

MINUTES OF THE REGULAR CITY COUNCIL MEETING

A regular meeting of the City Council was held on the 18th day of June, 2018 at 7:00 P.M. in the BPS Administration Building Board Room, 320 North 5th Street, Beatrice, Nebraska.

Mayor Wirth led those in attendance in the Pledge of Allegiance.

ROLL CALL

Attending: Mayor Wirth, Councilmembers: Billesbach, Catlin, Clabaugh, Cook, Kerr,
Morgan, Parde

Absent: Fairbanks.

Mayor Wirth announced that a copy of the Open Meetings Act is posted in the meeting room and is accessible to members of the public.

CONSENT AGENDA

- a. Approve agenda as submitted.
- b. Receive and place on file all notices pertaining to this meeting.
- c. Receive and place on file all materials having any bearing on this meeting.
- d. Approval of minutes of regular meeting on June 4, 2018, as on file in the City Clerk's Office.
- e. Approval of Treasurer's Report of Claims in the amount of \$487,528.05.
- f. Approval of BASWA Report of Claims in the amount of \$57,111.41.
- g. Approval of write-off of ambulance bad debts.
- h. Approval of Special Designated License application of D & J Enterprises, LLC dba Kabo Bar for a beer garden for charity on July 14, 2018 from 2:00 p.m. until 2:00 a.m., at 115 South 5th Street, and permission to use the City-owned alley for said beer garden.
- i. Approval of Manager Application for Denise L. Pahl, License #C122009, in connection with Tall Tree Tastings, LLC, 122 North 5th Street, Beatrice, Nebraska.
- j. Resolution Number 6230 executing the Agreement, between the City of Beatrice and Struve Enterprises, Inc., regarding repairs and improvements to the alley located on the west side of Townhouse Apartments, near the intersection of 6th Street and Logan Street.
- k. Resolution Number 6231 entering into an Interlocal Cooperation Act Agreement, between the City of Beatrice, the County of Gage, and Gage Area Growth Enterprise (NGage), to provide funding to NGage as authorized by Neb. Rev. Stat. §13-315.
- l. Resolution Number 6232 executing Amendment No. 2 to the Power Purchase Agreement with Cottonwood Wind Project, LLC, as recommended by the Board of Public Works.
- m. Resolution Number 6233 executing the Termination of Confirmation Letter #2, Confirmation Letter #3, and Confirmation Letter #4 with the City of Lincoln, Nebraska, doing business as Lincoln Electric System ("LES") regarding the sale/purchase of electric capacity, as recommended by the Board of Public Works.

Moved by Catlin, seconded by Billesbach, that the items listed under the consent agenda, with the exception of item h, be approved, accepted, and/or ratified as presented.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None

MOTION CARRIED.

h – Moved by Catlin, seconded by Billesbach, that the Special Designated License application of D & J Enterprises, LLC dba Kabo Bar for a beer garden for charity on July 14, 2018 from 2:00 p.m. until 2:00 a.m., at 115 South 5th Street, and permission to use the City-owned alley for said beer garden, be approved, accepted, and/or ratified as presented.

Councilman Parde noted he pulled this item to vote against as he is against using City property due to liability.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan
Nay: Parde

MOTION CARRIED.

PUBLIC HEARINGS/BIDS

Public Hearing to amend Table 4-2 relating to the permissibility of restaurant drive-throughs in the Limited Commercial district and warehousing in the General Commercial district; to amend Section 222 relating to definitions, to amend Section 707 relating to swimming pools; to add Section 708 relating to storage containers; to amend Section 703(B) relating to exceptions to the openness of required yards, to amend Section 706(C) relating to residential fences; to add Section 709 relating to appeals; and to amend Section 302(A) of the Subdivision Ordinance of the City of Beatrice, Ordinance Number 98-6, relating to administrative subdivisions.

Mayor Wirth announced that a public hearing will now be held to amend Table 4-2 relating to the permissibility of restaurant drive-throughs in the Limited Commercial district and warehousing in the General Commercial district; to amend Section 222 relating to definitions, to amend Section 707 relating to swimming pools; to add Section 708 relating to storage containers; to amend Section 703(B) relating to exceptions to the openness of required yards, to amend Section 706(C) relating to residential fences; to add Section 709 relating to appeals; and to amend Section 302(A) of the Subdivision Ordinance of the City of Beatrice, Ordinance Number 98-6, relating to administrative subdivisions.

Abby Stark, City Attorney, reviewed the two (2) proposed amendments to Table 4-2. The first change would allow drive-through restaurants in Limited Commercial zones, in the anticipation of the redevelopment of the Store Kraft area. The second proposed change would allow warehousing in General Commercial zones after acquiring a special use permit. Councilman Parde inquired if the City plans to limit the number of driveways along the Store Kraft redevelopment area. Tobias J. Tempelmeyer, City Administrator/General Manager, noted the Nebraska Department of Transportation sets those guidelines. Stark noted the Planning and Zoning Commission recommended approval on this item at their meeting earlier this evening.

Stark reviewed the proposed zoning changes regarding swimming pools which will restrict swimming pools to residential properties and require pools deeper than two feet (2') be restricted the same as accessory buildings. Those restrictions would not allow pools in front yards or side

yards and would also require pools placed in back yards or interior side yards to meet setback requirements. Councilman Kerr inquired if the public will need to check with inspections as to where they can place their pool. Tempelmeyer indicated the City will work to educate the public regarding the location of pools. Stark noted the Planning and Zoning Commission recommended approval on this item at their meeting earlier this evening.

Stark reviewed the proposed amendment regarding openness of required yards to clarify that accessory buildings may be constructed within five feet (5') of a rear lot line or an interior lot line only. Stark also reviewed the proposed revision for residential fences which would allow fences in a corner lot's required street side yard as long as the fence does not extend further out towards the street than any existing houses facing that same street. Councilman Kerr asked if it could be added in the code where the good side of the fence goes. Tempelmeyer noted it is silent now and an amendment can be brought forward at a future meeting. Stark noted the Planning and Zoning Commission recommended approval on this item at their meeting earlier this evening.

Stark reviewed the proposed changes to the administrative subdivision procedure, which would allow the subdivision of a lot that does not currently meet the required minimum lot area, which will allow adjoining property owners to sell a lot if they are not correct now. City code states lots must comply to current zoning, which would not allow the sale of irregular property lots. Stark noted the sale must be approved by appropriate City staff. Stark noted the Planning and Zoning Commission recommended approval on this item at their meeting earlier this evening.

Stark noted a hearing on the proposed changes to storage containers will still be held tonight, however, no action will be taken on this item. Current zoning code does not address storage containers and upon drafting the proposed ordinance, the City received concerns from citizens and have since made some revisions to the proposed ordinance. The revisions will allow storage containers in areas zoned Agriculture, General Commercial, Light Industrial, and General Industrial, however, they must meet the same setback requirements as accessory structures and they are only permitted when there is a primary structure. In General Commercial a maximum of two (2) storage containers would be allowed. In Residential districts, storage containers would not be allowed except for temporary use to accommodate a move, remodel, or cleanup of a casualty loss, which would be allowed for sixty (60) calendar days, and could apply for an extension. Stark also noted they may not be placed in the right-of-way or anywhere that would obstruct views. Councilman Kerr inquired why General Commercial was limited to two (2) containers. Tempelmeyer noted General Commercial is generally along the highway, and from an aesthetics view, you may not want these along the highways. Councilman Kerr inquired what the difference is between a storage container and storage units. Tempelmeyer noted storage units are required to have a concrete barrier around them, however, if they are not an accessory structure, they can be placed on the ground with no footings.

Councilman Clabaugh inquired on limiting the number of storage containers allowed. Stark noted that was one (1) area of concern that was raised, in which if you limited to two (2), that may not be realistic for some industrial businesses located in General Commercial. Councilman Kerr noted he would recommend no limit in General Commercial and two (2) in residential

areas, as long as they meet the setback requirements. Councilman Cook noted he agreed that if the setbacks are met, there should not be a limit for General Commercial properties.

Jim Nelson, 1025 North 6th Street, on behalf of Casper's Construction, which is zoned General Industrial. Nelson noted the first draft posed concerns, however, after meeting with Stark and Tempelmeyer, Casper's is in approval of the ordinance with the proposed revisions. Nelson noted on a personal note, although he does not live inside city limits, he does fall under the two-mile zoning jurisdiction and therefore would not be allowed to have a storage container on his property and asked to have this item postponed until further revisions can be made.

Wayne Bruns, 1201 Grant Street, inquired if someone currently has four (4) storage containers on their property and the proposal is to limit to two (2) in General Commercial, will the current containers be grandfathered in. Tempelmeyer noted that is a decision that would need to be made by the Council. Bruns also inquired on the definition of trailers and railroad cars. Stark noted that was another area that was revised to clarify and address only things that were originally meant to transport people or goods. Bruns also noted he did not like the subject to inspection wording. Stark noted that was also removed as well.

Moved by Catlin, seconded by Parde, that the public hearing be closed at 7:34 p.m.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None

MOTION CARRIED.

RESOLUTIONS

Resolution Number 6234 executing the Letter Agreement Amendment #1 to add additional services including construction administration, construction observation, material testing, project closeout, and record drawings for additional compensation to the Letter Agreement for Professional Services dated December 14, 2016 between the City of Beatrice, Nebraska, and Olsson Associates, Inc., as recommended by the Board of Public Works.

Mayor Wirth introduced Resolution Number 6234 executing the Letter Agreement Amendment #1 to add additional services including construction administration, construction observation, material testing, project closeout, and record drawings for additional compensation to the Letter Agreement for Professional Services dated December 14, 2016 between the City of Beatrice, Nebraska, and Olsson Associates, Inc., as recommended by the Board of Public Works.

Moved by Catlin, seconded by Cook, that Resolution Number 6234 be passed and adopted.

Tobias J. Tempelmeyer, City Administrator/General Manager, reported to the Council this amendment is for additional fees resulting from additional testing and observation of the project on Ridgeview Drive, as a result of construction not being completed as originally set out in the contract.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None

MOTION CARRIED.

Resolution Number 6234 has been passed and adopted.

Resolution Number 6235 executing the General Release to release and discharge Homestead Auto Glass, LLC, and Paul and Amber Pond, regarding Community Development Block Grant Loan Agreement.

Mayor Wirth introduced Resolution Number 6235 executing the General Release to release and discharge Homestead Auto Glass, LLC, and Paul and Amber Pond, regarding Community Development Block Grant Loan Agreement.

Moved by Catlin, seconded by Kerr, that Resolution Number 6235 be passed and adopted.

Tobias J. Tempelmeyer, City Administrator/General Manager, reported to the Council Homestead Auto Glass, LLC, has paid off their CDBG loan in full and this resolution is to release any and all collateral listed on the Loan Agreement.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None

MOTION CARRIED.

Resolution Number 6235 has been passed and adopted.

Resolution Number 6236 executing the Loan Extension Agreement and Promissory Note between the City of Beatrice and Birchwood Estates Retirement Village, LLC, for an extension of a direct loan in an amount up to \$35,000.00 under the City of Beatrice LB 840 Fund for Economic Development, and to execute all other necessary documents.

Mayor Wirth introduced Resolution Number 6236 executing the Loan Extension Agreement and Promissory Note between the City of Beatrice and Birchwood Estates Retirement Village, LLC, for an extension of a direct loan in an amount up to \$35,000.00 under the City of Beatrice LB 840 Fund for Economic Development, and to execute all other necessary documents.

Moved by Catlin, seconded by Morgan, that Resolution Number 6236 be passed and adopted.

Tobias J. Tempelmeyer, City Administrator/General Manager, reported to the Council in 2015 the City entered into an LB840 loan agreement with Nu Nebraska, which was later transferred to Birchwood Estates Retirement Village, LLC. The agreement outlined a two (2) year study period, followed by a one (1) year pre-construction period, and an eighteen (18) month construction period. The pre-construction period ends on July 6, 2018, and the developer has not yet finalized financing terms, therefore, Brian Mellage has asked for a six (6) month extension. Tempelmeyer noted this is the first extension Birchwood has requested.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None

MOTION CARRIED.

Resolution Number 6236 has been passed and adopted.

ORDINANCES

Ordinance amending Table 4-2 of the Zoning Ordinance of the City of Beatrice, Ordinance Number 94-13 relating to the permissibility of restaurant drive-throughs in Limited Commercial districts and warehousing in General Commercial districts.

Mayor Wirth introduced an ordinance amending Table 4-2 of the Zoning Ordinance of the City of Beatrice, Ordinance Number 94-13 relating to the permissibility of restaurant drive-throughs in Limited Commercial districts and warehousing in General Commercial districts.

Moved by Catlin, seconded by Billesbach, that said ordinance be given number 18-012 the title thereof be approved, the rules be suspended and said ordinance be read by number only three (3) times tonight.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde

Nay: None

MOTION CARRIED.

Mayor Wirth read Ordinance Number 18-012 by number only the first, second, and third time.

Moved by Catlin, seconded by Cook, that Ordinance Number 18-012 be passed and approved.

There was no further discussion from the City Council or public.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde

Nay: None

MOTION CARRIED.

Ordinance Number 18-012 has been passed and approved.

Ordinance amending Section 222 and Section 707 of the Zoning Ordinance of the City of Beatrice, Ordinance Number 94-13, relating to definitions and swimming pools.

Mayor Wirth introduced an ordinance amending Section 222 and Section 707 of the Zoning Ordinance of the City of Beatrice, Ordinance Number 94-13, relating to definitions and swimming pools.

Moved by Catlin, seconded by Billesbach, that said ordinance be given number 18-013 the title thereof be approved, the rules be suspended and said ordinance be read by number only three (3) times tonight.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde

Nay: None

MOTION CARRIED.

Mayor Wirth read Ordinance Number 18-013 by number only the first, second, and third time.

Moved by Catlin, seconded by Parde, that Ordinance Number 18-013 be passed and approved.

Abby Stark, City Attorney, noted these changes will restrict swimming pools to residential properties and pools holding more than twenty-four inches (24”) of water will not be allowed in front yards or side yards.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None MOTION CARRIED.

Ordinance Number 18-013 has been passed and approved.

Ordinance amending Section 703(B) and 706(C) and adding Section 709 of the Zoning Ordinance of the City of Beatrice, Ordinance Number 94-13, relating to exceptions to the openness of required yards, residential fences, and appeals.

Mayor Wirth introduced an ordinance amending Section 703(B) and 706(C) and adding Section 709 of the Zoning Ordinance of the City of Beatrice, Ordinance Number 94-13, relating to exceptions to the openness of required yards, residential fences, and appeals.

Moved by Catlin, seconded by Billesbach, that said ordinance be given number 18-015 the title thereof be approved, the rules be suspended and said ordinance be read by number only three (3) times tonight.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None MOTION CARRIED.

Mayor Wirth read Ordinance Number 18-015 by number only the first, second, and third time.

Moved by Catlin, seconded by Cook, that Ordinance Number 18-015 be passed and approved.

Councilman Kerr asked Administration to look into clarifying the code to address which property you place the front side of the fence. Administration will draft a revision clarifying this issue and bring it forward to a future Council meeting.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None MOTION CARRIED.

Ordinance Number 18-015 has been passed and approved.

Ordinance amending Section 302(A) of the Subdivision Ordinance of the City of Beatrice, Ordinance Number 98-6 relating to administrative subdivisions.

Mayor Wirth introduced an ordinance amending Section 302(A) of the Subdivision Ordinance of the City of Beatrice, Ordinance Number 98-6 relating to administrative subdivisions.

Moved by Catlin, seconded by Parde, that said ordinance be given number 18-016 the title thereof be approved, the rules be suspended and said ordinance be read by number only three (3) times tonight.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None MOTION CARRIED.

Mayor Wirth read Ordinance Number 18-016 by number only the first, second, and third time.

Moved by Catlin, seconded by Cook, that Ordinance Number 18-016 be passed and approved.

Councilman Catlin asked for clarification on the proposed ordinance. Abby Stark, City Attorney, reviewed the proposed changes which would allow the subdivision of lots that already do not meet the minimum area requirements. This amendment will not permit the creation of lots not conforming with the minimum lot size requirements, it will allow property owners of existing non-conforming lots to sell or purchase property because after the subdivision the lots will still not meet the minimum area requirements.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None MOTION CARRIED.

Ordinance Number 18-016 has been passed and approved.

Ordinance Number 18-009 adding Sections 17-35, 17-36, 17-37, and 17-38 to the Beatrice City Code regarding disorderly houses.

Mayor Wirth introduced Ordinance Number 18-009 adding Sections 17-35, 17-36, 17-37, and 17-38 to the Beatrice City Code regarding disorderly houses. (Postponed May 21, 2018)

Moved by Catlin, seconded by Clabaugh, that Ordinance Number 18-009 be passed and approved.

Tobias J. Tempelmeyer, City Administrator/General Manager, reported to the Council after the proposed ordinance was presented on May 21, 2018, Administration met with members of the Gage County Rental Property Owners Association to discuss concerns they had. The members asked that the landlord also be notified if/when their tenant is issued a citation for disorderly house. Tempelmeyer noted the Association is comfortable with the ordinance with that change added.

Larry Wolken, 1301 Elk Street, inquired how many notices landlords be notified of. Tempelmeyer noted the landlord will be notified if/when a tenant is issued a citation for disorderly house. Wolken inquired what types of citations are considered towards a disorderly house. Tempelmeyer noted citations for a disorderly house would include multiple citations for loud parties, disorderly conduct, etc.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None MOTION CARRIED.

Ordinance Number 18-009 has been passed and approved.

PUBLIC FORUM

No one appeared at public forum.

DISCUSSIONS/REPORTS

NGage Quarterly Report

Walker Zulkoski, NGage Executive Director, presented the 2nd Quarter report for 2018. Zulkoski noted two (2) interns have been added to the staff for the summer, helping with filing, scanning, as well as trying to get an idea of what needs to be done to make the younger population return to Gage County to work and live. Zulkoski noted there are a lot of promising projects in the works. They are continuing to push developers in regards to the hotel study and the first home in the Excel Development has been sold. SCC also recently held a groundbreaking for their new development for dining and residence halls. Zulkoski noted NGage Board of Directors will hold a retreat at their August meeting to develop their 2019 strategic goals.

City Administrator's Monthly Report

Tobias J. Tempelmeyer, City Administrator/General Manager, presented the City Administrator's Monthly Report. Tempelmeyer noted the mill and overlay project is set to begin the week following the July 4th holiday. The start date for the Porter Addition sanitary sewer improvements has been moved up to July 9th and a pre-construction meeting has been held. Tempelmeyer noted the ballfields have been very busy this season, further noting the Public Properties staff has done a great job ensuring the facilities are ready. The concrete for the new shelter at Hannibal Park has been poured and the playground equipment will be installed over the next few weeks, all of which is being funded with the Land and Water Conservation grant. Plans will be sent out soon on the Standing Bear Trail and construction is still anticipated to occur this fall.

EXECUTIVE SESSION

Moved by Catlin, that the Beatrice City Council go into closed session at 8:07 p.m., for the protection of public interest to discuss contract negotiations and strategy with respect to litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body. Seconded by Billesbach, that the Beatrice City Council go into closed session at 8:07 p.m., for the protection of public interest to discuss contract negotiations and strategy with respect to litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body.

Mayor Wirth announces that it has been Moved by Catlin, seconded by Billesbach, that the Beatrice City Council go into closed session at 8:07 p.m., for the protection of public interest to discuss contract negotiations and strategy with respect to litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde
Nay: None

MOTION CARRIED.

Reconvened at 8:19 p.m.

ADJOURNMENT

The next regular Council meeting is July 2, 2018 at 7:00 p.m. in the BPS Administration Building Board Room. There will be a work session on June 25, 2018 at 7:00 p.m. in the BPS Administration Building Board Room.

Moved by Catlin, seconded by Billesbach, that the meeting be adjourned at 8:19 p.m.

Roll Call: Yea: Billesbach, Catlin, Clabaugh, Cook, Kerr, Morgan, Parde

Nay: None

MOTION CARRIED.

Erin Saathoff, CMC, City Clerk

Stan Wirth, Mayor