

MCCOOK CITY COUNCIL
January 3, 2012
7:30 P.M.

A MEETING OF THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 7:30 o'clock P.M. in the City Council Chambers.

Present: Mayor Berry; Councilmembers Gonzales, Calvin; City Attorney Schneider; City Manager Hancock; City Clerk-Treasurer Doak.

Absent: Kircher, Hilker.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on December 29, 2011, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Mayor and members of the City Council and a copy of the Acknowledgment of Receipt of such notice is attached to these minutes. Availability of the agenda was communicated in the advance notice to the Mayor and Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Mayor Berry announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review.

- (1) INVOCATION - THE MCCOOK MINISTERIAL ASSOCIATION - MARY HENDRICKS, ST. ALBAN'S EPISCOPAL CHURCH.

No one was present for the invocation.

- (2) CITIZEN'S FORUM.

No one was present for Citizen's Forum.

- (3) MAYOR'S ANNOUNCEMENTS & RECOGNITIONS.

There were no Mayor's announcements or recognitions.

- (4) DIRECT THE CITY CLERK TO DECLARE THAT A VACANCY EXISTS ON THE CITY COUNCIL AND TO PUBLISH NOTICE OF VACANCY OF COUNCILMEMBER AARON KIRCHER AS PRESCRIBED BY LAW.

Councilmember Calvin introduced a motion to direct the City Clerk to declare that a vacancy exists on the City Council and to publish notice of vacancy of Councilmember Aaron Kircher as prescribed by law. Councilmember Gonzales seconded the motion.

Mayor Berry stated that similar vacancies in the past have been filled without the expense of a special election which could cost the City up to \$8,000. He prefers proceeding with the appointment process to fill the seats.

John Hubert stated that he was opposed to a special election and that the Mayor should make the appointments.

In a letter dated December 27, 2011, to City Attorney Schneider, City Manager Hancock, Mayor Berry, and Councilmembers Gonzales and Calvin, Councilmember Kircher stated the following:

“In response to the letter dated December 21, 2011 regarding forfeiture of the office of City Council Member, it is my understanding based on the advice provided by Simmons Olsen Law Firm, P.C., in a document dated December 14, 2011 and provided to the city, that my office and Shane Hilker's office have been forfeited according to Nebraska Revised Statutes 19-613 and 32-560 upon the date of our respective convictions. It is also my understanding that the three remaining council members took the formal action to make it the policy of the City of McCook to interpret the aforementioned statutes according to the recommendation provided in that attorney's recommendation. It is also my understanding that the council took formal action authorizing the City Attorney to provide a letter to myself and Shane Hilker to give notice that the offices have been vacated due to forfeiture in order to proceed with filling the vacancies. Please respond if any of the aforementioned statements are incorrect in any way, before your next regular meeting on January 3, 2012 since I want to be sure we are all on the same page.

In light of the Council's decision to proceed in this matter strictly according to the recommendation of the opinion offered by Simmons Olsen Law Firm, I would expect the City to immediately declare and give notice of the vacancies as soon as possible so that the business of the people of McCook can move forward without further delay. I have seen nothing in the statutes that would prevent the council from taking this action so I believe you could move forward immediately. I understand there are some concerns about whether the city needs to file a Quo Warranto action based on the discussion at the last meeting. In fact, a Quo Warranto action is only for unlawfully holding or exercising public office, which I am not, so that should not slow up the city in any way. I know this is not the format you were seeking but I believe this matter requires more thorough consideration than a "check yes or no" response as requested in your letter. Any further questions can be asked of me during the agenda item for filling the vacancies so they can all be addressed in public at the meeting.

This should not be construed as a resignation since a resignation is not appropriate for this situation according to Nebraska Revised Statute 32-560. A resignation has a different requirement for determining a vacancy than forfeiture according to Nebraska Revised Statute 32-562. Furthermore, it would only add one more element for a statutory dispute and make things even more complicated which the city does not need. It would actually cause more problems than it solves in a matter which has an abundance of uncertain legal issues surrounding it, so that is the reason that I'm affirming that this is not a resignation.

Given the fact that any council member could be subject to this same situation before the Legislature resolves this issue, I do not want to set the precedent that the city has to acquire an "acknowledgment of forfeiture" before declaring a vacancy when the statutes don't require the council to obtain such an acknowledgment. I am simply responding so that the council can move forward since there seems to be a lot of confusion about how to proceed. I believe the city should follow the statutes and declare a vacancy when a vacancy exists, fill any vacant office according to the law and move forward with the business of the community.

I apologize for not being able to give an immediate answer after the conference call

with the attorney at the last council meeting but this situation certainly required careful consideration before coming to a decision. I have decided that you need to take the necessary steps to ensure that the vacant seats are properly filled as soon as possible.

I have enjoyed serving the people of McCook and I believe everyone agrees that it's unfortunate that elected officials can be removed in this way but the city needs to be able to function and carry on the business of the community.

Sincerely,
Aaron Kircher”

City Attorney Schneider inquired from Councilmember Kircher if he acknowledges forfeiture of his Council seat. Councilmember Kircher responded from the audience yes.

The Mayor then stated the question: "Shall the motion on the floor be approved as stated?" Upon roll call vote the following Councilmembers voted YEA: Berry, Gonzales, Calvin. NAY: None. ABSENT: Kircher, Hilker. Motion carried.

- (5) DIRECT THE CITY CLERK TO DECLARE THAT A VACANCY EXISTS ON THE CITY COUNCIL AND TO PUBLISH NOTICE OF VACANCY OF COUNCILMEMBER SHANE HILKER AS PRESCRIBED BY LAW.

Upon a motion by Councilmember Calvin, seconded by Councilmember Gonzales, the Council voted to direct the City Clerk to declare that a vacancy exists on the City Council and to publish notice of vacancy of Councilmember Shane Hilker as prescribed by law. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin. NAY: None. ABSENT: Kircher, Hilker.

- (6) ADOPT RESOLUTION NO. 2012-01 SUBMITTING THE MATTER OF SUCCESSOR TO FILL THE UNEXPIRED TERM OF SHANE HILKER ON THE CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA, TO THE STATEWIDE GENERAL ELECTION ON NOVEMBER 6, 2012 AND CERTIFYING THE SUBMISSION OF THIS MATTER TO THE RED WILLOW COUNTY CLERK.

Upon a motion by Councilmember Calvin, seconded by Councilmember Gonzales, the Council voted to adopt Resolution No. 2012-01 submitting the matter of successor to fill the unexpired term of Shane Hilker on the City Council of the City of McCook, Nebraska, to the statewide general election on November 6, 2012 and certifying the submission of this matter to the Red Willow County Clerk. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin. NAY: None.

- (7) PUBLIC HEARING - CONDUCT A PUBLIC HEARING FOR THE PURPOSE OF PROVIDING INFORMATION TO THE PUBLIC ON IMPROVEMENTS TO THE WATER AND SEWER SYSTEM THAT ARE ELIGIBLE FOR THE STATE REVOLVING FUND (SRF).

Upon a motion by Councilmember Gonzales, seconded by Councilmember Calvin, the Council voted to recess as a City Council and convene a public hearing for the purpose of providing information to the public on improvements to the Water and Sewer System that are eligible for the State Revolving Fund (SRF) with the City Attorney to act as hearing officer. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin. NAY: None.

The City Attorney offered and received into evidence Exhibit #1 - Notice of Hearing published and Exhibit #2 - the map prepared by Miller & Associates indicating the location of the various projects.

Chris Miller, City Engineer, and Utilities Director Jesse Dutcher reviewed the proposed projects with the Council stating that each year the Water and Sewer Departments provide a list of capital projects to the Nebraska Department of Health & Human Services (NHHS) and Nebraska Department of Environmental Quality (NDEQ) for possible funding by the State Revolving Fund (SRF). The SRF program is managed by the state and provides low interest loans and grants to municipalities for infrastructure improvements. Several of McCook's projects have been determined eligible for funding in conjunction with the required Cation Waste Project. The cation project is the removal of the high salt content waste that is currently being pumped to the wastewater treatment facility (WWTF) which is causing problems with the WWTF whole effluent toxicity (WET) testing. This portion of the improvements is the driving force that made the City of McCook eligible for grant funds due to the EPA's involvement. The Cation Waste disposal project was identified by EPA/NDEQ as a key project and has indicated in written correspondence the project has a deadline for completion by December 31, 2012. The location for this facility has not been finalized yet and depending on the final location could impact the final design criteria required by the regulatory agencies. The land acquisition process must remain on schedule to meet the EPA deadline. When the Cation Project was selected as a priority, other water and wastewater projects were eligible for SRF funding. While the SRF program is primarily a lending instrument the program does provide for some loan forgiveness. With the proposed contract for the City of McCook, this loan/grant is currently at 80 % loan and 20% forgiveness (grant) for all eligible projects. An overview of loan terms is as follows. The construction interest is 2% assessed every 6 months on funds that have been drawn, the 1% admin fee is waived for the first year of the loan, then the administration fee would be assessed on the outstanding principal balance on the six month cycle thereafter. Principal repayment does not have to begin until "within one year of the initiation of operation or completion of the project". At the initiation of operation or completion of the project the interest then goes to 2.5% + 1.0% administration for then the balance of the 20 year term or 2.8% + 1.0% admin if a 30 year term is selected. While the rates are very competitive the driving force that staff is looking at is the fact that the SRF program has offered 20% loan forgiveness. For example, the \$550,000 Cation Waste project is eligible for \$100,000 in grant / forgiveness. SRF is also considering incorporating the loan/grant for projects that are now under construction or completed that were on the original needs survey filed a year ago and they would be eligible to receive the 20% loan forgiveness. These project being considered are the East C Street Water Main Improvement, the City Office Sewer Relocation, the Kelly Park Sewer Bypass Line and the replacement of the 16" water main from the water treatment plant to town. These projects were part of the proposed budget and the City has funds available to retire the loan once the paper work is completed and the 20% forgiveness has been deducted. The Cation Waste and the East "H" Street Water Main Improvement (part of "H" Street resurfacing) also have existing funds budgeted to pay off the loan at end of construction. Other projects that were listed on the Needs Survey last year which would require a rate increase if the Council chooses to do so, is the replacement of the water main up West 5th Street to the Booster Station at the Senior Center and the ongoing budgeted Water Meter Replacement Project. These projects will be considered in the following budget if council desires. Both of these would require loan funds and repayment over time.

There being no one else present to comment, upon a motion by Councilmember Gonzales, seconded by Councilmember Calvin, the Council voted to adjourn the public hearing and to reconvene as a City Council. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin. NAY: None.

(8) CONSENT AGENDA:

ITEM A APPROVE THE MINUTES OF THE DECEMBER 19, 2011 REGULAR CITY COUNCIL MEETING.

Upon a motion by Mayor Berry, seconded by Councilmember Calvin, the Council voted to approve the minutes of the December 19, 2011 regular City Council meeting. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin. NAY: None.

ITEM B APPROVE THE APPLICATION FOR A SPECIAL DESIGNATED LIQUOR LICENSE SUBMITTED BY THE MCCOOK AREA CHAMBER OF COMMERCE, FOR THEIR ANNUAL BANQUET TO BE HELD AT THE MCCOOK ARMED FORCES RESERVE CENTER, 38709 EAST HIGHWAY 6 & 34, ON FEBRUARY 4, 2012, FROM 12:00 A.M. TO 11:59 P.M.

Upon a motion by Mayor Berry, seconded by Councilmember Calvin, the Council voted to approve the application for a Special Designated Liquor License submitted by the McCook Area Chamber of Commerce, for their Annual Banquet to be held at the McCook Armed Forces Reserve Center, 38709 East Highway 6 & 34, on February 4, 2012, from 12:00 A.M. to 11:59 P.M. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin. NAY: None.

REGULAR AGENDA

(9) MUNICIPAL FACILITIES UPDATE.

City Manager Hancock updated the Council on the Municipal Facilities project. Bids were received by Sampson Construction on December 20. They are still in the process of reviewing and tabulating the bids. The next Construction meeting will be held on January 2 at 1:00 P.M. at the Heritage Senior Center.

(10) COUNCIL COMMENTS.

Councilmember Gonzales stated that he recently visited the Public Library. The changes and new computers all look nice. The hard work of the Library Staff is greatly appreciated.

City Attorney Schneider stated that he hopes to have a Purchase Agreement with the McCook Library Foundation completed and ready for Council approval at the January 16 meeting.

Mayor Berry congratulated and thanked all who helped to make the Annual First Night event another success.

(11) ADJOURNMENT.

There being no further business to come before the Council, Mayor Berry declared the meeting adjourned at 8:05 P.M.

Dennis Berry, Mayor

ATTEST:

Lea Ann Doak, City Clerk-Treasurer