

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: January 25, 2010:

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 25, 2010.

The Commissioners present or absent were as shown following:

Present: Mahoney, Piepkorn, Williams, Walaker.

Absent: Wimmer.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved omitting Item "p (4)" in the Consent Agenda.

Second by Piepkorn. All the Commissioners present 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 11, 2010 be approved as read.

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

Consent Agenda Approved:

Commissioner Piepkorn moved the Consent Agenda be approved as follows:

- a. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 25-3512 of Article 25-35 of Chapter 25 of the Fargo Municipal Code Relating to Secondhand Goods Dealers; 1st reading, 1/11/10.
- b. Waive requirement to receive and file an Ordinance one week prior to first reading and first reading of an Ordinance Amending Sections 25-0401, 25-0406, 25-0411, 25-0413, 25-0414, 25-0416, 25-0417, 25-0419, 25-0421, 25-0422, 25-0423, 25-0424, 25-0428, 25-0430 and 25-0433 of Article 25-04 of Chapter 25 of the Fargo Municipal Code Relating to Taxicabs, Owners and Drivers, Limousines and Handicapped Vans.
- c. Small Claims Court Claim Affidavit filed by Meghan Raechelle vs. the City of Fargo Street Department.
- d. Employee Policy No. 400-008B, Drug & Alcohol Policy – Federal Transit Administration.

- e. Extension of the Job Access Reverse Commute (JARC) grant for Fargo Senior Services until all of the remaining funds are expended.
- f. Memorandum of Understanding with the F-M Metropolitan Council of Governments, the States of North Dakota and Minnesota and the City of Moorhead for transit planning.
- g. Social media policy for City of Fargo employees and volunteers.
- h. Applications for property tax exemptions for improvements made to buildings:
 - (1) Rachel Jordan, 3022 8th Street North (5 year).
 - (2) Margaret Jermyn, 1320 10th Street North (5 year).
 - (3) John Mrozla, 1506 10th Street North (5 year).
 - (4) Jeff and Mindy Western, 1418 3rd Avenue North (5 year).
 - (5) Shawn Oleson, 1609 9th Avenue South (5 year).
 - (6) Marjorie Morris, 305 20th Avenue North (5 year).
 - (7) Terry and Shirley Nerby, 2515 2nd Street North (5 year).
 - (8) Audrey Schock, 2006 8th Street North (5 year).
 - (9) James and Sandra Traeger, 1318 16th Street South (5 year).
 - (10) Kevin and Jean Powers, 3413 Peterson Parkway (3 year).
 - (11) Richard and Alice Newsam, 3007 9 1/2 Street North (3 year).
 - (12) Robert and Patricia Walton, 2610 Lilac Lane North (3 year).
 - (13) Karen Naastad, 1023 12th Street North (5 year).
- i. Pledged securities as of December 31, 2009.
- j. Six month extension of the Fargo American Legion alcoholic beverage license.
- k. Receive and file Ordinance Relating to Issuance and Transfer of Licenses (requiring that Class "E" Alcoholic Beverage Permit applications be received seven days prior to event).
- l. Purchase of one Hook Lift Roll-Off from Olympic Sales, Inc. for \$41,000.00.
- m. Request of U Motors, Inc. for an extension of the noise ordinance until 11:00 p.m. on 7/24/10 for their 3rd Annual Backyard BBQ and Bike Bash.
- n. Three year renewal of contract with Parking Service for operation of parking facilities (corrected agreement).
- o. Resolution Approving Prairie Grove Second Addition Plat (Attachment "A").
- p. Applications for Games of Chance:
 - (1) Mike Walters Benefit for a raffle on 1/30/10; Public Spirited Resolution.
 - (2) North Central Turf Grass Association for a raffle on 2/25/10; Public Spirited Resolution.
 - (3) Clara Barton Hawthorne PTA for a raffle on 3/6/10.
 - (4) Fargo Catholic Schools Network for a raffle on 4/24/10 (omitted).

- q. Relinquishment of Easement concerning property owned by Elm Terrace Condo Association for Oak Grove Mickelson Field Permanent Dike for flood control (Project No. 5902).
- r. Resolution Authorizing the submittal of a formal loan application to the North Dakota Department of Health for clarifier improvements under the Clean Water State Revolving Fund and American Recovery and Reinvestment Act of 2009 (Attachment "B").
- s. Engineering Services Contract Amendment in the amount of \$123,900 for Project No. 5701.
- t. 50/50 Cost Share with USGS for web camera installation and maintenance at the Red River near Main Avenue.
- u. Local match funding estimated at \$270,000 for 2009 flood arterial street repairs.
- v. Request for Proposals for engineering services for Project Nos. 5908-03, 5681-02 and 5925-01.
- w. Bills in the amount of \$5,681,874.69.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Change Order No. 1 for Improvement District No. 5525 Approved:

Commissioner Piepkorn moved approval of Change Order No. 1 for an increase of \$22,316.00 for Improvement District No. 5525.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Asphalt Wearing Course, Mill and Overlay and Incidentals Improvement District No. 5640 (Various Locations in South Fargo):

Commissioner Piepkorn moved the following action be taken in connection with Asphalt Wearing Course, Mill and Overlay and Incidentals Improvement District No. 5640:

Adopt Resolution Creating Improvement District No. 5640:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5640 in the City of Fargo, North Dakota, be created

On 42nd Street South from Main Avenue to 13th Avenue South.

On 43 1/2 Street South from Main Avenue to 2nd Avenue South.
On 43 1/2 Street South from 10th Avenue South to 13th Avenue South.
On 44th Street South from 9th Avenue South to 13th Avenue South.
On 2nd Avenue South from 42nd Street South to a point located approximately 300' east of the centerline of 45th Street South.
On 9th Avenue South from 42nd Street South to 45th Street South.
On 9th Avenue Circle South from 9th Avenue South to 9th Avenue South.
On 10th Avenue South from 42nd Street South to 44th Street South.
On 13th Avenue South from 38th Street South to 42nd Street South.

COMPRISING:

The following described land located in Township 139 N, Range 49 W, City of Fargo, Cass County, North Dakota:

Lots 9 through 15, inclusive, Poritt's Subdivision.

Lot 1, Block 1, Buena Vista Courts Addition.

Lots 1 and 2, Block 1, 45th Street Park 4th Addition.

Lot 2, Block 1, 45th Street Park 3rd Addition.

The east half of Section 10.

The southwest quarter of Section 10, except Lot 2, Block 1, Builders Square 1st Addition, and also except Lots 1, 2, and 3, Block 1, Tower Park Plaza 1st Addition.

The east half of Section 15.

All of the foregoing located in Township 139 N, Range 49 W, City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Asphalt Wearing Course, Mill and Overlay and Incidentals Improvement District No. 5640 in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5640:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5640 in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$1,303,000.00)

Order Plans and Specifications for Improvement District No. 5640:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5640 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5640:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5640 in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5640 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring Asphalt Wearing Course, Mill and Overlay and Incidentals Necessary:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

That it be and is hereby declared necessary to construct Asphalt Wearing Course, Mill and Overlay and Incidentals Improvement District No. 5640 in the City of Fargo, North Dakota, according to the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection.

That a portion of said Asphalt Wearing Course, Mill and Overlay and Incidentals improvement is to be paid from Street Sales Tax and approximately 59% is to be assessed against the benefited property in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Asphalt Wearing Course, Mill and Overlay and Incidentals must be in writing and must be filed with the City Auditor's Office within thirty days after the first publication of this Resolution.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5640:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5640 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5907 (Autumn Fields Addition):

Commissioner Piepkorn moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5907:

Adopt Resolution Creating Improvement District No. 5907:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5907 in the City of Fargo, North Dakota, be created

On Umber Court South.

On 28th Avenue from Umber Court to Saffron Drive South.

On Saffron Drive South from Umber Court to 28th Avenue South.

COMPRISING:

Lots 1 through 23, inclusive, Block 1.

Lots 1 through 10, inclusive, Block 2.

Lots 1 through 10, inclusive, Block 3.

All in Autumn Fields Addition.

Lots 6 through 8, inclusive, Block 1.

All in Calico Prairie Addition.

All of the foregoing located in Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5907 in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5907:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5907 in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$680,000.00)

Order Plans and Specifications for Improvement District No. 5907:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5907 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5907:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5907 in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5907 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Necessary:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

That it be and is hereby declared necessary to construct Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5907 in the City of Fargo, North Dakota, according to the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection.

That the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals must be in writing and must be filed with the City Auditor's Office within thirty days after the first publication of this Resolution.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5907:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5907 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Ordinance Relating to Dogs and Cats to be Placed on First Reading at the Next Regular Meeting of the Board:

Commissioner Piepkorn moved the Ordinance Amending Sections 12-0104, 12-0105 and 12-0111, Repealing and Re-Enacting 12-0112, Repealing Section 12-0113 and Enacting Sections 12-0113 through 12-0117 of Article 12-01 and Amending Sections 12-0201 and 12-0203 of Article of 12-02, All in Chapter 12 of the Fargo Municipal Code Relating to Dogs and Cats be received and filed and placed on first reading at the next Regular Meeting of the Board.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Ordinance Relating to Ordinance Violations to be Placed on First Reading at the Next Regular Meeting of the Board:

Commissioner Piepkorn moved the Ordinance Amending Section 1-0305.A of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Ordinance Violations be received and filed and placed on first reading at the next Regular Meeting of the Board.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Ordinance Relating to Noise Control and Radio Interference to be Placed on First Reading at the Next Regular Meeting of the Board:

City Attorney Erik Johnson said this Ordinance is in response to a request approved by the Board from the January 11, 2010 Commission meeting for restrictions on the use of compression brakes within the City.

In response to a question from Commissioner Piepkorn regarding enforcement of the new Ordinance by Fargo Police Department staff, Police Chief Keith Ternes said State Highway Patrol and Sheriff Department staff do not enforce City Ordinances, just as Police Department staff do not enforce State laws on the Interstate highways. He said the NDDOT will be erecting signage for the new Ordinance and he is hopeful the signs will help with the problem.

Commissioner Williams moved the Ordinance Amending Section 11-0205 of Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference be received and filed and placed on first reading at the next Regular Meeting of the Board.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

City Attorney Directed to Prepare an Amendment to the State of Emergency Ordinance:

The Board received a communication from City Attorney Erik Johnson stating during the spring of 2009 flood event, the Board approved an amendment to Section 10-0318 of the Fargo Municipal Code. He said it would seem appropriate to give further thought to the types of powers and the method of implementation of such a mayoral declaration to clarify or modify the following:

1. The process for the mayoral declaration and extension of emergency declaration.
2. To address the limiting of hours of operation of businesses during an emergency.

Mr. Johnson said he has been conferring with the Engineering Department staff regarding their experiences with last spring's flood fight and he will also be conferring with the City Administrator to consider other areas where emergency powers are important.

Commissioner Mahoney said it would be helpful for Mr. Johnson to include clarification regarding the levels of alert.

Commissioner Mahoney moved the City Attorney be directed to confer with the City Administrator and other appropriate City departments and prepare amendments to Fargo's state of emergency or disaster Ordinance.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Application Filed by FSB Associates, LLC d/b/a Rivals Sports Bar for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by FSB Associates, LLC d/b/a Rivals Sports Bar for a Class "Z" Alcoholic Beverage License at 4265 45th Street South, Suite 161, notice of which had been duly published in the official newspaper for the City of Fargo.

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 Piepkorn moved the application be approved.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Commissioner Mahoney moved that the Board adjourn to 5:00 o'clock p.m., Monday, February 8, 2010.

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

The time at adjournment was 5:20 o'clock p.m.