

MINUTES
CITY COUNCIL MEETING
April 2, 2012
5:30 PM
Council Chambers

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

MEMBERS ABSENT: None

STAFF PRESENT: Jim Hurm, Jeanne Howatt, Craig Hoium, Jon Erichson, David Hoversten, Ann Hokanson, John Mueller and Ernesto Cantu.

OTHERS PRESENT: Post Bulletin. Austin Daily Herald. Matt Simonson. Shelley LeTendre. Susan Strack. Don Peterson and Mary McGrane. Roger Jorgenson, Helen Gardner, James Jorgenson, Barbara Langan and James Davis. Public.

Added to the consent agenda: a motion approving an excavation license from Doug's Electric, 1606 13th Street NE. Also added to the agenda, a motion approving free dog licensing at Double KK on April 21st as a benefit for the dog park.

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

Moved by Council Member Boughton, seconded by Council Member-at-Large Anderson, approving the minutes of March 19, 2012. Carried.

Matt Simonson spoke to Council and reiterated his argument that the Council is not protecting the poor class and that they are taxing without representation.

Mayor Stiehm read a proclamation for Suicide Prevention & Awareness Week on April 15-21. Shelley LeTendre, founder of Desperate Tears, a nonprofit organization dedicated to the awareness and prevention of suicide spoke to Council about why the organization was created. Ms. LeTendre also announced several activities that are being planned to benefit the organization including a concert on April 18.

Moved by Council Member Austin, seconded by Council Member Enright, approving the consent agenda as follows:

Licenses:

Excavation: Doug's Electric, 1606 13th Street NE, Austin

Excavation: Hansen Hauling & Excavating, Inc., 1602 11th Drive NE, Austin

Food: Park & Rec @ Todd Park North Diamonds

Food: Park & Rec @ Todd Park South Diamonds

Food: Park & Rec Municipal Pool

Food-mobile: Juan Sanchez dba Los Pericos, 301 7th Street SW, Austin

Master Plumber: Davidson Plumbing LLC, 303 5th Place NW, Austin

Master Plumber: Dick's Plumbing, 1810 E. Oakland Avenue, Austin

Master Plumber: Kelley Plumbing & Heating, 923 S. Broadway, Albert Lea, MN

Temporary Food: Early Risers Kiwanis, St. Edward's – May 13 and parade – July 4

Claims:

a. Pre-list of Bills.

Carried.

A public hearing was held for the vacation of public right-of-way, petitioned by Austin Public Schools. This request is associated with the site for the new school near Ellis. The first parcel is on 6th Avenue and the second parcel is where 6th Avenue and 7th Avenue connect.

No comments were made.

Moved by Council Member Austin, seconded by Council Member Boughton, approving a resolution to proceed with the vacation and appointing the following commissioners:

First Ward	Charles E. Fawver
Second Ward	David Bumgarner
Third Ward	Mahlon Krueger

7-0. Carried.

A hearing was held for an appeal to a dangerous dog declaration. The Police Department has given a notice of a dangerous dog to Susan Strack, 911 10th Avenue SE. Ms. Strack has requested a hearing to appeal. Under state statute, a dog can be declared dangerous or potentially dangerous if it has caused bodily injury, engaged in an attack or has exhibited unusually aggressive behavior. City Attorney David Hoversten advised Council of their three options according to City Code: declare the dog not dangerous, declare the dog dangerous and order it destroyed, or declare it dangerous with conditions to comply. The conditions to comply under a dangerous dog designation include providing a proper enclosure, posting warning signs in the front and rear of the premises, securing \$300,000 liability insurance, and having the dog muzzled and restrained by a leash when outside an enclosure. The dog must also have a identifying tag at all time, have a microchip implanted for location purposes, be registered with the county as being dangerous, and being current with licenses and vaccinations and rabies shots. Mr. Hoversten questioned Mr. Cantu, the CSO who responded to the call of the dog bite. Don Peterson was walking his dog (a terrier) in front of Ms. Strack's home at the same time that she had opened her door to let her dog out (a pit bull). Mr. Peterson received puncture wounds and scratches while trying to take his dog away. Mr. Hoversten provided pictures of the incident. Mr. Cantu stated that the attack was not provoked but was a complete surprise. Mr. Cantu advised Mr. Strack of the attack, and she did not argue that fact. The terrier received severe stomach lacerations on the abdomen and was taken to the veterinary clinic. The dog was operated on but died. After the incident, Mr. Cantu took the pit bull to the pound. The incident happened on March 9th, and the dog has been at the pound since then. Mr. Hoversten asked Mr. Cantu his opinion, given the facts of the case. Mr. Cantu said he believed the dog should be destroyed "because it could happen again." He added that it poses potential danger for people

going by the house. Ms. Strack confirmed with Mr. Cantu that he has seen Xena (pit bull) with the other dogs at the pound, and the dog has not shown any bad behavior; the dog is separately caged. Ms. Strack promised she would get a fence. Ms. Strack viewed the pictures provided by the city attorney. Ms. Strack apologized to the victim. She presented her nine pictures of Xena with her other dog and a friend's dog. She stated that friends and their dogs come over and she visits her dad who has cats, and there never has been any problem. Ms. Strack stated she lives on a dead-end street, and the dog has never run. She stated her dog was obsessed with squirrels, and that she believes her dog did not see the man but thought the terrier looked like a squirrel. Mr. Peterson, the person whose dog was bitten and who also received puncture wounds, stated he is concerned if the Council allows this dog to live. He said a loving dog owner doesn't necessarily mean that make for a good master. He said the minute the door was opened, the dog was in attack mode. The terrier, he stated, could have been a little kid. Mr. Peterson said Ms. Strack is not responsible because she let the dog out without a leash; dogs need to be on leash when outside. Mr. Peterson listed the bills he incurred which add up to \$1094 which include a trip to the hospital emergency and a prescription for antibiotics. The actual owner of the dog and Mr. Peterson's daughter, Mary McGrane, spoke to Council. She believes that if a dog comes out and attacks that quickly, it could come out and attack anything. She paid \$500 for her dog. She stated Ms. Strack should be required to pay the \$1094 to the victims before she is required to provide the fence and insurance, etc.

Lisa Liedahl, 1900 2nd Avenue SE, stated she had lived with Ms. Strack for nine months and Xena never showed any sign of aggression. She said three 3-year-old neighborhood boys always played outside and there was no problem. Ms. Liedahl stated she counted 13 dogs in the neighborhood at one time and not all were on leashes. In addition, there was never any issue with Ms. Strack's other dog, a chihuahua.

Autumn Lopez, 316 North Main, said she had no fear of the dog.

Loanne Perrigo, 1502 6th Street NW, spoke to Council. City Attorney David Hoversten directed Ms. Perrigo to speak relevant to the hearing and not about dogs in general. Ms. Perrigo said she has spent a lot of time with Xena. Xena never showed any aggression against her or her dog. Ms. Perrigo said if Ms. Strack needed help financially, she "would be there 100%."

Mayor Stiehm asked if there were other reports on Xena, to which Mr. Hoversten said there was another incident. Mr. Hoversten stated, and it was confirmed with Ms. Strack, that Xena and another dog were fighting each other and she (Ms. Strack) was bit. It was unsure which dog did the biting.

Mayor Stiehm questioned if the City would incur liability if the Council allowed the dog to live. Mr. Hoversten said he believed that the City would be immune if they were to make that determination.

Mayor Stiehm asked how much the fee was for housing the dog, to which Lieutenant Mueller said it was \$5 per day for about 20 days.

Council Member King said we need to separate emotion from fact in this case. He feels the pit bull is a public safety issue. Based on the evidence, it seems very clear, he stated.

Council Member McAlister questioned if there would there be inspections if the dog is allowed to live. Mr. Hoversten said the ordinance states that the owner must comply within 14 days, after which the dog may be seized upon non-compliance.

Lieutenant Mueller stated the dog owner would have to register through the Auditor's Office as a dangerous dog.

Council Member Austin confirmed with Mr. Hoversten that the dog could only be released after the conditions are met.

Council Member-at-Large Anderson questioned if all the conditions listed would need to be met, to which Mr. Hoversten stated that they would.

Mayor Stiehm questioned if there could be an ordinance against a certain breed, a breed that is naturally aggressive. Mr. Hoversten said state law prohibits that type of restriction. The City does not have the authority to prohibit pit bulls within the city.

Council Member Clennon questioned if the dog could be declared dangerous prior to an attack. Mr. Hoversten stated a dog could be found "potentially dangerous" according to city ordinance, and with that there is a different process. Anyone with the concern of a dangerous dog should come to the Police Department, and they would conduct an investigation.

Moved by Council Member King, seconded by Council Member Boughton, declaring the dog dangerous. 6-0. Carried. Council Member Enright abstained.

Moved by Council Member King, seconded by Council Member McAlister, ordering the dog to be destroyed. 4-2. Carried. Council Members Anderson and Austin voted nay. Council Member Enright abstained.

Moved by Council Member Austin, seconded by Council Member King, directing the city attorney to prepare Findings of Fact for the declaration and destruction of the dog. Carried.

Council Member McAlister confirmed with Mr. Hoversten that the owner could appeal in court. Mr. Hoversten said he would check state statute and include within the Findings allowable time to provide Ms. Strack the opportunity to appeal the decision.

A public hearing was held for the vacation of a public right-of-way, petitioned by Austin Public Schools. The request relates to the new school.

Moved by Council Member Austin, seconded by Council Member Enright, adopting a resolution to proceed with the vacation of public right-of-way and appointing vacation commissioners:

First Ward: Charles E. Fawver

Second Ward: David Bumgarner

Third Ward: Mahlon Krueger

7-0. Carried.

SPARK dog park group has requested the City's assistance with the dog park. The Committee-of-the-Whole, at the last work session, consented to authorizing city staff to install fence posts

for the Austin dog park. City Engineer Jon Erichson said their department will be able to do this but would need to work it into the City's schedule. The dog park group would furnish the fence posts.

Roger Jorgenson, 2906 11th Street NE, addressed the Council regarding work that has not been completed from the sanitary sewer project. He said they were promised a meeting in February and there never has been another meeting set for those who objected to their assessments. Mayor Stiehm referred the question to Mr. Erichson who suggested that the dog park discussion be continued first.

Council Member Clennon moved, seconded by Council Member Austin that SPARK dog park group work with Park & Rec for further permissions regarding the dog park and to authorize city staff to install fence posts for Austin Dog Park. Carried.

Moved by Council Member Boughton, seconded by Council Member Austin, to offer free dog licensing on April 21 at Double KK for the benefit of the Austin Dog Park. Carried.

City Engineer Jon Erichson stated that the City received several objections to the assessments for sanitary sewer associated with the 2009 Lansing Township area annexation. Appraisals were performed on some of the properties, and the City has received copies of those appraisals and subsequently submitted them to the city attorney's office. A closed session is planned for the April 16th work session to discuss the approximately 50 parcels with objections. The closed meeting is necessary due to pending litigation. After the closed meeting, the Engineering Department will present the assessment process through a series of informational meetings. The first meetings will be informal and will likely occur in early May. Mr. Erichson is suggesting two separate informal discussions – one with property owners on the east side of the river, and one for the property owners on the west side. Some properties are being charged more than one residential equivalent unit (REU) – such as some Austin Utilities property and The Old Mill Restaurant – based on the anticipated amount and strength of flow. As to the question from Mr. Jorgenson about the road ditches not being completed, Mr. Erichson noted that the contractor works off a punch list, items that remain to be completed. He is not aware of the status of this list.

Council Member Clennon highly suggested not splitting up the group but instead having one informal meeting so everyone can hear all the concerns. This will avoid repetition. Mr. Erichson stated he can do this however Council would like. He had suggested the two groups to accommodate the number of questions likely to be asked. This can be discussed on April 16th.

Helen Gardner, 303 11th St NE, referring to the manner (the residential equivalent unit) in which the sanitary sewer is being assessed, asked who has the right to split up her property. She said she cannot afford the \$32,000 assessment. Mr. Erichson said the splitting is for the assessment process. He said the City has the ability to assess based on the service received. Sometimes that is based on the use of the parcel, and sometimes it is based on the size of the parcel. The assessments were based on a "residential equivalent unit", the amount a typical property would distribute to the sanitary sewer. The Old Mill was used as an example that is a very small-sized property but would distribute a high flow. The City also looked at the size of the parcel and the potential to change as the option to collect fees in the future is somewhat limited.

James Jorgenson, Ramsey Addition, asked how they determine which houses they assess. Mr. Erichson said they looked at different property distributions: those that had compliant systems, those with noncompliant systems, and vacant properties. Mr. Erichson noted that there were originally 210 residential equivalent parcels. Of the 210, the City has received approximately 50 objections, or 25%. Seventy-five percent did not object.

Council Member Austin clarified that the question referred to appraisals, not assessments. Mr. Hoversten said only a sampling of appraisals has been done. If the property owners continue on with their objections to district court, those would all be appraised.

Barbara Langan, 3307 11th St NE, has commercial property being assessed. She was told she has two properties, but the appraisers said that she has one lot. Mr. Erichson reiterated that the basis for the two residential equivalent units versus one for her property was for strength and amount.

James Davis, 700 27th Ave NE, said he was told he couldn't hook up yet. He said his sewer system was new. He normally would have it pumped out about every two years, but didn't know if that would be worthwhile if he is forced to hook up. Mr. Erichson said this assessment policy provides that those with compliant systems could delay hook-up for five years. Mr. Erichson suggested he have his system pumped.

Council Member Enright questioned when the five years begins. Mr. Erichson said it would be five years from the initial hearings, but Council could modify this accordingly.

Mr. Davis agreed with Council Member Clennon's idea for one meeting.

Council Member McAlister told those who spoke on the sewer issue that this is not the public hearing, and that they should attend the next meeting. Mr. Erichson said the next meeting will be an informal meeting probably sometime in early May.

The city council implemented a storm water utility fee in 2003. It was set at \$2.50 per month per parcel. Mr. Erichson noted the various unit rates. Mr. Erichson stated that due to unfunded mandates from the MPCA, a forecasted shortfall and the Total Maximum Daily Limit, an increase to \$4.00 per month per parcel is being recommended. The unit rates will remain the same. The increase would take effect July 1. The storm water utility fee will also undergo an annual review.

Council Member Enright confirmed with Mr. Erichson that undeveloped property would be assessed when a permit to build is obtained. He noted that is the case with the new school development.

Moved by Council Member King, seconded by Council Member Austin, adopting a resolution increasing the storm water utility fee to \$4.00 per month effective July 1, 2012. 6-1. Carried. Council Member Boughton voted nay.

Council was requested to approve the classification of tax-forfeited property, public sale of the property with the intention to reassess the unpaid levied special assessments.

Council Member Clennon noted that the address of one property, 303 10th Street SW, must be incorrect as there is no structure on the property. (The address was later corrected to be 308 10th Street SW.)

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, adopting a resolution approving the classification of forfeited tax property, the public sale of property, and the intention to reassess the unpaid levied special assessments. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member McAlister, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1109 16th Avenue NE, Vern Neitzell property. Carried.

Moved by Council Member Austin, seconded by Council Member McAlister, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1109 17th Avenue NE, Vern Neitzell property. Carried.

Moved by Council Member Austin, seconded by Council Member McAlister, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 600 1st Avenue SW, Leal Javier Salas property. Carried.

Moved by Council Member Austin, seconded by Council Member Enright, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 406 9th Street NE, David Talamantes property. Carried.

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1810 8th Street NE, Wells Fargo Bank property. Carried.

REPORTS

Council Member Enright announced that the Beyond the Yellow Ribbon committee was notified that soldiers will be returning in May to Austin. Some type of ceremony will be held, and she encouraged the public to attend. She will let everyone know of the details.

Council Member reported she attended a joint women's meeting prior to the League of Minnesota Cities Legislative Action Day. She also attended the Zonta meeting in which they gave Jeanne Sheehan the Woman of Achievement award.

Moved by Council Member Boughton, seconded by Council Member Enright, adjourning the meeting to April 16, 2012.

Adjourned: 7:08 pm

Approved: April 16, 2012

Mayor: _____

City Recorder: _____