

City Council Minutes January 3, 2022

Pursuant to due call and notice thereof, the City Council of the City of Buffalo, Minnesota, held a regular meeting in the City Center on the 3rd day of January 2022 at 7:00 p.m. Present was: Council Members: Nick O'Rourke, Scott Enter, Teri Lachermeier, Steve Downer and Jameson Wakefield. Staff: Administrator Laureen Bodin, Sergeant Mark Brown, Community Service Officer Tony Daniels, Fire Chief John Harnois, City Clerk Susan Johnson, Community and Economic Development Director David Kelly, Utilities Director Jason Meusbarger, Human Resource Manager Shelby Pahl, Student Liaison/Videographer Matthew Scherber.

Mayor Lachermeier called the meeting to order at 7:00 p.m.

SWEARING IN OF COUNCIL MEMBER JAMESON WAKEFIELD

Administrator Bodin swore in Council Member Jameson Wakefield.

ANNOUNCEMENTS

Mayor announced Kites on Ice Festival will be coming in February.

OPEN FORUM

Shayla Holm of 201 Division Street addressed the Council regarding speed limits. She stated that St. Louis Park has a default speed limit of 20 miles per hour on local streets unless posted otherwise. They (St. Louis Park) feel that slower is safer. Slower speed limits promote a mobility system that prioritizes walking first, then bicycling and transit, and then motor vehicle use. Lower speed limits are in-line with national trends toward lower urban speed limits to support safety. Lower traffic speeds reduce the likelihood of a crash and make all types of crashes less likely to lead to death or a life-changing injury. Holm wondered if this might be something to look at incorporating with the comprehensive plan. She also shared from St. Louis Park's website that in May 2019, the Minnesota legislature passed provisions giving cities increased authority to set speed limits on local streets.

AGENDA ADDITIONS OR DELETIONS

6D. Resolution to Not Waive the Monetary Limits on Municipal Tort Liability Established by Minn. Stat. 466.04. – *CONSENT AGENDA*

10B. Emergency Temporary Standard on Vaccination and Testing

COUNCIL REPORTS AND RECOGNITION

Student Liaison Scherber announced that BHM schools start back from break tomorrow.

Council Member Downer reported that he and Utilities Director Meusburger attended the MMPA monthly board meeting on December 21 in Chaska. He wanted to pass on some information. About 70% of cities expenses for electric utility is purchase costs. We purchase power from MMPA so it's an important thing to keep an eye on. There 12 city members. The group discussed COVID19 and inflation, which is projected to be 7% from 2021 to 2022. They have been having a series of long-term discussions on energy planning, specifically energy storage. They discussed Xcel Energy's request for a 21% electric rate increase over the next three years. The state regulators have granted them a 6.4% for 2022 for residential customers and 9.4% for all other customers. MMPA's rates for its members for 2022 are 3% lower than 2021 but are 3.1% higher than budgeted for 2021. He mentioned the Clean Energy Choice program the City offers where 100% green energy can be purchased.

MMPA will soon be buying the full output from the Walleye Wind Project 110 mg project in Rock County. The agency has no staff, it contracts with a private consulting firm out of Minneapolis for management and expertise. He said the meetings are very informative.

CONSENT AGENDA

- A. Approval of December 20 & 27 Minutes
- B. Approval of Claims and Payrolls

Council Meeting ~ 01/03/2022

Payroll Dates 12/12/2021 - 12/25/2021	Paid Date 12/30/2021	Payroll =	\$329,286.90
		Payroll Withholding ~ Incl in Payroll	

A/P Check Runs	EFT/DRAFT	Checks	Total	Check Numbers
12/28/2021	\$ 282,833.15	\$ 729,968.40	\$ 1,012,801.55	125906-126011
12/30/2021	\$ 116,626.10	3,049.67	\$ 119,675.77	125898-125905
12/29/2021		10,231.34	\$ 10,231.34	126015
		\$ -		
Grand Total			1,142,708.66	

- C. Call for Hearing on Past Due Accounts on January 18, 2022

Public Hearing on Past Due Accounts, January 18, 2022

Property ID	Address	Amount*	Description
103-500-194408	912 3rd Ave NE A	\$69.84	Utilities
103-026-006050	301 Central Ave	\$125.80	Utilities

103-192-001340	1002 Ivy Ridge Ln	\$435.85	Utilities
103-031-003070	503 8th Street NE #B	\$590.09	Utilities
103-165-001120	523 Creekside Dr	\$720.58	Utilities
103-163-002010	1800 11th Street NE	\$94.90	Utilities
103-097-004030	210 17th Street S	\$274.89	Utilities
103-500-203325	914 6th Avenue NE	\$337.10	Utilities
103-500-322201	802 Bradshaw Ave NE	\$440.00	Admin. Penalties

*Amount plus interest at 6%. A \$40 filing fee has been included in the above amounts in the event they are not paid in full by November 30, 2022.

D. Resolution 2022-1 Resolution to Not Waive the Monetary Limits on Municipal Tort Liability Established by Minn. Stat. 466.04

Upon motion by Council Member Enter, motion seconded by Council Member Downer to approve of the consent agenda.

VOTE	Wakefield	Downer	Enter	Lachermeier	O'Rourke
Aye	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Nay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Abstain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Absent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion passed 4-0-1.

REMOVED CONSENT AGENDA ITEMS-None

PUBLIC HEARINGS-None

OLD BUSINESS

A. Johnsonville, LLC Appeal of Administrative Citations 802 Bradshaw Avenue NE

Attorney Dege reviewed that she was directed to begin issuing citations to this property regarding a flagpole that had been erected on the property that exceeded the height limits. The property has received several citations and Johnsonville, LLC has appealed all citations.

Attorney Dege walked the Council through the legal basis for the citations. She reviewed the two sections of the City Code 50.193(5) and 50-193(6) which establish a height limit of 10 feet over the building height for flag poles.

Attorney Dege said she started working with Community Service Officer Daniels as the Code Enforcement Officer to establish a basis for the Code violation. Attorney Dege asked Officer Daniels of his involvement. He reviewed that each

January 3, 2022

Buffalo City Council Minutes

day he would take a picture and label each with date and signature of the officer that took the photo. He and the two sergeants would take the photos. Photos began being taken on October 19. Attorney Dege asked Officer Daniels to review the representative photos presented to the Council. He affirmed that the photos accurately showed the flagpole between the dates of October 19 and December 30. She asked if he had reviewed his photos before the meeting and he said he did. Officer Daniels confirmed the pictures and dates for accuracy. She confirmed with Officer Daniels that he had photos from October 19 to December 30 depicting the flagpole on each day.

Attorney Dege noted to the Council that Johnsonville, LLC was issued a citation for each day from October 19 through December 30 for a total of 73 citations.

Attorney Dege called Engineer Kannas to the podium. The city commissioned Kannas to do a height survey for the building and the pole. Kannas explained to the Council that the top elevation for the building on the property is 992.88 feet, and the difference in elevation from the top of the building to the top of the flagpole is 169 feet. Attorney Dege confirmed that the height of the flagpole exceeds the height of the building by 169 feet which exceeds the Code limits.

Attorney Dege asked the Council to uphold the citations in amount of \$200/day for 73 days for a total penalty of \$14,600.00. (corrected amount)

Attorney Aaron Dean, from Moss & Barnett said he had appeared before the Council once before and encouraged the Council at that time to exercise some constraint. He stated that after he sat down his client got up and did not exercise constraint when addressing the Council. He said he raised this issue because his client representatives will be addressing the Council tonight.

Attorney Dean said he would address the Council as related to the law as he feels this is the easiest way for the Council to not issue any discipline and to vacate the citations and not issue any fines. He isn't burdened by some of the background between the City and Johnsonville representatives. He understands that the City took action and amended a portion the Zoning Ordinance because the City knew that building materials had been delivered to the site for a flagpole. There is no dispute that the pole exceeds the principal building by more than 10 feet. Attorney Dean argued that there wasn't sufficient notice of the zoning amendment approved on September 20, 2021 and that the amendment was designed to punish one citizen, Johnsonville, LLC. City representatives and Council knew the materials were already on site, so the Council took a quick action to amend the zoning ordinance.

Attorney Dean argued that the ordinance does not apply to flag poles. Section 6 was amended but Section 5 was not. This is a standalone flagpole; it isn't mounted on a roof. This is important because there are some inconsistencies between Section 5 & Section 6. He feels it was an attempt for a band aid approach to quickly amend the ordinance without going through the proper notice and holding two meetings on the amendment. He asked how the council could justify amending the Zoning Ordinance on a quick basis just to target one citizen? He stated he knows the Council doesn't like the Trump flag, but the Trump flag hasn't flown on this flagpole, only the American flag has been flown on this.

Council Member Enter stated that Attorney Dean was making an assumption that the Council knew about materials being delivered. Dean said that city representatives did know the materials were delivered, but maybe Council Member Enter didn't.

Attorney Dean mentioned genuine dislike between certain city representatives and Johnsonville, LLC. He said he isn't tainted by any of that. Sometimes elected officials aren't aware of that background between city officials and others. He asked Council to exercise restraint. He offered that the Council could affirm penalties and there would be another lawsuit, Council could take no action while lawyers are talking, or Council could decide not to issue any penalties because of lack of notice to property owner. He hopes the Council takes the last option and doesn't issue any fines. He feels the law is on the property owner's side. He reiterated that he kept his comments to the law and his client will be speaking and he doesn't know what he will say. He asked after receiving client's comments, that Council limits their thoughts to the law and not issue any penalties.

Jay Johnson, owner of Johnsonville, LLC addressed the Council. He feels the councilmembers are going against their oath by telling him he can't fly the flag. He talked about the republic no longer being a corporation and that he is flying a title five flag. He feels the Code was not changed legally. He said the City took the bait to change the Code. He brought up past issues with his property. Mayor Lachermeier told him that the topic tonight is about the flagpole citations he is appealing, nothing else.

Johnson again talked about past issues at his property. Mayor Lachermeier reiterated that the topic tonight is Johnsonville, LLC's appeal of 73 citations at \$200 per day. She asked if those with Johnson wanted to talk about the citations.

Mayor Lachermeier said Johnson was here in September regarding some fines. At that time Johnson stated to the Council that he didn't care about the fines, that he didn't care about the money. She asked him what changes things now. Johnson said nothing. He is here to educate people because the fines mean nothing because we are in the republic now. He said his goal is to replace everyone here because he can't win. He said he is going to build a community center on his property.

Mayor Lachermeier said that in September, she asked Johnson to not put the sign or pole back up. He said then that the sign would go back up. Johnson said if there isn't a flag on it, he can't be fined for a flagpole. Mayor said Council was elected to represent the Buffalo community. Johnson again referred to past issues with his property.

Mayor Lachermeier asked why Johnson thought he didn't have to abide by the guidelines like everyone else. Johnson said that's why he was here tonight. He said that they are missing the point that he is here to provoke the fight.

Mayor Lachermeier asked if any of the Council Members had any questions. Council Member O'Rourke said that Johnson stated he didn't care about the fines and that he is here to provoke a fight intentionally. That clears everything up.

Mayor said she wanted to invite Johnson's wife to talk as she had heard she was the one who didn't want the flagpole up. Mayor said she didn't know if that was true so wanted to ask her publicly. Mrs. Johnson was present but declined to speak. Johnson said that his wife doesn't want it up and doesn't want to battle a fight. Johnson said that the city is attacking him. He then referred to past issues with his property.

Upon motion by Council Member O'Rourke, motion seconded by Council Member Enter to uphold the fines for the Johnsonville flagpole and deny the appeal.

VOTE	Wakefield	Downer	Enter	Lachermeier	O'Rourke
Aye	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Nay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Abstain	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Absent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion passed 5-0.

B. Heritage Preservation Advisory Board

Community and Economic Development Director David Kelly said he is seeking direction from the Council on the Heritage Preservation Advisory Board. He said

there is interest in the Board and over the years there has been variations of what the Board is. Currently, there are some residents that are passionate about bringing this Board to fruition. He said that the previous person in his position was directed to speak with MN Historical Society representative to find out what the role of this Board would be.

Mayor said she wants to be clear that years ago a study was done to see if we had any historical buildings to preserve.

There was discussion on the affects this Board could have on both historical preservation as well as growth.

Mayor Lachermeier said she wants to hear from the MN State Historical Society for perimeters. She would like to take those answers and balance that with what we want to do with the downtown. Mayor wonders how it can be incorporated into the comprehensive plan.

Mayor asked Community and Economic Development Director Kelly to bring back bylaws of other cities for review. Kelly asked the Council if they would like a workshop with the MN Historical Society representative? Council consensus was that a workshop would be good.

Holly McKinney asked if she could address the Council. She shared her background with heritage boards through her work in Alaska. She feels that the benefits of an advisory board are another consulting authority, showing that we care about our historic preservation, and it wouldn't be a detriment to the City.

NEW BUSINESS

A. Mayor and Council Appointments

Mayor reviewed the list of appointments for 2022.

2022 MAYOR AND COUNCIL APPOINTMENTS

Position	2021 Council Rep	2022 Council Rep
<i>Liquor</i>	Scott Enter	Scott Enter
<i>Public Safety</i>	Teri Lachermeier	Teri Lachermeier
<i>Public Works</i>	Eric Anderson	Jameson Wakefield
<i>Utilities</i>	Steve Downer	Steve Downer
<i>Finance</i>	Teri Lachermeier	Teri Lachermeier

<i>Finance</i>	Steve Downer	Steve Downer
<i>Planning Commission</i>	Nick O'Rourke	Jameson Wakefield
<i>Parks</i>	Eric Anderson	Jameson Wakefield
<i>Airport</i>	Scott Enter	Scott Enter
<i>Library</i>	Steve Downer	Steve Downer
<i>Community Center</i>	Eric Anderson	Nick O'Rourke
<i>Safe Schools</i>	Nick O'Rourke	Nick O'Rourke
<i>United for Youth</i>	Nick O'Rourke	Nick O'Rourke
<i>Golf Course</i>	Scott Enter	Vacant
<i>Acting Mayor</i>	Scott Enter	Scott Enter
Staff Positions	2021 Council Appts	2022 Council Appts
<i>City Administrator</i>	Lauren Bodin	Lauren Bodin
<i>Treasurer</i>	Lauren Bodin	Lauren Bodin
<i>City Clerk</i>	Susan Johnson	Susan Johnson
<i>City Attorney</i>	Susan Dege	Susan Dege
<i>Civil Defense Director</i>	John Harnois	John Harnois
<i>Fire Chief</i>	John Harnois	John Harnois
<i>Asst. Weed Inspector</i>	Carey Kotilinek	Carey Kotilinek
<i>Official Newspaper</i>	Wright County Journal Press	Wright County Journal Press
<i>Designated Depository</i>	Old National Bank	Old National Bank

Upon motion by Council Member Enter, motion seconded by Council Member Downer to approve of the Mayor and Council appointments as stated.

VOTE	Wakefield	Downer	Enter	Lachermeier	O'Rourke
Aye	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Nay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Abstain	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Absent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion passed 5-0.

B. Emergency Temporary Standard on Vaccination and Testing

Human Resources Manager Pahl reviewed that MN OSHA and OSHA states we need a policy in place by Monday, January 10 with a good faith effort to implement the policy by February 9. The Supreme Court will hear an appeal on this on Thursday. If the mandate is overturned, the City will pull our policy as well. The mandate gives opportunity for weekly testing for unvaccinated employees.

Human Resources Manager Pahl reviewed the options for testing both inhouse and outsourcing and costs. She said ARPA funds are available, and this is an eligible expense for those funds. She also reviewed the risks of loss of funding if a policy was not put into place.

Mayor asked if everyone would be tested? Administrator Bodin said just unvaccinated would be tested.

Human Resources Manager Pahl said the standard is for just non-vaccinated employees to wear masks, but the City's policy would have both vaccinated and unvaccinated wearing masks to not single anyone out as well as to protect the health of everyone.

Mayor asked for timeline on a decision. Human Resources Manager Pahl said the League of Minnesota Cities is recommending that cities have the policy in place and if the Supreme Court upholds the appeal, then policies would be pulled.

Council Member Downer is concerned about losing employees because of their stance on the vaccination. He would like to wait on the Supreme Court's decision on Thursday. He asked of the public health risk if we can't operate our water or wastewater system because we lose employees. He feels there is more to be considered.

Council Member O'Rourke asked about loss of productivity for employees waiting to test.

January 3, 2022

Buffalo City Council Minutes

Mayor Lachermeier doesn't want to mandate but won't do it on taxpayers' backs. She said whatever is decided needs to work for everyone. She wants to wait until what the Supreme Court decides. She said tabling this is an option. If the Supreme Court upholds this, the Council needs to be ready to decide at the next meeting.

Wakefield questioned the January 10 date. Human Resources Manager Pahl said that OSHA can fine us if we don't have a plan on this date.

Council Member Enter feels that there is good faith effort shown by the Council in tabling it tonight pending the Supreme Court's decision. He struggles with this decision.

Mayor Lachermeier agreed with the good faith comment Council Member Enter made. She agrees with Council Member Downer that we can't function without employees, and they may have their own reasons on vaccination. There is also a responsibility to protect our citizens.

Upon motion by Council Member Enter, motion seconded by Council Member Downer to table this matter to the January 18 meeting.

Council Member Downer commented that he would like to see us work with people rather than use this as a lever to drum out good employees. Good employees are hard to get, and it takes time and money to train, obtain licenses and certifications. He doesn't want to lose people. Human Resources Manager Pahl said that the COVID team has worked with staff and how they feel about it. She said it isn't the intent to lose employees.

Test availability as well as costs were discussed.

Council Member O'Rourke asked if staff is aware of the policy? Human Resources Manager said they are not, but they are aware of the possibility of weekly testing. The COVID team has discussed it with some department heads, and they are hearing that staff will be OK with the testing.

On the motion to table.

VOTE	Wakefield	Downer	Enter	Lachermeier	O'Rourke
Aye	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Nay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Abstain	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Absent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion passed 5-0.

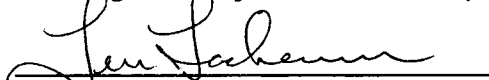
STAFF UPDATES

Staff gave general updates to the Council.

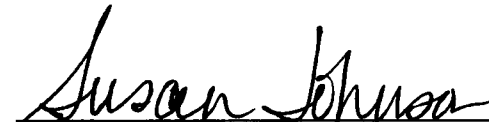
OTHER

ADJOURN

Meeting was adjourned at 8:40 p.m.



Mayor



City Clerk