found favorable toward the City as the City was able to prove benefit. The original amounts of the assessments now stand. (The City has another three additional assessment cases to take to court.) The properties were appraised. Two parcels came in at a lower appraisal than the original assessment; City Engineer Jon Erichson recommends approval of the assessments. One appraisal was higher than the original assessment; City Engineer recommends approval of the original assessment. The Council needs to set a hearing for November 3 for final assessment approval.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, adopting the proposed assessments and setting a public hearing for November 3, 2003 for final street improvement assessments for three disputed properties, Projects 7-A-00, 15th Avenue NE, and Project 1-A-00, 12th Street NE. 7-0. Carried.

The American Legion Post 91 is requesting gambling premises permit renewals at two sites: the American Legion Post 91 and at Smitty's Tavern, 105 11th Street SE. The Gambling Control Board has changed some of their requirements and does not need separate resolutions for each location. The organization is in compliance with gambling tax requirements and donations within the specified area.

Moved by Council Member Christopherson, seconded by Council Member Nordin, adopting a resolution approving gambling premises permit renewal for American Legion Post 91 at the American Legion Post 91, 401 1st Avenue NE and Smitty's Tavern, 105 11th Street SE. 7-0. Carried.

The Austin Housing and Redevelopment Authority is in the process of refinancing their bonds on the Courtyard Apartments. The refinancing will result in cash savings of over \$430,000 over the remaining 24 years of the bond issue, mostly at the back end. The City is being asked to pass a new ordinance reaffirming our G.O. pledge on these bonds. The G.O. pledge commits the council to use any means in their power, including a tax levy, to ensure payment of all outstanding bonds. Mayor Rietz asked if this levy would be outside the levy limit. Mr. Dankert noted under current law (and he stressed current), debt service levies are allowable as add-on levies, which are not subject to the levy limit. Council Member Goodnature asked at what point should the Council consider selling the Chauncey to private developers. Mr. Dankert said at some point after the debt is paid off or when most of the debt is paid off, much like the Town Center, it would make financial sense to sell the property if the Council so chose.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, that the City Attorney prepare the ordinance. 7-0. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, for adoption and publication of the ordinance. 7-0. Carried.

As part of the airport expansion project, existing wetlands acres have been impacted. Because of this, the City of Austin was required to make a permit application. The following steps needed to be taken: 1) Attempt to avoid the impact, 2) Attempt to minimize the impact, or 3) replace the impacted area. The removal of the wetlands could not be avoided or minimized so the City was required to replace the impacted areas. The City was required to determine the type of wetlands and then purchase wetlands credits. The following acres need to be replaced: 1.52 acres of Type 2 wetlands, 2.54 acres of Type 3 wetlands, and 2.72 acres of Public Value Credits. The total value of the credits is \$55,080. The City Council needs to approve purchasing these credits, which would be purchased through George Erickson from a wetland bank north of Austin in the Cedar River Watershed. The wetlands bank retains ownership.

Moved by Council Member Pacholl, seconded by Council Member Jorgenson, approving wetlands purchases for wetlands credits. Carried.

The Chamber of Commerce requested the barricading of streets and the use of the Town Center building for the Christmas in the City events. City Engineer Jon Erichson said if the request is similar to previous year's, there should be no problem. City Administrator Jim Hurm advised that since the Port Authority is the owner of the Town Center, Council should allow the use of the building, and if there are any objections by the Port Authority Board, he would let Council know.

Moved by Council Member Christopherson, seconded by Council Member Nordin, approving requests for Christmas in the City. Carried.

The City of Austin has entered into a purchase agreement with Richard Hawkins, owner of D&R Star, to sell the south 313.38 feet of the north 805 feet of Lot 6, Block 3, Austin Industrial Park Northeast. The purchaser's attorney has identified unconfined easements on the property from 1932 and 1949 that need to be clarified. In order to satisfy the purchaser, the City of Austin will have to proceed with a quiet title action at an estimated cost of \$3,500. City Attorney David Hoversten recommends approval of the action to 1) cause the transaction to proceed, and 2) clean up the title problems on other parcels which may have the same problem. This is an economical solution, he said.

Moved by Council Member Jorgenson, seconded by Council Member Christopherson, adopting a resolution approving quiet title action. 7-0. Carried.

Moved by Council Member Christopherson, seconded by Council Member Nordin, setting a public hearing with the Board of Adjustments and Appeals for Monday, October 20 for a sideyard setback variance requested by Rick and Eileen Bremner, 300 4th Street SW. Carried.

Moved by Council Member Nordin, seconded by Council Member Chamberlain, granting the Planning and Zoning Department the power to contract for the removal of junk at 913 2nd Avenue NE, Miguel Calderon. Carried.

Moved by Council Member Chamberlain, seconded by Council Member Pacholl, granting the Planning and Zoning Department the power to contract for the removal of junk at 1504 8th Avenue NE, Mike Hemann. Carried.

Moved by Council Member Chamberlain, seconded by Council Member Nordin, granting the Planning and Zoning Department the power to contract for the removal of junk at 801 15th Street NE, Brian Luening. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Pacholl, granting the Planning and Zoning Department the power to contract for the removal of junk at 707 6th Street NW, Eric Hollerud. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Christopherson, granting the Planning and Zoning Department the power to contract for the removal of junk at 703½ 7th Street NW, Kandice Miles. Carried.

Moved by Council Member Chamberlain, seconded by Council Member Christopherson, granting the Planning and Zoning Department the power to contract for the removal of junk at 409 2nd Street SW, Mary Janning. Carried.

Moved by Council Member Nordin, seconded by Council Member Christopherson, granting the Planning and Zoning Department the power to contract for the removal of an inoperable vehicle and junk at 701 2nd Avenue NE, Dean Thordor and Tara Greathouse. Carried.

Moved by Council Member Chamberlain, seconded by Council Member Christopherson, granting the Planning and Zoning Department the power to contract for the removal of an inoperable vehicle and junk at 604 11th Avenue SW, David Thompson. Carried.

Moved by Council Member Chamberlain, seconded by Council Member Christopherson, granting the Planning and Zoning Department the power to contract for the removal of an inoperable vehicle and junk at 1806 1st Avenue SE, Steve Krueger. Carried.

The intersection of 2nd Street and 4th Avenue NE has a visibility problem. The visibility problem is especially significant when a truck or van is parked on the south side of 4th Avenue, west of the intersection (in front of Progressive Hair). City Engineer Jon Erichson have talked to surrounding property owners, who have no problem with posting a “no parking” sign. Mr. Erichson recommends eliminating the parking stall.

Moved by Council Member Nordin, seconded by Council Member Chamberlain, approving the parking restriction. Carried.

Moved by Council Member Pacholl, seconded by Council Member Christopherson, adopting a resolution granting Wine and Sunday Wine On-Sale licenses. 7-0. Carried.

In anticipation of a property sale, Hormel Foods has asked for an indemnification agreement for activities the City will be involved in with inspecting the Hormel property. The agreement allows for the city to conduct environmental and soil testing.

Moved by Council Member Koch, seconded by Council Member Chamberlain, adopting a resolution approving the Indemnification Agreement. 7-0. Carried.

Reports: City Administrator Jim Hurm said the City has received a letter from the Hormel Foundation. The City has received \$10,000 for the Blandin Scholarship program and \$3000 for the smoke detectors.

Lyle is hosting the next Mower County League of Cities meeting. Council Member Pacholl will be attending with City Administrator Jim Hurm.

Mr. Hurm acknowledged a letter received from Scott Felten, director of the Mower County Fair thanking the city for its use of equipment and thanking the city departments for cooperation in putting on this year’s fair.

Community Development Director Craig Hoium submitted the JOBZ application this morning in Fairmont. Five communities in addition to Austin are submitting. Mr. Hoium said he believed there are twelve applicants throughout the state. October 15 is the deadline for submittal, and the State will designate the zones by the end of 2003. The next phase would be some marketing efforts.

Senator Langseth will be coming to Austin in support of the bond bill for the trails project. The meeting will be at the Nature Center on October 21 at 4:30.

October 14 is the date for the Planning Commission/City Council work session with Attorney Craig Byram. The tentative time is 6:30. Information will go out in Friday's packets.

The September 16 work session was primarily discussion on the lease/lease-back proposal. Trixie Golberg from Southeast Minnesota Initiative Foundation attended. City Administrator Jim Hurm will meet with Ms. Golberg within the next two weeks and report back to Council.

Mayor Rietz noted that the Employee Appreciation will be October 21 from 2:00 to 4:00. Council was requested to attend to help serve pies for this event.

October 29th is the date for the Regional League of Minnesota meeting. Council members were invited to attend.

Moved by Council Member Pacholl, seconded by Council Member Koch, adjourning to closed session for discussion of AAO contract negotiations under M.S. 13D.03 Subdivision 1 under the open meeting law. Carried.

Moved by Council Member Nordin, seconded by Council Member Jorgenson, to reopen the meeting. Carried.

Moved by Council Member Pacholl, seconded by Council Member Christopherson, to adjourn to closed session for review of Fire Chief/Commander incident under M.S. 13D.05, Subdivision 2, subparagraph B for preliminary consideration of charges. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Christopherson, to reopen the meeting. Carried.

Mayor Rietz noted there will be no work session on 10/21, instead we will meet after the council meeting on 10/20

Moved by Council Member Jorgenson, seconded by Council Member Nordin, to adjourn the meeting to October 20, 2003.

Adjourned: 8:20 p.m.

Approved: October 20, 2003

Mayor: _____

City Recorder: _____