

The minutes of the Fairmont City Council meeting held on Monday, September 9, 2019 at the City Hall Council Chambers.

Mayor Deborah J. Foster called the meeting to order at 5:30 p.m.

Council Members Ruth Cyphers, Wayne Hasek, Tom Hawkins, Randy Lubenow and Bruce Peters were present. Also, in attendance: City Administrator Mike Humpal, Public Works Director/City Engineer Troy Nemmers, Finance Director Paul Hoye, City Clerk Patricia J. Monsen, Police Chief Mike Hunter and Interim City Attorney Erik Ordahl.

It was moved by Council Member Peters to approve the agenda with the removal of agenda item number 15.3 Multifamily Housing Tax Abatement Proposal and the addition of agenda item number 15.8 Investigation. Council Member Hasek seconded the motion and the motion carried.

It was moved by Council Member Cyphers, seconded by Council Member Hawkins and carried to approve the minutes of the City Council meeting held on August 26, 2019.

During open discussion, Linsey Preuss, Economic Development Coordinator announced that the City was awarded a Greater Minnesota Business Development Public Infrastructure Program Grant through DEED for the expansion of the Industrial Park. The grant will pay for half of the construction cost.

Ernie Nuss of 1800 South Prairie addressed the Council and questioned the Interim City Attorney on the liability of the City due to Council Members not heeding the advice from the City Attorney on the separation agreement with the former City Attorney. Nuss wanted to know if these Council Members would be held personally liable. Nuss also stated that if the Council was going to move ahead on a forensic audit, to get it done.

Vicky Schulte of 313 South Prairie Avenue stated that she was a victim affected by the former City Attorney's failure to address police reports sent to her office. Schulte wanted people to quit attacking Council Members.

Marilla Whitney of 111 N. Elm Street expressed her dissatisfaction with the former City Attorney and the fact that she allowed these cases to sit on her desk with the abusers not being charged.

Council Member Hasek made a motion to approve the Event Permit for Project 1590 - Kids Just Want to Have Fun for the ribbon cutting of the new Miniature Golf Course to be held on September 22, 2019 from 3:00 – 6:00 p.m. Council Member Peters seconded the motion and the motion carried.

Council Member Peters made a motion to approve **Resolution 2019-36**, declaring costs for the 2019 Improvement Program and ordering the assessment roll to be prepared. Council Member Hawkins seconded the motion. On roll call: Council Members Ruth Cyphers, Wayne Hasek, Tom Hawkins, Randy Lubenow and Bruce Peters all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Council Member Lubenow made a motion to approve **Resolution 2019-37**, calling for a public hearing on proposed assessments for the 2019 Improvement Projects to be held on Monday,

October 14, 2019 at 5:30 p.m. in the Fairmont City Hall Council Chambers. Council Member Cyphers seconded the motion. On roll call: Council Members Hasek, Hawkins, Lubenow, Peters and Cyphers all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Council Member Cyphers made a motion to approve **Resolution 2019-38**, authorizing the Mayor and City Clerk to sign the State Grant Agreement for construction of a new T-hangar at the Fairmont Airport. Council Member Peters seconded the motion. On roll call: Council Members Hawkins, Lubenow, Peters, Cyphers and Hasek all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Council Member Hasek made a motion to declare inventory as reported excess property. Council Member Lubenow seconded the motion and the motion carried.

A discussion was held regarding the KSTP report. Council Member Lubenow read a statement expressing how deeply saddened he is to learn about the cases which had passed the statute of limitations. Council Member Peters stated that he agreed and that it was his understanding that procedures were already put into place so this type of thing will never happen again. Council Member Lubenow stated that his biggest concern was that there were no checks and balances in place. Council Member Peters stated that the responsibility for this fell on the Council, and that the Council should take responsibility and move forward. Interim City Attorney Ordahl stated that typically in situations such as this the responsibility lies with the attorneys in the firm. Chief Hunter stated that he has worked with records personnel to create a case file tracking and audit report. This process was started in June of this year. Cases sent to the prosecuting attorney are now tracked in-house and reviewed by Chief Hunter, Captain Tonder or Administrative Sergeant Sanow. Chief Hunter stated that no other local law enforcement agency is currently doing this.

Council Member Hawkins made a motion to direct the city attorney to provide legal advice and guidance to any councilor upon a councilor's request for the purpose of drafting or reviewing motions or resolutions to be considered by the city council or to determine the requirements or procedure for bringing a proposed action before the city council. A councilor can make a request no more than three times per month, limited to five hours per request and ten hours cumulative in any one month. The city attorney may, at its discretion, share the advice and guidance provided to the councilor with the mayor and the other councilors in accordance with relevant law and policy. Council Member Cyphers seconded the motion. After discussion, the motion was amended to read as follows: to direct the city attorney to provide legal advice and guidance to any councilor or mayor upon a councilor's or mayor's request for the purpose of drafting or reviewing motions or resolutions to be considered by the city council or to determine the requirements or procedure for bringing a proposed action before the city council. A councilor or mayor can make a request no more than three times per month, limited to five billable hours per request and ten billable hours cumulative in any one month. The city attorney must share the advice and guidance provided to the councilor or mayor with the mayor and the other councilors in accordance with relevant law and policy. On roll call vote: Council Members Cyphers, Hawkins, Lubenow and Peters all voted aye. Council Member Hasek voted nay. Mayor Foster declared said motion passed.

Council Member Hawkins made a motion to authorize hiring the firm of Madden Galanter Hansen, LLP to conduct an investigation on why the city council was never made aware of aging criminal cases, including those that were expired due to the statute of limitations. The firm will investigate who may or may not have known the age of these cases to determine proper

notification of the council. The cost will be billed at \$200 per hour and council will be frequently updated to status and cost of investigation. Upon approval, Madden will provide an agreement to be signed by the mayor. Council Member Cyphers seconded the motion. Interim City Attorney Ordahl advised that council members individually do not have the authority to seek out services on their own. Council members need to act as a body and that this practice should not be followed in the future. On roll call: Council Members Cyphers and Hawkins voted aye. Council Members Hasek, Lubenow and Peters voted nay. Mayor Foster declared said motion failed. After discussion, Council Member Hawkins made a motion to move forward with an investigation with Flaherty & Hood facilitating the services and working with the City Council and Staff to determine the scope of the investigation and to bring names of individuals and/or firms to conduct the investigation to the September 23<sup>rd</sup> City Council meeting to be voted upon. Council Member Lubenow seconded the motion and the motion carried.

Nemmers reminded citizens that the City Clean-up Opportunity begins tomorrow and Saturday. With the construction on Winnebago Avenue, citizens should use Tenth Street to access the Marcus Street drop off site.

Mayor Foster reminded the council of the work session scheduled for next Monday at 4:30 p.m. regarding an update on the Community Center. Mayor Foster said the public is welcome to attend, but will not be able to participate, only listen.

Council Member Lubenow asked about several street construction projects and Nemmers gave updates on the projects.

Council Member Lubenow stated that after doing some research and talking to others, that he agrees that the City should include a wash bay in the new street and parks department building.

Council Member Hasek asked about the water issue south of Winnebago Avenue on Grant Street. Nemmers responded.

Council Member Peters thanked Chief Hunter for the new procedures he has put in place for tracking police reports that are sent to the prosecuting attorney.

Council Member Cyphers advised that she will be attending an Airport Board meeting on Tuesday, September 10<sup>th</sup> at 5:30 p.m. and a CER meeting at noon on Thursday, September 19<sup>th</sup>.

A motion was made by Council Member Peters, seconded by Hawkins and carried to adjourn the meeting at 6:48 p.m.

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Deborah J. Foster, Mayor

ATTEST:

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Patricia J. Monsen, City Clerk