

M I N U T E S
CITY COUNCIL MEETING
December 2, 2013
5:30 PM
Council Chambers

MEMBERS PRESENT: Mayor Stiehm. Council Members Judy Enright, Steve King, Michael Jordal, Roger Boughton, Jeremy Carolan, Jeff Austin and Council Member-at-Large Janet Anderson

MEMBERS ABSENT:

STAFF PRESENT: Director of Administrative Services Tom Dankert, Community Development Director Craig Hoium, Public Works Director Steven Lang, City Attorney David Hoversten, Assistant City Attorney John S. Beckmann (6:15 p.m.) Police Chief Brian Krueger, Fire Commander Brian Lovik, Library Director Ann Hokanson, Park and Rec Director Kim Underwood and City Clerk Ann Dunlap

OTHERS PRESENT: Austin Daily Herald, Officer Chad Norman, Marian Clennon, Ralph Peters, Public

Mayor Stiehm called the meeting to order at 5:30 pm.

Added to the agenda:

Consent Agenda:

Licenses-

-Exempt Gambling (raffle): Cedar River Longbeards, National Wild Turkey Federation for January 25, 2014 at the Austin Holiday Inn.

-Food: Jimmy John's, 803 18th Avenue NW, Suite 3

16. Donation of Olympic Torch

17. Council action relating to Jim Hurm performance evaluation

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

Moved by Council Member Boughton, seconded by Council Member-at-Large Anderson, approving the minutes of November 18, 2013. Carried.

CITIZENS ADDRESSING THE COUNCIL

There were no citizens wishing to address the Council.

CONSENT AGENDA

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

Licenses:

- Exempt Gambling (raffle): Cedar River Longbeards, National Wild Turkey Federation for January 25, 2014 at the Austin Holiday Inn.
- Food: Jimmy John's, 803 18th Avenue NW, Suite 3

Claims:

- a. Pre-list of Bills.

Carried.

PUBLIC HEARINGS

A public hearing was held regarding the annexation of Turtle Creek 1. Community Development Director Craig Hoium presented on the topic. The Turtle Creek 1 area is 96.28 acres and has 28 residential structures and 1 church. A joint resolution for orderly annexation with Austin Township was presented to the Council.

There are two ways a City can annex a property, either by ordinance or an orderly annexation. For annexation by ordinance the property must be contiguous with the City boundaries and the City can simply pass an ordinance annexing the property. This process is not common.

The second way, by orderly annexation, is regulated by statute and the City and Township come to a joint agreement to complete the annexation of the properties. In the Turtle Creek 1 matter, a joint resolution was reviewed and approved by Austin Township on November 18, 2013. The joint resolution contains the terms and conditions of the annexation including the seven year graduated scale of tax payments shifting from the Township to the City and the terms of the connection to the municipal sanitary sewer system. Parcels that have been identified as an imminent threat to public health as determined by Mower County Environmental Services shall have 30 days to hook up to the City system upon project completion. Parcels with non-compliant septic systems shall have until July 1, 2015 to connect to the City system. Parcels with compliant septic systems shall have up to five years to connect with an optional three year extension based on being able to provide a Certificate of Compliance from Mower County Environmental Services for their existing system. The majority of homes have failing systems as determined by Mower County and will be hooked up shortly after project completion.

There were no public comments on this matter.

Moved by Council Member Enright, seconded by Council Member Austin, adopting a resolution for orderly annexation of Turtle Creek 1 Area. Carried 7-0.

A public hearing was held for a potentially dangerous dog appeal by Jerry Hicks, 308 9th Street SW. The police department has given a notice of a potentially dangerous dog to Mr. Hicks and he has requested the hearing to appeal. City Attorney David Hoversten presented the matter to

the Council. The potentially dangerous dog citation was given to Jerry Hicks in regard to his dog "Bruiser" from an incident on November 9, 2013 involving a 12 year old girl.

Mr. Hoversten pointed out to the Council that in the past they have held appeal hearings on dangerous dogs wherein the dog owners either had to meet requirements to keep the dog or have the dog destroyed. This is not the same type of matter; it's merely a designation of this animal as a potentially dangerous animal. There will be no conditions required nor is there an option for destruction of the animal if the Council confirms it as potentially dangerous. If the animal is determined to be potentially dangerous then that designation could be used as evidence in a future dangerous dog hearing. The Council can either confirm designation of potentially dangerous or confirm appeal of Mr. Hicks.

David Hoversten questioned officer Chad Norman regarding the incident. Officer Norman investigated the incident in question and was dispatched to the victim's house but met the victim and her mother at the hospital. He learned that the incident took place in the vicinity of Galloway Park. The victim was riding her bike on the public sidewalk and passed a white male walking a large black dog. The dog jumped up and purportedly bit her on the right arm. She was wearing a black sweatshirt at the time and the dog bit through her sweatshirt leaving abrasions and saliva on her sleeve. Mr. Hoversten provided four photographs of the victim, the abrasions on her arm and of her sweatshirt. Officer Norman confirmed the photographs were accurate of victim and the victim's injuries. He stated the photographs appeared to show dried saliva on the sweatshirt of her right arm and two light round red spots that appeared to be puncture marks along with two scrapes that went from the inside of the forearm to the outside.

Mr. Hoversten allowed the Council the opportunity to review the photographs and then allowed Mr. Hicks an opportunity to review the photographs. The photographs were made a part of the hearing and given to the City Clerk.

Veterinarian reports from Banfield Pet Hospital were also presented and made a part of the hearing. The dog is a Mastiff-Neapolitan crossbreed born on May 4, 2012 and weighed approximately 128 pounds on August 8, 2013.

Officer Norman located the owner of the animal as Jerry Hicks, 308 9th Street SW, and spoke to Mr. Hicks. Mr. Hicks admitted his dog was the animal involved in the incident. His 12 year old son was walking the animal at the time and did not keep the leash tight as he was instructed to do so by Mr. Hicks.

Officer Norman testified Mr. Hicks thought the injury was a result of the dog jumping on the girl, not from a bite. He also told the Officer he felt the girl was at fault for startling the dog. Officer Norman stated Mr. Hicks was not present at the time of the incident. Officer Norman served the potentially dangerous animal notice on Mr. Hicks checking the criteria on the form that "the animal has, when unprovoked, chased or approached a person up on the streets, sidewalks, or any public property in an apparent attitude of attack."

Mr. Hicks then questioned Officer Norman if the Officer felt in danger when he met the dog. Officer Norman stated the dog was very friendly. Mr. Hicks added that he feels the injury is clearly a scratch. If the dog would have bit the girl it would be a gash from the animal. Any dog would get excited with kids around. Mr. Hicks also added that he has a seven month old baby and the dog is around the baby with no problem.

Mr. Hoversten also added the police report as part of the record. He stated he believes there is adequate evidence under the ordinance to sustain the findings from the Austin Police Department that this is a potentially dangerous animal. If the animal is defined as potentially dangerous it is a warning to the owner to have the dog under control at all times and if the dog attacked another person then that would be used as evidence in a dangerous dog hearing.

Council Member-at-Large Anderson questioned if the fact that the child was riding bike on a sidewalk should be considered. Mr. Hoversten replied that should not be considered. People have a right to ride a bike on a public sidewalk.

Mayor Stiehm asked if the distinction of whether the dog scratched or bit her is relevant. Mr. Hoversten stated under ordinance there is no difference between scratching and biting. In fact, the dog did not need to scratch or bite, it only needed to act in an aggressive manner.

Mayor Stiehm also asked does the intent of a dog matter. Mr. Hoversten stated there is no way to determine the intent of a dog.

Council Member Boughton made a motion to grant the appeal of Jerry Hicks and reverse the determination of a potentially dangerous animal. This motion failed for lack of a second to said motion.

Motion by Council Member King, seconded by Council Member Carolan to deny the appeal, designate the dog as potentially dangerous and direct the City Attorney to prepare the necessary findings and order. Carried 4-3 with Council Members Boughton, Enright and Austin voting nay.

Mayor Stiehm added that with a big dog comes increased responsibility on the owner.

PETITIONS AND REQUESTS:

Moved by Council Member Boughton, seconded by Council Member Enright, adopting a resolution approving HRA/CHIP request for partnership to purchase property located at 409 2nd Street SW. Carried 7-0.

Moved by Council Member King, seconded by Council Member Austin, approving the remaining \$24,000 in the 2013 Riverside Arena air conditioning budget be allocated for compressor inspection/repairs and Freon purchase. Carried.

Moved by Council Member Boughton, seconded by Council Member Carolan, adopting a resolution accepting gifts from September and October to the Austin Public Library. Carried 7-0.

Director of Financial Services Tom Dankert presented on the annual resolution for insurance rates. The City has set the premium rates for 2014. The amount for each plan listed on the resolution is the total rate. The allocation between the City and the employee is determined by each bargaining group.

Moved by Council Member-at-Large Anderson, seconded by Council Member Enright, adopting a resolution setting plans, qualifications and rates for city health insurance for 2014. Carried 7-0.

Director of Financial Services Tom Dankert also presented on the annual resolution for insurance rates for individuals not covered in a bargaining group. The resolution sets the employer contribution cap of \$1,000 for family coverage and \$400 for single coverage. It also allows for an opt out provision of \$225 per month.

Moved by Council Member Austin, seconded by Council Member Enright, adopting a resolution approving health insurance plans and required employee contribution for said plans for non-bargaining unit employees for the calendar year 2014. Carried 7-0.

Director of Financial Services Tom Dankert presented on the long term disability insurance rate resolution. The current carrier, Prudential, had a higher renewal rate therefore additional bids were taken. Madison National bid .27 per \$100 of covered payroll which is less than the current rate of .319 per \$100 with Prudential. It's estimated that the City would save \$4,000 to \$5,000 a year with this lower rate and it is recommended that the Council approve the new carrier. This rate also comes with a three year guarantee.

Moved by Council Member Enright, seconded by Council Member Austin, adopting a resolution approving new long term disability carrier and rates. Carried 7-0.

Director of Public Works Steven Lang presented the proposed street and sewer projects for 2014. Ordering the preparation of report on improvements is the first step in 2014 street reconstruction process. The following projects are proposed:

| Type | Location | Project |
|--------|---------------------------------------------------------------------------------|---------|
| Street | 8 th Avenue SW (12 th Street to 18 th Street) | 1-A-14 |
| Street | 8 th Street NE (8 th Avenue to 10 th Avenue) | 1-A-11 |
| | 8 th Avenue NE (8 th Street to DM&E RR) | |
| Street | 8 th Street NW (17 th Street to 18 th Street) | 7-A-13 |
| | 17 th Avenue NW (4 th Street to 8 th Street) | |
| Street | Kaufman Park Area | 6-A-13 |
| | (9 th Avenue SE – Abandoned RR to 8 th Street) | |
| | (10 th Avenue SE – Abandoned RR to 8 th Street) | |
| | (11 th Avenue SE – Abandoned RR to 8 th Street) | |
| | (6 th Street SE – 8 th Avenue to 10 th Avenue) | |
| | (7 th Street SE – 8 th Avenue to 11 th Avenue) | |
| Street | 7 th Street NE (2 nd Avenue to 4 th Avenue) | 4-A-14 |
| | 3 rd Avenue NE (7 th Street to 8 th Street) | |
| Sewer | Turtle Creek 1, Sanitary Sewer Project | 1-B-13 |
| | (31 st Street NW – Oakland Avenue to Cedar Ave) | |

Moved by Council Member Enright, seconded by Council Member Austin, adopting a resolution ordering preparation of report of 2014 street construction and sanitary sewer projects. Carried 7-0.

Moved by Council Member Austin, seconded by Council Member Carolan, setting a public hearing for December 16, 2013 on a rezoning of property located in the 900-1000 blocks of 15th Avenue NE, 16th Avenue NE and 17th Avenue NE from an R-1 Single Family Residential District to an R-0 Multi-Family Residential Office District. Carried.

Council Member-at-Large Anderson stated Pam Jacobsen, the mother of Shelby Gilster, who was one of the torchbearers in 1996 when the torch came through Austin, has requested the display torch from the City.

Moved by Council Member Enright, seconded by Council Member King, to donate the Olympic torch to Pam Jacobson on behalf of Shelby Gilster.

Mayor Stiehm called for a brief recess from 6:06 p.m. to 6:16 p.m.

Motion by Council Member Austin, seconded by Council Member Enright that Jim Hurm be terminated from his position as City Administrator effective immediately and that Trish Wiechmann be authorized to implement the termination consistent with applicable legal requirements. Carried.

REPORTS

Council Member Enright reported she attended the recent HRA meeting which provided the end of year financial information and updates on the properties HRA manages. Also, the Beyond the Yellow Ribbon Christmas party for soldiers is this Saturday, December 7th at the American Legion.

Council Member-at-Large Anderson reported she also attended the HRA meeting.

Director of Public Works Steven Lang reported that work on the North Main flood control project work began and will continue through the winter. All roadways will remain open during this time.

Park and Recreation Director Kim Underwood highlighted the Tuba Christmas concert at the Oak Park Mall on Saturday, December 7th at 2:00 p.m.

Moved by Council Member Austin, seconded by Council Member Carolan, adjourning the meeting to December 16, 2013. Carried.

Adjourned: 6:19 pm

Approved: December 16, 2013

Mayor: _____

City Recorder: _____