

CITY OF NORFOLK, NEBRASKA

The Mayor and City Council of the City of Norfolk, Nebraska met in regular session in the Council Chambers, 309 North 5th Street, Norfolk, Nebraska on the 15th day of April, 2013, beginning at 5:30 p.m.

Following a moment of silence and the Pledge of Allegiance to the flag of the United States of America, Mayor Sue Fuchtman called the meeting to order. Roll call found the following Councilmembers present: Dale Coy, Jim Lange, Rob Merrill, Shane Clausen, Thad Murren, Josh Moenning, Dave Fauss, and Dick Pfeil. Absent: None.

Staff members present were: City Administrator Shane Weidner, Director of Public Works Dennis Smith, City Attorney Clint Schukei, City Clerk Beth Deck, Finance Officer Randy Gates, Police Chief Bill Mizner, Wastewater Plant Superintendent Todd Boling, Park Superintendent Pat Mrsny, Information Systems Manager Jim McKenzie, Administrative Secretary Bethene Hoff, Water & Sewer Director Dennis Watts, Prevention Manager Trent Howard, Assistant City Engineer Mark Dolachek and Operations Manager Gary Miller.

The Mayor presided and the City Clerk recorded the proceedings.

The Mayor informed the public about the location of the current copy of the Open Meetings Act posted in the City Council Chambers and accessible to members of the public.

Notice of the meeting was given in advance thereof by publication in the Norfolk Daily News, Norfolk, Nebraska, the designated method of giving notice, as shown by affidavit of publication.

Notice was given to the Mayor and all members of the Council and a copy of their acknowledgement of receipt of notice and agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the public.

Agenda Motions

Councilmember Merrill moved, seconded by Councilmember Fauss to delete Item 11, Special Designated Liquor Permit for Mudder's Sports Bar & Grill, and to approve the consent agenda as amended. Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

Councilmember Coy moved, seconded by Councilmember Lange to adopt the full agenda as printed. Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

Consent Agenda Items Approved

Minutes of the April 1, 2013, City Council meeting

Waive \$2.00 bicycle registration fee for the annual Landon Bos Memorial Bike Rodeo on May 18, 2013 from 9:00 a.m. to 12:00 p.m., to be held at the Norfolk Pedal Park, located west of the YMCA

Rotary Club of Norfolk agreement to hold four music performance events in Skyview Park and allow alcohol consumption in the park during those events

Special Designated Liquor License for VIN, Inc., dba Lloyd's Drug Mart, 2600 West Norfolk Avenue, to serve beer, wine and distilled spirits on May 9, 10 and 11, 2013 from 12:00 noon to 8:00 p.m. for sampling/tasting events

Big Bang Boom, Inc. (a Nebraska Nonprofit Corporation) and *J & M Displays, Inc.* (an Iowa Corporation) agreement to use Skyview Park for various activities to celebrate the 4th of July, including but not limited to a fireworks display on Saturday, July 6, 2013

Special Designated Liquor License for Jessica L. Reestman, dba Boomerang's, 601 North 2nd Street, Elgin, Nebraska, to serve beer and distilled spirits on June 1, 2013 at The Loft, 311 West Norfolk Avenue, Norfolk, Nebraska, from 3:00 p.m. to 12:00 a.m. for a dance and reception

Elkhorn Paving Construction Co., Inc. of Norfolk, Nebraska contract for the Michigan Avenue Improvements (Wood Street to 10th Street) project for an amount of \$594,734.25 to furnish all labor, materials, equipment and all else necessary to properly construct the improvements. Sealed bids were received and opened on April 9, 2013. Other bidders were Rutjens Construction, \$628,842.11; and Robert Woehler & Sons, \$647,615.00.

Northern Truck Equipment bid of \$65,559.00 to purchase a new live floor transfer trailer for the Transfer Station. Sealed bids were received and opened on April 4, 2013. Other bidders were: Trans West, \$97,848; and Wilkens Industries, \$66,871.

Resolution No. 2013-9 releasing the South 119 feet of the West 5 foot utility easement of Lot 1, Kurpgewei's Addition, being a subdivision of part of Lot 23, Wards Suburban Lots to the City of Norfolk, Madison County, Nebraska, being part of the SE ¼ of the SE ¼ of Section 21, Township 24 North, Range 1 West of the 6th P.M., City of Norfolk, Madison County, Nebraska

Sta-bilt Construction Company bid of \$23,887.20 to provide an armor coat application at Skyview Park, and \$21,138.00 for the Street ROW project. Sealed bids were received and opened on April 5, 2013. Other bidders were: Topkote, \$28,346.00; and Figgins, \$36,337.80.

Norfolk Post 16 of The American Legion at Norfolk, Nebraska (a Chartered Unit of the Nebraska American Legion and its National Organization) agreement to use Central Park for a Memorial Day celebration on Monday, May 27, 2013

Advertise for site grading at Ta-Ha-Zouka for the Phase II Project

Christian Cross, Inc. (a Nebraska Nonprofit Corporation) and *Fly By Night Fireworks, L.L.C.* (a Nebraska Limited Liability Company) agreement to use Skyview Park for various activities in conjunction with a Christian Cross Festival on June 8, 2013

Patti Podliska (doing business as Mid-America Working Terrier Association) agreement to use the Vulcraft shelter, dog park and surrounding area in the northeast corner of Ta-Ha-Zouka Park to conduct the Terrier Trials event from Thursday, June 20, 2013, through Sunday, June 23, 2013

Chris Price (doing business as Norfolk Little League Association) agreement to use the City's baseball fields at Veterans Memorial Park, Warren Cook Park and Ta-Ha-Zouka Park for baseball practice and games for the 2013 baseball season

Norfolk Post 16 of The American Legion at Norfolk, Nebraska (a Chartered Unit of the Nebraska American Legion and its National Organization) agreement to use the City's baseball fields at Veterans Memorial Park and Ta-Ha-Zouka Park for baseball practice and games for the summer baseball season

Bills in the amount of \$971,585.04

Special Presentations

The Mayor proclaimed April 26, 2013 as "Arbor Day"; and April 27, 2013 as "Buddy Poppy Day" for the Veterans of Foreign Wars.

Public Hearings and Related Items

Public Hearings

(amend Comprehensive Plan & zone change, 1900 block N 43rd St, ROPAC)

A public hearing was held to consider an amendment to the Comprehensive Plan from single family residential to rural residential in the 1900 block of North 43rd Street at the request of Ropac, Inc. Trent Howard, Preventions Manager, provided information to the Mayor and City Council. The amendment is necessary as the owner, Robert Hauser, has applied for a zoning change on this five-acre parcel.

On April 2, 2013, the Norfolk Planning Commission held a public hearing regarding the Comprehensive Plan amendment and the City Clerk read the Planning Commission's recommendation for approval into the record.

No one else appeared either in favor of or in opposition to amend the Comprehensive Plan in the 1900 block of North 43rd Street and the Mayor declared the hearing closed.

Ordinance No. 5251

(amend Comprehensive Plan, 1900 block North 43rd Street)

Councilmember Lange introduced, seconded by Councilmember Fauss, Ordinance No. 5251 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, MADISON COUNTY, NEBRASKA; AMENDING THE FUTURE LAND USE MAP OF THE CITY OF NORFOLK, NEBRASKA; PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Said ordinance was then read into the record by title by the City Clerk.

Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. Ordinance No. 5251 passed on first reading.

Councilmember Lange moved, seconded by Councilmember Fauss, that the statutory rule requiring reading on three different days be suspended.

Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said ordinance.

Thereafter Councilmember Lange moved, seconded by Councilmember Fauss, that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance. The Mayor then stated the question "Shall Ordinance No. 5251 be passed and adopted?"

Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 5251 as required by law.

A public hearing was held to consider a zone change from A (Agricultural District) to R-R (Rural Residential District) at the 1900 block of North 43rd Street at the request of Ropac, Inc. Trent Howard, Preventions Manager, provided information to the Mayor and City Council. The property owner, Robert Hauser, is requesting a zoning change on this five-acre parcel to be able to exchange the land with another parcel and will plat the parcel that houses a small farm.

On April 2, 2013, the Norfolk Planning Commission held a public hearing regarding the zone change and the City Clerk read the Planning Commission's recommendation for approval into the record.

Ordinance No. 5252
(zone change, 1900 block North 43rd Street)

Councilmember Lange introduced, seconded by Councilmember Fauss, Ordinance No. 5252 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, MADISON COUNTY, NEBRASKA; AMENDING THE ZONING DISTRICT MAP OF THE CITY OF NORFOLK, NEBRASKA; PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Said ordinance was then read into the record by title by the City Clerk.

Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. Ordinance No. 5252 passed on first reading.

Councilmember Lange moved, seconded by Councilmember Fauss, that the statutory rule requiring reading on three different days be suspended.

Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said ordinance.

Thereafter Councilmember Lange moved, seconded by Councilmember Fauss, that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance. The Mayor then stated the question "Shall Ordinance No. 5252 be passed and adopted?"

Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 5252 as required by law.

Regular Agenda Items

Ordinance No. 5245

(zone change, Mota Ambaji, Inc., 721 East Norfolk Avenue)

Councilmember Coy moved, seconded by Councilmember Fauss to take Ordinance No. 5245 off the table. The ordinance was tabled at the March 4, 2013 City Council meeting, and at the March 18, 2013 City Council meeting.

Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion to take Ordinance No. 5245 off the table carried.

Councilmember Coy introduced, seconded by Councilmember Lange, Ordinance No. 5245 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, MADISON COUNTY, NEBRASKA; AMENDING THE ZONING DISTRICT MAP OF THE CITY OF NORFOLK, NEBRASKA; PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Said ordinance was then read into the record by title by the City Clerk.

Prevention Manager Trent Howard explained the City of Norfolk issued a cease and desist letter, dated March 14, 2013 to the owner, Mota Ambaji, Inc. because the use of the motel (Budget Inn) at 721 East Norfolk Avenue fell out of compliance with the proper use of the property. The cease and desist order has been appealed by Jeff Hrouda, attorney for Mota Ambaji, Inc.

City Administrator Shane Weidner stated the requested zoning change has no bearing on the order and doesn't affect enforcing code compliance. Weidner stated the commercial zoning is consistent for property in that location.

Councilmember Moenning wants a clear understanding of the intended use of the property given the code compliance concerns.

Councilmember Clausen understands the zoning request has no bearing on the code concerns but the current property owner is not in compliance with use of the property.

Councilmember Fauss has concerns about rezoning the property at this time.

Councilmember Merrill has concerns but understands nothing can probably be done to the property until the zoning is changed.

Councilmember Coy is concerned with the non-compliant use of the property and said the appeals process may take a long time.

Councilmember Lange feels the requested zoning change is similar to other housekeeping issues to correct improper zoning.

Jeff Hrouda, attorney for Mota Ambaji, Inc., requested approval of the zoning change to allow the property owner to move forward with either demolition, reconstruction or repairing the fire damaged building once the insurance company settles on the claim. Hrouda stated the commercial zoning is consistent with other property in the area. Hrouda stated the zoning defect needs to be cleared up at some time.

City Attorney Clint Schukei explained: enforcement action, appeal filed, current use of motel, city code description of motel, and appeals process.

Al Rajaei spoke in opposition to the zoning change and said the property has been out of compliance for years. Rajaei feels the City Council has the opportunity to address the non-compliance by not approving a zoning change.

Pat O’Gorman operated Mary’s Café on East Norfolk Avenue for 55 years and said the Budget Inn has been in disarray for 30 years. O’Gorman spoke in opposition to the zoning change request.

Roll call on Ordinance No. 5245: Ayes: Councilmembers Lange and Murren. Nays: Coy, Merrill, Clausen, Moenning, Fauss and Pfeil. Absent: None. Motion failed. Ordinance No. 5245 failed on first reading.

Municipal Electrical Interests Group Agreement

Councilmember Lange moved, seconded by Councilmember Merrill, to approve an agreement with Municipal Electrical Interests Group (MEIG) for the City of Norfolk to join MEIG.

Public Works Director Dennis Smith explained the agreement provides municipalities a forum for discussion of common interests relating to rate setting and policy decisions made by Nebraska Public Power District (NPPD).

Roll call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

Resolution No. 2013-10 (CVS Pharmacy development, 13th Street & Norfolk Avenue)

Councilmember Coy moved, seconded by Councilmember Fauss, to adopt Resolution No. 2013-10 approving the alley vacation ordinance, platting, and subdivision agreement all related to the CVS development of property located on the southwest corner of the intersection of 13th Street and Norfolk Avenue following CVS acquiring ownership of the proposed development area.

Public Works Director Dennis Smith explained CVS Pharmacy needs everything in place prior to acquiring property to move forward with the development. This resolution provides that after CVS acquires all properties involved in the platting of CVS 1st Addition the City of Norfolk will approve an alley vacation ordinance, CVS 1st Addition platting, and CVS 1st Addition Subdivision Agreement.

Roll Call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. Resolution No. 2013-10 was adopted.

Administrative Report

Finance Officer Randy Gates presented the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2012, along with the related Single Audit Reports and auditor's letter.

Regular Agenda Item

SID #1 (Woodland Park)

(sewer bill and Interlocal Agreement for sewer services)

Mayor Fuchtmann requested a motion to go into closed session to discuss potential litigation related to the \$200,000 sewer bill owed by Sanitary Improvement District No. 1 (Woodland Park), and the status of the Interlocal Agreement for sewer service between Sanitary Improvement District No. 1 (Woodland Park) and the City of Norfolk.

Councilmember Merrill moved, seconded by Councilmember Fauss, to adjourn from regular session and convene into closed session at 6:58 p.m. to discuss potential litigation related to the \$200,000 sewer bill owed by Sanitary Improvement District No. 1 (Woodland Park) and the status of the Interlocal Agreement for sewer service between Sanitary Improvement District No. 1 (Woodland Park) and the City of Norfolk.

Roll Call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion to go into closed session carried.

Mayor Fuchtmann stated the motion carried and the closed session is to discuss potential litigation related to the \$200,000 sewer bill owed by Sanitary Improvement District No. 1 (Woodland Park) and the status of the Interlocal Agreement for sewer service between Sanitary Improvement District No. 1 (Woodland Park) and the City of Norfolk.

The City Council came back to the City Council Chambers and Mayor Fuchtmann stated the only item discussed during the closed session was potential litigation related to the \$200,000 sewer bill owed by Sanitary Improvement District No. 1 (Woodland Park) and the status of the Interlocal Agreement for sewer service between Sanitary Improvement District No. 1 (Woodland Park) and the City of Norfolk.

Mayor Fuchtmann requested a motion to come out of closed session.

Councilmember Fauss moved, seconded by Councilmember Clausen to adjourn from closed session and reconvene into regular session at 7:55 p.m.

Roll Call: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

Councilmember Dale Coy provided some history into the Woodland Park sewer issue. Coy explained a subcommittee of elected officials met with Woodland Park board members, with supportive staff in attendance as well, to discuss the sewer issue and try to come to a mutual consensus on payment of the sewer bill. However, consensus wasn't able to be reached.

Councilmember Coy, seconded by Councilmember Lange moved that, effective May 1, 2013, the Norfolk City Council is directing staff to:

- (1) Give notice to Sanitary Improvement District No. 1 of Stanton County (Woodland Park) that it should take the steps necessary to disconnect its sewer line from the City of Norfolk sewer system by June 1, 2016;
- (2) Not pursue collection of the unpaid sewer charges that occurred prior to July 31, 2012 through the court system; and
- (3) Not pursue the City of Norfolk's legal right expressly set forth in the 1986 Woodland Park agreement to terminate the sewer connection immediately for non-payment of the unpaid sewer charges that occurred prior to July 31, 2012.

Coy stated elected officials, as a group, feel this motion gives the Sanitary Improvement District No. 1 of Stanton County (Woodland Park) the opportunity to control their own future and feel it is in the best interest of constituents.

Roll call on the Woodland Park motion: Ayes: Councilmembers Coy, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

There being no further business, the Mayor declared the meeting adjourned at 7:58 p.m.

Sue Fuchtman
Mayor

ATTEST:

Elizabeth A. Deck
City Clerk

(S E A L)

I, the undersigned Clerk, hereby certify that the foregoing is the full, true and correct original document of proceedings of Monday, April 15, 2013, had and done by the Mayor and City Council; that all of the subjects included in the proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to the meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Elizabeth A. Deck
City Clerk

(S E A L)