January 6, 2020

West Des Moines City Council Proceedings
Monday, January 6, 2020

Mayor Steven K. Gaer opened the regularly scheduled meeting of the City Council of West Des Moines, Iowa, at the West Des Moines Community School District Learning Resource Center, 3550 Mills Civic Parkway on Monday on Monday, January 6, 2020 at 5:30 PM. Council members present were: R. Hardman, G. Hudson, M. McKinney, K. Trevillyan, and R. Trimble.

On Item 1. Agenda. It was moved by Trimble, second by Trevillyan approve the agenda as presented.

Vote 20-001: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 2. Public Forum: No one came forward.

On Item 3. Council/Manager/Other Entities Reports:

Fire Chief Craig Leu introduced Fire Lieutenant Tim Hostetter and Deputy Fire Chief of Training Scott McFarland, who were then sworn in by Mayor Gaer.

Debbie Westphal Swander, Board President of the Historic Valley Junction Foundation, introduced Matt Hauge, who was recently hired as the new Executive Director for the Historic Valley Junction Foundation.

Mr. Hauge expressed appreciation to the City for its support of the Valley Junction neighborhood, and he stated he looks forward to working with the city.

Council member McKinney stated it is an honor and privilege to be on the City Council, and he expressed appreciation to the citizens that have put their trust in him, as well as his family and friends for their support. He stated he is looking forward to serving in this capacity.

Council member Hudson stated it is an honor and privilege to serve the City of West Des Moines as a council member. He expressed appreciation to God, the citizens of West Des Moines, and his predecessor John Mickelson. He also thanked the Mayor, his fellow council members, and city staff, for helping him transition into his new role, and he thanked the students and staff from the West Des Moines School District and his family for their support.

Council member Hardman welcomed incoming council members McKinney and Hudson. She also congratulated Matt Hauge on his new position as Executive Director for the Historic Valley Junction Foundation, and she wished him good luck in his new role.

On Item 4. Consent Agenda.

Council members pulled Item 4(c)1 for discussion. It was moved by Trimble, second by Trevillyan to approve the consent agenda as amended.

a. Approval of Minutes of December 16, 2019 and December 26, 2019 Meetings
b. Approval of Bill Lists
c. Approval of Liquor Licenses:
   2. Hy-Vee, Inc. d/b/a Hy-Vee West Des Moines Health Market, 375 South Jordan Creek Parkway - Class LE Liquor License with Carryout Beer, Carryout Wine, and Sunday Sales - Renewal
   3. Waterfront Seafood Market, Inc. d/b/a Waterfront Seafood Market, 2900 University Avenue - Class LC Liquor License with Sunday Sales and Catering Privileges - Renewal
d. Approval of Orders for Violations of Alcohol Laws
e. Approval of Appointment - City Clerk
f. Approval of Grant Agreement with The Principal Financial Group Foundation, Inc. - MidAmerican Energy RecPlex
g. Approval of Professional Services Agreements:
   1. American Legion Park - Skate Facility Design Services
   2. American Legion Park - Site Engineering Services
   3. Jordan Creek Trail, 39th Street to 50th Street
   4. Southwoods Park - Single Track Trail Design Services
h. Approval of Change Order #1 - MidAmerican Energy Recplex - Foundations
i. Approval of Amendment No. 3 to Professional Services Agreement - Nature Lodge HVAC Replacement, Roof Repairs and Exterior Improvements
j. Approval of Interfund Transfers
k. Accept Work:
   1. Ashworth Road Improvements, Phase 2 - 81st Street to 88th Street
   2. Grand Avenue Stormwater Pump Station
   3. Valley West Drive and Westown Parkway Storm Sewer Improvements
l. Authorize Application for Surface Transportation Block Grant (STBG) Program Funding - Des Moines Area Metropolitan Planning Organization
m. Approval of Amendment to High Quality Jobs Program Contract - Innovative Injection Technologies, Inc.
n. Approval of Professional Consulting Services Agreement - University Avenue Corridor Study
o. Approval and Acceptance of Consent and Hold Harmless Agreement, Purchase Agreement, and Conveyance of Property Interests - City Entrance Enhancements Project
p. Approval and Acceptance of Purchase Agreements and Conveyance of Property Interests - Project Osmium Public Infrastructure

Vote 20-002: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 4(c)1 Approval of Liquor License - 26550, LLC d/b/a 50th Street Tap, 265 50th Street - Class LC Liquor License with Sunday Sales and Outdoor Service - New

Council member Trimble stated he would like to continue this item to the next council meeting to allow him time to do more due diligence on this application by reaching out to the owner and learning more about his plans for this establishment.

It was moved by Trimble, second by Trevillyan to continue Item 4(c)1 Approval of Liquor License - 50th Street Tap to January 21, 2020.

Vote 20-003: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 5(a) Amendment #4 to Alluvion Urban Renewal Area, initiated by the City of West Des Moines

It was moved by Trimble, second by Trevillyan to consider the second reading of the ordinance.

Vote 20-004: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Trevillyan to approve the second reading of the ordinance.

Vote 20-005: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

It was moved by Trimble, second by Trevillyan to waive the third reading and adopt the ordinance in final form.

Vote 20-006: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 5(b) Amendment to City Code - Title 6 (Motor Vehicles and Traffic), Chapter 9 (Traffic Schedules), Section 3 (Special Stops Required) - South 91st Street and Coachlight Drive; and SW 60th Street and SW Kerry Street, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Hardman to consider the second reading of the ordinance.

Vote 20-007: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Hardman to approve the second reading of the ordinance.

Vote 20-008: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

It was moved by Trevillyan, second by Hudson to waive the third reading and adopt the ordinance in final form.

Vote 20-009: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 5(c) Amendment to City Code - Title 6 (Motor Vehicles and Traffic), Chapter 9 (Traffic Schedules), Section 10 (Special Speed Zones) - SW 60th Street, Veterans Parkway to SW Kerry Street; SW Warren Avenue, SW Adams Street to southern terminus of SW Warren Avenue; SW Kerry Street, SW Warren Avenue to western terminus of SW Kerry Street, initiated by the City of West Des Moines

It was moved by Trimble, second by Hardman to consider the second reading of the ordinance.

Vote 20-010: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Hardman to approve the second reading of the ordinance.

Vote 20-011: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

It was moved by Trimble, second by Hudson to waive the third reading and adopt the ordinance in final form.

Vote 20-012: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(a) Mayor Gaer indicated this was the time and place for a public hearing to consider MidAmerican Energy RecPlex - Ice Refrigeration, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on December 27, 2019 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

City Attorney Dick Scieszinski reported two bids were received for this project, but after staff and the architect reviewed both bids, the low bid from Minnesota Ice was deemed non-responsive on account of two significant issues. One of the issues was Minnesota Ice had not met the minimum of ten comparable floors completed in the past two years. He noted the other bidder, Rink-Tec, did meet this requirement. The other issue was Minnesota Ice did not meet the requirement of having a master refrigeration license from the State of Iowa. He noted they have since indicated they could obtain the required license at a later date, but the bid documents required that the bidder indicate possession of the license at the time the bid was submitted. He stated staff is recommending that the non-responsive bid from Minnesota Ice be rejected, and the contract be awarded to Rink-Tec.

Mayor Gaer asked if there were any public comments.

Jack McDevitt, representing Minnesota Ice, 13540 Flagstaff Avenue, Apple Valley, Minnesota, stated Minnesota Ice was the low bidder, and it is their opinion that they did meet the bid specifications. He stated there were three qualifications that had to be met: ten permanent floors in the last two years, ten chiller installations in the last two years, and ten floor/chiller packages in the last two years. He stated that Minnesota Ice had met all those qualifications, however during his correspondences with Mr. Scieszinski, he was told that the qualifications required that the floor/chiller packages had to be for a permanent floor, even though Mr. McDevitt said that the bid specifications had not stated the floor/chiller packages had to be permanent. He noted Minnesota Ice has successfully done floor/chiller packages for many temporary/seasonal ice rinks. He also stated Minnesota Ice has been in business over five years, they have a bond on this project, and they believe they can perform the project at the bid price.

City Attorney Dick Scieszinski stated the bid specifications may not have specifically called for ten "permanent" floors, but it did call for ten "comparable" floors, which implied that they be permanent floors.

Mr. McDevitt stated that Minnesota Ice has completed ten permanent floors, exactly like the floor for this project, but the qualification for which there is a question is the requirement that the bidder has also installed ten floor/chiller packages, as many of the projects completed by Minnesota Ice only required one or the other. He noted ten floor/chiller packages in two years is a very high threshold.

Shayne Ratcliff, RecPlex General Manager, stated it is the opinion of staff that temporary/seasonal ice rinks are not comparable to the system for this project, which will be embedded in concrete, not adjustable, and intended to remain 20-25 years for year-round use. Staff reviewed the references provided by Minnesota Ice, but because there were not ten comparable systems, staff did not consider their bid as having met the bid specifications. He also noted State Code requires a master licensure, which Minnesota Ice does not currently have in place.

Mr. McDevitt stated he is confident Minnesota Ice could obtain the license in time to complete the project. He noted they did not already have the license in place because not enough projects are constructed in Iowa to warrant continuously maintaining an Iowa license.

Mayor Gaer asked if there were any additional public comments; hearing none he declared the public hearing closed.

Council member Trevillyan expressed concerns that staff intended for the state license to be in place at the time of the bid, but the bid documents may not have explicitly stated that, which would mean the City shouldn't disqualify a bidder over that. He also expressed doubt that this project would last as long as 25 years, so he doesn't believe the temporary/seasonal projects Minnesota Ice listed should be thrown out for not being comparable.

Mr. Scieszinski noted according to the staff and consultants, there is a significant difference between a permanent project and a temporary/seasonal project. He also stated the bid specifications included a requirement that the bidder submit a letter at the time of the bid, indicating they could meet all licensing requirements of the city and the state, which Minnesota Ice did not fulfill; therefore, they were not in compliance with that requirement.

Mr. McDevitt acknowledged that Minnesota Ice does not yet have the license in place, but the license would only be required to complete the project, and there is no requirement in state code or city code that the license be in place in order to submit a bid for the project. He noted the bid forms included a question about whether the contractor could meet all state and city licensure requirements, and Minnesota Ice responded "yes".

City Manager Tom Hadden noted there was a third contractor interested in bidding on this project, but they declined because they could not meet the licensing requirement prior to submitting the bid.

Mr. Scieszinski responded to questions from the Council, stating the City can waive any irregularities if deemed appropriate. For example, bidders are required to submit unconditional bids, but Minnesota Ice imposed a condition that they needed 20 weeks from the time of the notice to proceed in order to complete the project. Staff felt that was reasonable, so that irregularity was waived. He noted there were no waivers of irregularities for the bid submitted by Rink-Tec.

Council member Trimble stated if the City waives the license requirement and accepts the low bid from Minnesota Ice, it could be problematic from a legal standpoint, as the City's decision could be challenged by either the bidder that did comply with the license requirement or the bidder that declined to bid because they did not have the license in place.

It was moved by Trevillyan, second by Trimble to adopt Motion - Continue Item 6(a) to a special council meeting scheduled for January 16, 2020.

Mayor Gaer requested that the letter from the architect regarding the rejection of the Minnesota Ice bid be made available to the council prior to the special meeting. He also requested that a representative from the architect be present at the special meeting to speak to the matter.

Vote 20-013: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 7(a) Courtyards at Kings Landing, northeast corner of South 100th Street and Stagecoach Drive - Subdivide Property into 79 Lots and Three Outlots for a Detached Townhome Development, initiated by Caliber Iowa, LLC

It was moved by Trimble, second by Trevillyan to adopt Resolution - Approval and Release of Final Plat, subject to the applicant complying with all applicable City Code requirements.

Vote 20-014: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 7(b) Amendment to City Code - Title 3 (Business and Licensing), Chapter 8 (Pawnbrokers) - Modify the Procedures and Requirements for Reporting Pawned Items by Pawnbrokers, initiated by the City of West Des Moines

It was moved by Trimble, second by Hardman to consider the first reading of the ordinance.

Council member Trevillyan inquired how pawn shops would acquire the software program referenced in the proposed ordinance.

Police Chief Chris Scott responded it is a web-based program, and the police department would provide pawn shops access to it.

Vote 20-015: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Hardman to approve the first reading of the ordinance.

Vote 20-016: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 8 - Receive, File and/or Refer: no items

On Item 9 - Other Matters: none

Mayor Gaer noted the agenda included an executive session for pending/threatened litigation. He inquired if that is still needed.

Mr. Scieszinski responded it is no longer needed.

The meeting was adjourned at 6:25 p.m.

Respectfully submitted,

_____

Ryan T. Jacobson, CMC
City Clerk

ATTEST:

_____

Steven K. Gaer, Mayor