

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: January 24, 2011:

The Regular Meeting of the Board of City Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 5:00 o'clock p.m., Monday, January 24, 2011.

The Commissioners present or absent were as shown following:

Present: Mahoney, Piepkorn, Williams (via conference call), Wimmer, Walaker.

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Piepkorn moved the Order of the Agenda be approved.

Second by Mahoney. All the Commissioners voted aye and the motion was declared carried.

Minutes Approved:

Commissioner Mahoney moved that the Minutes of the Regular Meeting of the Board held on January 10, 2011 be approved as read.

Second by Wimmer. All the Commissioners voted aye and the motion was declared carried.

An exchange between Frank Anderson and Commissioners about whether audience members could comment on contents of the minutes ended with the suggestion from Commissioner Williams that a written summary of concerns could be presented in written form to the Board.

Consent Agenda Approved:

Commissioner Mahoney moved the Consent Agenda be approved as follows:

- a. Receive and file Notice of Appeal in the matter of Curt Cossette vs. North Dakota Workforce Safety & Insurance and the City of Fargo.
- b. Pledged securities as of December 31, 2010.
- c. Plat of Currier's Third Addition.
- d. Applications for tax exemptions for improvements made to buildings:
 - (1) James and Catherine Knudson, 1429 9th Avenue South (5 year).
 - (2) Elizabeth Thelen, 1441 8th Avenue South (5 year).
 - (3) Rebecca Schindlbeck, 2910 10th Street North (5 year).
 - (4) Jason Malarkey, 3138 Edgewood Drive North (5 year).
 - (5) Jared and Marvia Hall, 411 Lindenwood Drive South (5 year).
 - (6) TTC, LLP, 318 and 324 NP Avenue (3 year).

- e. Contracts with the North Dakota Department of Health for Immunization Programs (CFDA #93.268).
- f. 2011 tree order award to Bailey Nurseries, Inc. for \$34,886.60.
- g. Lease Agreement with Swanston Equipment for the use of two Bobcats through 12/31/11.
- h. Purchase Agreements for property in Oxbow Country Club and Estates in connection with Improvement District No. 5153-3:
 - (7) John P. Albrecht.
 - (8) Gordon and Kaye Irwin.
- i. Recommendation to purchase 2 street sweepers from Sanitation Products for \$404,804.00
- j. NDDOT Cost Participation and Maintenance Agreement for Improvement District No. 5908-02.
- k. NDDOT Maintenance Certification Urban Federal Aid Project.
- l. Consultant selection and contract with Merrick and Company in the amount of \$523,789.62 for Project No. 5981.
- m. Change Orders for the following Projects: No. 2 for an increase of \$27,472.50 for No. 5944; No. 3 for an increase of \$38,634.82 for No. 5839.
- n. Bills in the amount of \$5,395,701.90.

Second by Wimmer. On call of the roll Commissioners Mahoney, Wimmer, Williams, Piepkorn and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Recommendation for Rate Changes in City-Owned Parking Facilities Approved:

The Board received a communication from Senior Planner Bob Stein stating the Fargo Parking Commission is recommending parking rate changes in some of the downtown parking facilities.

City Planner Jim Gilmour said rates are reviewed each year. Increases are recommended in several of the lots, ranging from \$1 to \$3 per month, he said, and it works best to have small increases rather than wait a number of years and increase rates by large amounts. He said if approved, the increase would be effective March 1st and those parking in the lots on a monthly basis would get 30 days notice.

In response to a question from Commissioner Mahoney on data availability and long range planning, Mr. Gilmour said information on reserves and capital improvement needs can be provided. He said usually about \$200,000 to \$300,000 is kept in reserve for future capital improvements; however, debt remains on several of the lots.

Commissioner Williams said the Island Park lot has about 130 spaces open and rate changes can help adjust utilization of space.

Commissioner Wimmer moved the recommended rate changes be approved.

Second by Williams. On call of the roll Commissioners Wimmer, Williams, Piepkorn, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Application Filed by Rhombus House of Pizza d/b/a Rhombus Guys for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Rhombus House of Pizza d/b/a Rhombus Guys for a Class "FA-RZM" Alcoholic Beverage License at 606 Main Avenue, notice of which had been duly published in the official newspaper for the City of Fargo.

City Auditor Steve Sprague stated the request is for a full license in the Renaissance Zone. He said being in the Renaissance Zone allows a 50 percent discount on the initial issuance fee. A microbrew designation is included, he said, because the applicant may add microbrew in the future.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Wimmer stated he would abstain from voting because he is the current owner of 606 Main Avenue.

Commissioner Piepkorn moved the application be approved.

Second by Mahoney. On call of the roll Commissioners Piepkorn, Mahoney, Williams and Walaker voted aye.

Commissioner Wimmer abstained from voting.

The motion was declared carried.

Petitions Referring the Sign Code Ordinance Accepted:

The Board received a communication from City Auditor Steve Sprague stating the Auditor's Office received a petition to refer the Sign Code Ordinance and examined the validity and sufficiency of the signatures on the petition. He said 1,765 signatures were examined and on January 13th, between the hours of 5:00 and 8:00 p.m., the required number of people who signed the petition, 241, were contacted by phone for verification of signatures. He said phone conversations verified that the signer indeed signed the petition and verified addresses and that they are qualified to vote in the City of Fargo. He stated the Auditor's Office is of the opinion the petitions were gathered in the correct manner, are valid and sufficient, and the requisite number of 1,424 signatures were gathered to refer the Sign Code Ordinance.

In response to a question from Commissioner Mahoney about the timing of the petition, Mr. Sprague stated a petition must be submitted within 10 days of publication which in this case was December 20th. He said the signatures were turned in on December 30th, so the time frame requirement was met.

Commissioner Piepkorn moved the validity and sufficiency of the petitions referring the Sign Code Ordinance be accepted.

Second by Williams. On call of the roll Commissioners Piepkorn, Williams Mahoney, Wimmer and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

City Attorney Directed to Draft an Ordinance for the Repeal of Ordinance No. 4772:

City Attorney Erik Johnson stated now that the petitions referring the Sign Code Ordinance have been accepted and declared sufficient, the new Sign Code Ordinance No. 4772, which went into effect December 20th, is suspended, according to the Home Rule Charter. He said at the last City Commission meeting the Board accepted his opinion on the affect of the referral petition and approved the first reading of an Ordinance Enacting and Establishing an Ordinance Related to the Issuance of Sign Permits, and approving the second reading and final adoption places the prior Sign Code back into effect, essentially preserving the status quo. Now, he said, the Board has several options; Ordinance No. 4772 may be repealed, an interim Sign Code could be put in effect until the 2012 election when the repealed Sign Code would be voted on, or another Sign Code ordinance could be passed.

Jonathan Garaas, Attorney representing the sign code petitioners, said his opinion of the referral petition outcome is the Home Rule Charter allows the Board to either repeal the sign code or accept the referral and direct a citywide vote on the two portions referred. He brought correspondence from May of 2009 disputing the legitimacy of the previous Sign Code adopted in 1989 and amended in 1998. He stated the Board having first and second readings of an Ordinance Enacting and Establishing an Ordinance Related to the Issuance of Sign Permits, essentially reinstating the old Sign Code, cannot accomplish that when, in his opinion, the prior Sign Code did not exist because all the required steps in the process to enact an ordinance were not followed at that time.

Mr. Johnson stated the old Sign Code is a valid code that was enacted December 4, 1989 and he and Mr. Garaas are in agreement on the other points.

Commissioner Wimmer said a new Sign Code ordinance could be drafted revisiting the issues that brought about the referral as well as addressing new technology and electronic messaging centers.

Commissioner Mahoney moved the City Attorney be directed to draft an ordinance for the repeal of Ordinance No. 4772 and to present such ordinance to the City Commission for its consideration at its next regular meeting.

Second by Wimmer. On call of the roll Commissioners Mahoney, Wimmer, Piepkorn, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Second Reading and Final Adoption of an Ordinance Enacting and Establishing an Ordinance Related to the Issuance of Sign Permits:

Commissioner Piepkorn moved that the proposed Ordinance Enacting and Establishing an Ordinance related to the issuance of sign permits, which was placed on its first reading January 10, 2011, be now placed on its second reading and a vote taken on the question of its final passage and adoption.

Second by Wimmer. On call of the roll Commissioners Piepkorn, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

There was unanimous consent to waive reading of the Ordinance in its entirety and no one was present to request that the Ordinance be read.

On the vote being taken on the question of the final passage and adoption of the Ordinance, Commissioners Piepkorn, Wimmer, Mahoney, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the Ordinance was duly passed and adopted.

Hearing on a Dangerous Building Located at 3700 42nd Street South set for February 22, 2011:

The Board received a communication from Inspections Administrator Ron Strand stating he has been in contact with the attorney for the owners of the fire damaged Galleria on 42nd Ill Building and is confident of the owner's intention to remove the damaged structure. He said in spite of assurances, he believes the process should follow Fargo Municipal Code Article 21-04, which requires him to report when his order has not succeeded in securing removal of a dangerous building. He said the owners were notified on December 20, 2010 that they had 30 days to comply with his order. Mr. Strand said in most cases he would request the hearing to be set for the next regular meeting but in this complex matter with several building owners and such a large building, 30 days is reasonable.

Commissioner Wimmer moved the hearing on a dangerous building located at 3700 42nd Street South be set for February 22, 2011 at 5:15 o'clock p.m.

Second by Piepkorn. All the Commissioners voted aye and the motion was declared carried.

Emergency Declaration Extended to March 3, 2011:

The Board received a communication from Assistant City Attorney Butch McConn stating the Emergency Declaration signed by Mayor Walaker on January 18th was for a two week period and will expire on February 1, 2011, prior to the next scheduled City Commission meeting on February 7th. He said part of the purpose of the Emergency Declaration is to begin advance emergency flood preparation for what could be a significant flood and those preparations will take some time. Mr. McConn said with approval of the City Commission, the Emergency Declaration can be extended and it would be prudent to extend the Declaration for 30 days from the February 1st date, unless further extended by the City Commission.

Commissioner Mahoney moved the Emergency Declaration be extended to March 3, 2011.

Second by Wimmer. On call of roll Commissioners Mahoney, Wimmer, Williams, Piepkorn and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

2011 Legislative Issues Update:

City Administrator Pat Zavoral reviewed the matrix indicating the 2011 legislative bills the City supports and opposes and a summary of hearings taking place this week. Mr. Zavoral, Director of Public Health Ruth Bachmeier, Police Chief Keith Ternes and City Assessor Ben Hushka spoke on various bills and explained the reasoning for the City choosing to support or oppose the proposed legislation.

Mr. Zavoral said following an open house held by the City of Fargo for legislators in Bismarck last week, he was asked whether informational legislative Q&A meetings, such as the ones sponsored by the League of Women Voters in the past, are planned. He said while it is late in the session to arrange speakers, perhaps a couple meetings could be arranged and with the support of the Board, he will work on finding a sponsor and report back.

Commissioner Wimmer moved approval of the support and oppose matrix of bills as presented.

Second by Piepkorn. All the Commissioners voted aye and the motion was declared carried.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, February 7, 2011.

Second by Piepkorn. All the Commissioners voted aye and the motion was declared carried.

The time at adjournment was 6:10 o'clock p.m.