

MCCOOK CITY COUNCIL
November 5, 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, Hepp, McDowell; City Manager Hancock; City Attorney Schneider; City Clerk-Treasurer Doak.

Absent: None.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on November 1, 2012, 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 - ANGEL CARRILLO, MCCOOK HARVEST CHURCH.

Angel Carrillo, pastor of the McCook Harvest Church was present for the invocation.

(2) PLEDGE OF ALLEGIANCE.

Mayor Berry led the Council and audience in the Pledge of Allegiance.

(3) CITIZEN'S FORUM.

No one was present for Citizen's Forum.

(4) MAYOR'S ANNOUNCEMENTS & RECOGNITIONS.

City Manager Hancock informed the Council that Public Works Director Kyle Potthoff was recently elected to served a one year term on the League of Nebraska Municipalities Executive Board.

Library Director Jody Crocker informed the Council that at their meeting this past week the McCook Library Foundation made the commitment to fund the vestibule, installation of the elevator, asbestos removal, bathroom and lighting renovations, and the parking lot to the north of the facility.

(5) PUBLIC HEARINGS:

ITEM A CONDUCT A PUBLIC HEARING ON THE APPLICATION OF SMOKERS OUTLET INC., DBA "SMOKERS OUTLET 1", FOR A CLASS "D" - (BEER, WINE & DISTILLED SPIRITS, OFF SALE ONLY) LICENSE UNDER THE NEBRASKA LIQUOR CONTROL COMMISSION, TO BE LOCATED AT 1111

WEST "B" STREET, MCCOOK, NEBRASKA.

Upon a motion by Councilmember Calvin, seconded by Councilmember Gonzales, the Council voted to recess as a City Council and convene a public hearing for the purpose of receiving public comment on the application of Smokers Outlet Inc., dba "Smokers Outlet 1", for a Class "D" - (Beer, Wine & Distilled Spirits, Off Sale Only) License under the Nebraska Liquor Control Commission, to be located at 1111 West "B" Street, McCook, Nebraska with the City Attorney to act as hearing officer. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

The City Attorney offered and received into evidence Exhibit #1 - Notice of Hearing published; Exhibit #2 - application and all attachments received from the Nebraska Liquor Control Commission; Exhibit #3 - the Liquor License Application Report from the Police Department; and Exhibit #4 - the Liquor License Application Report from the Planning Department.

The applicants John Nothnagel and Nick Nothnagel, presented their request to the Council. They have been at this location since 1997 as the Smokers Outlet and are wanting to add beer, wine, liquor, and other commodities to support their business. They plan to construct a 10 foot by 80 foot addition to the east of the existing structure. The expansion will add three to four part-time positions. They are good stewards of the community and are committed to selling only to responsible adults.

There being no one else present to comment, upon a motion by Councilmember Calvin, seconded by Councilmember Hepp, 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, Hepp, McDowell. NAY: None.

ITEM B RECOMMEND APPROVAL TO THE NEBRASKA LIQUOR CONTROL COMMISSION THE APPLICATION OF SMOKERS OUTLET INC., DBA "SMOKERS OUTLET 1", FOR A CLASS "D" - (BEER, WINE & DISTILLED SPIRITS, OFF SALE ONLY) LICENSE UNDER THE NEBRASKA LIQUOR CONTROL COMMISSION, TO BE LOCATED AT 1111 WEST "B" STREET, MCCOOK, NEBRASKA.

Upon a motion by Councilmember Calvin, seconded by Councilmember McDowell, the Council voted to recommend approval to the Nebraska Liquor Control Commission the application of Smokers Outlet Inc., dba "Smokers Outlet 1", for a Class "D" - (Beer, Wine & Distilled Spirits, Off Sale Only) License under the Nebraska Liquor Control Commission, to be located at 1111 West "B" Street, McCook, Nebraska. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

(6) CONSENT AGENDA:

Councilmember Calvin requested that Item F be removed from the Consent Agenda and placed on the Regular Agenda.

Public Works Director Potthoff requested that Item G be removed from the Consent Agenda and placed on the Regular Agenda.

ITEM A APPROVE THE MINUTES OF THE OCTOBER 15, 2012 REGULAR CITY COUNCIL MEETING.

Upon a motion by Mayor Berry, seconded by Councilmember McDowell, the Council voted to approve the minutes of the October 15, 2012 regular City Council meeting. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

ITEM B RECEIVE AND FILE THE MINUTES OF THE SENIOR CENTER ADVISORY BOARD DATED OCTOBER 2, 2012.

Upon a motion by Mayor Berry, seconded by Councilmember McDowell, the Council voted to receive and file the minutes of the Senior Center Advisory Board dated October 2, 2012. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

ITEM C APPROVE THE BID SPECIFICATIONS FOR BALLPARK CONCESSIONS AT THE JAYCEES BALL COMPLEX AND FELLING FIELD FOR A TERM OF THREE (3) YEARS AND SET THE DATE TO RECEIVE BIDS AS NOVEMBER 27, 2012 AT 2:30 P.M.

Upon a motion by Mayor Berry, seconded by Councilmember McDowell, the Council voted to approve the bid specifications for Ballpark Concessions at the Jaycees Ball Complex and Felling Field for a term of three (3) years and set the date to receive bids as November 27, 2012 at 2:30 P.M. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

ITEM D AWARD THE BID FOR THREE (3) CARDIAC MONITOR/DEFIBRILLATORS FROM ZOLL MEDICAL CORPORATION OF BURLINGTON, MASSACHUSETTS IN THE AMOUNT OF \$81,295.35, THAT BEING THE LOWEST RESPONSIBLE BID.

Upon a motion by Mayor Berry, seconded by Councilmember McDowell, the Council voted to award the bid for three (3) Cardiac Monitor/Defibrillators from Zoll Medical Corporation of Burlington, Massachusetts in the amount of \$81,295.35, that being the lowest responsible bid. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

ITEM E AUTHORIZE GREAT PLAINS COMMUNICATIONS TO OCCUPY CITY OF MCCOOK RIGHT OF WAY FOR THE INSTALLATION OF UNDERGROUND FIBER OPTIC CABLE AND COAX CABLE AND AUTHORIZE THE MAYOR TO SIGN THE APPLICATION TO OCCUPY RIGHT OF WAY.

Upon a motion by Mayor Berry, seconded by Councilmember McDowell, the Council voted to authorize Great Plains Communications to occupy City of McCook Right of Way for the installation of underground fiber optic cable and coax cable and authorize the Mayor to sign the Application to Occupy Right of Way. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

ITEM H RECEIVE AND FILE CLAIM FOR DAMAGES FROM BRADFORD S. HERSHBERGER, HERSHBERGER MUSIC CO, AND INSTRUCT THAT IT BE SUBMITTED TO THE CITY'S INSURANCE CARRIER FOR REVIEW AND APPROPRIATE ACTION.

Upon a motion by Mayor Berry, seconded by Councilmember McDowell, the Council voted to receive and file claim for damages from Bradford S. Hershberger, Hershberger Music Co, and

instruct that it be submitted to the City's insurance carrier for review and appropriate action. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

ITEM I APPROVE THE MCCOOK AREA CHAMBER OF COMMERCE REQUEST TO CONDUCT THE ANNUAL CHRISTMAS LIGHT PARADE AT 6:00 P.M. ON NOVEMBER 24, 2012, THE FLYING IN OF SANTA CLAUS AT MCCOOK BEN NELSON REGIONAL AIRPORT AT 10:00 A.M., AND THE USE OF A FIRE TRUCK FOR SANTA'S TRANSPORTATION IN THE PARADE AT 6:00 P.M.

Upon a motion by Mayor Berry, seconded by Councilmember McDowell, the Council voted to approve the McCook Area Chamber of Commerce request to conduct the Annual Christmas Light Parade at 6:00 P.M. on November 24, 2012, the flying in of Santa Claus at McCook Ben Nelson Regional Airport at 10:00 A.M., and the use of a fire truck for Santa's Transportation in the parade at 6:00 P.M. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

ITEM J APPROVE THE APPLICATION FOR A SPECIAL DESIGNATED LIQUOR LICENSE SUBMITTED BY THE MCCOOK AREA CHAMBER OF COMMERCE FOR A MIXER TO BE HELD AT QUALITY URGENT CARE, 3 BISON HOLIDAY DRIVE, ON WEDNESDAY, DECEMBER 12, 2012 FROM 5:30 P.M. TO 7:00 P.M.

Upon a motion by Mayor Berry, seconded by Councilmember McDowell, the Council voted to approve the application for a Special Designated Liquor License submitted by the McCook Area Chamber of Commerce for a mixer to be held at Quality Urgent Care, 3 Bison Holiday Drive, on Wednesday, December 12, 2012 from 5:30 P.M. to 7:00 P.M. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

REGULAR AGENDA

ITEM 6F APPROVE THE BID SPECIFICATIONS FOR TWO (2) NEW POLICE PACKAGE VEHICLES OR SPECIAL SERVICE VEHICLES FOR THE POLICE DEPARTMENT AND SET THE DATE TO RECEIVE BIDS AS NOVEMBER 27, 2012 AT 1:30 P.M.

Upon a motion by Councilmember Calvin, seconded by Councilmember McDowell, the Council voted to approve the bid specifications for two (2) new Police Package Vehicles or Special Service Vehicles for the Police Department and set the date to receive bids as November 27, 2012 at 1:30 P.M. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

Councilmember Calvin presented questions regarding the special service vehicle.

ITEM 6G APPROVE THE BID SPECIFICATIONS FOR ONE (1) NEW FOUR WHEEL DRIVE RUBBER-TIRED LOADER FOR THE CITY OF MCCOOK STREET DEPARTMENT AND SET THE DATE TO RECEIVE BIDS AS NOVEMBER 27, 2012 AT 2:00 P.M.

Mayor Berry introduced a motion to approve the bid specifications for one (1) new Four Wheel

Drive Rubber-Tired Loader for the City of McCook Street Department and set the date to receive bids as November 27, 2012 at 2:00 P.M. Motion was seconded by Councilmember Calvin.

Public Works Director Potthoff requested that Alternate #6 - Dual left and right brake pedals be added on Page 9 of the specifications and to the Bid Form.

Upon a motion by Councilmember Gonzales, seconded by Councilmember Calvin, the Council voted to amend the presented specifications by adding Alternate #6 - Dual left and right brake pedals on Page 9 and to the Bid Form. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

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

- (7) APPROVE ORDINANCE NO. 2012-2886 PROVIDING FOR THE AMENDMENT OF CHAPTER 91, FIRE PREVENTION; FIREWORKS; POISONOUS OR FLAMMABLE GAS; EXPLOSIVES, OF THE CITY OF MCCOOK, NEBRASKA CODE OF ORDINANCES, AMENDING SECTION 91.41, BY PROVIDING FOR A TEMPORARY BAN PROHIBITING THE USE OF PERMISSIBLE FIREWORKS IN THE CITY OF MCCOOK UPON ITS SECOND READING.

Motion was made by Councilmember Gonzales, seconded by Councilmember Hepp, to approve Ordinance No. 2012-2886 providing for the amendment of Chapter 91, Fire Prevention; Fireworks; Poisonous or Flammable Gas; Explosives, of the City of McCook, Nebraska Code of Ordinances, amending Section 91.41, by providing for a Temporary Ban Prohibiting the Use of Permissible Fireworks in the City of McCook upon its second reading. Upon roll call vote the following Councilmembers voted YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None. Motion carried. Whereupon the Mayor declared said Ordinance No. 2011-2361 approved on its second reading.

- (8) APPROVE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MCCOOK AND RED WILLOW COUNTY FOR RED WILLOW COUNTY TO USE THE POLICE DEPARTMENT AND FIRE DEPARTMENT PORTIONS OF THE CITY'S BUILDING AT 526 WEST "B" STREET, WITH THE COUNTY TO UTILIZE THE PREMISES FOR LAW ENFORCEMENT FUNCTIONS AND JAILING.

Councilmember Calvin introduced a motion to approve an Interlocal Agreement between the City of McCook and Red Willow County for Red Willow County to use the Police Department and Fire Department portions of the City's building at 526 West "B" Street, with the County to utilize the premises for law enforcement functions and jailing. Councilmember Gonzales seconded the motion.

City Attorney Schneider informed the Council that the City extended an offer to the County in April of 2012, with respect to the County's use of the police/fire facilities at 526 West B Street after the new City building was completed. Since that time, the City and County have been working to develop an interlocal agreement that would implement this mutual desire and thus allow the County to utilize and conduct its jailing operations, as required by the State of Nebraska. The presented Interlocal Agreement will achieve this end. The basic terms of the proposed agreement are that the County will begin jail operations in the facility on December 18, 2012. The actual term of the Agreement will begin on January 1, 2012 for one year with an option to continue use one more year. The County will use the police and fire area, the City will use the bay area with corresponding

parking on the north, and east of the bay area. The County will be responsible for all utilities and liability insurance, and the City will pay for property insurance. A deposit of \$4,000.00 will be provided to the City and a joint inspection will take place before the beginning of the term.

Red Willow County Commissioner Earl McNutt stated that during discussion City Manager Hancock felt there was a need for a damage deposit. He expressed concerns with the required deposit, noting that the building is a dwindling facility and that there should be a trust factor between the two entities. Maybe the deposit could have been removed.

Upon a motion by Councilmember Gonzales, seconded by Councilmember Calvin, the Council voted to strike the \$4,000 deposit as required in section 6. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

Police Chief Brown informed the Council that he and Sheriff Mahon had met with the Nebraska Jail Standards Board last week to work out the details of the transition and that the facility meets the requirements.

Upon a motion by Mayor Berry, seconded by Councilmember Calvin, the Council voted to add the presented Exhibit B to the agreement. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

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

- (9) APPROVE AND AUTHORIZE THE MAYOR TO SIGN AN AGREEMENT BETWEEN NEBRASKA INTERACTIVE, LLC (MANAGER), THE NEBRASKA STATE RECORDS BOARD (THE "NSRB") AND THE CITY OF MCCOOK ("PARTNER") FOR THE PURPOSE OF PROVIDING ELECTRONIC SERVICES WHICH ALLOWS THE USE OF CREDIT OR DEBIT CARDS TO PAY CITY UTILITY BILLS, AND OTHER FEES OWED BY CITIZENS TO THE CITY.

Utility Director Dutcher informed the Council that the City gets as many as thirty requests per month from utility customers wanting to pay their bill by credit or debit card. Over the last year staff has looked for a credit card processing firm that could provide this type of service without a monthly or per transaction fee being charged back to the city. Most processing firms charge a transaction fee or a monthly fee plus a small per transaction fee. Any fees charged to the city would need to be billed back to the customer or absorbed by the city. Back billing is cumbersome because of the lag time in getting the exact fee from the processing company and then making sure that it is applied to the customer. Absorbing the fee is not fair to the customers that don't use this type of service. All of this has changed with PayPort which is a part of Nebraska.gov operated by Nebraska Interactive, LLC and under the Nebraska State Records Board (NSRB). With PayPort Nebraska state government entities (which includes City Government) can offer customers the option to pay by debit and credit card with the 2.49% transaction fee billed directly to the customers credit card. Then in about three business days the amount of the utility bill is electronically transmitted to an account designated by the City. The city will need to purchase the actual card reader for a one time fee of \$100. It is also note-worthy that other departments will have the same option under this contract to add the PayPort process by simply buying the reader and setting up the account. In the future PayPort will also be providing online bill paying, something that is getting very popular in the age of e-banking.

Upon a motion by Councilmember Calvin, seconded by Councilmember McDowell, the Council

voted to approve and authorize the mayor to sign an agreement between Nebraska Interactive, LLC (Manager), The Nebraska State Records Board (the "NSRB") and the City of McCook ("Partner") for the purpose of providing electronic services which allows the use of credit or debit cards to pay city utility bills, and other fees owed by citizens to the city. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

(10) INTRODUCE AND APPROVE UPON ITS FIRST READING ORDINANCE NO. 2012-2887 AMENDING CHAPTER 114, TELEPHONE COMPANIES, OF THE CITY OF MCCOOK, NEBRASKA CODE OF ORDINANCES, SECTION 114.01, OCCUPATION TAX IMPOSED; EXCEPTIONS; REDUCING THE OCCUPATION TAX TO THE CITY FROM 3% TO 1½% OF GROSS RECEIPTS.

Mayor Berry introduced Ordinance No. 2012-2887 by title. The Clerk read the Ordinance by title:

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AMENDING CHAPTER 114, TELEPHONE COMPANIES, OF THE CITY OF MCCOOK, NEBRASKA CODE OF ORDINANCES, SECTION 114.01, OCCUPATION TAX IMPOSED; EXCEPTIONS; REDUCING THE OCCUPATION TAX TO THE CITY FROM 3% TO 1½% OF GROSS RECEIPTS; PROVIDING FOR THE REPEAL OF ANY AND ALL ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM AND FOR A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE.

Ordinance No. 2012-2887 was introduced and read by title only. Motion was made by Mayor Berry, seconded by Councilmember McDowell, to approve Ordinance No. 2012-2887 on its first reading. Upon roll call vote the following Councilmembers voted YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None. Motion carried. Whereupon the Mayor declared said Ordinance No. 2012-2887 approved on its first reading.

(11) MUNICIPAL CENTER UPDATE.

Councilmember Gonzales gave a brief update on the progress of the Municipal Center.

City Manager Hancock stated that staff is currently addressing three issues, the possibility that we will not be able to use the portable generator from the auditorium as permanent backup, debating some concrete parking issues, and the entryways on the east side.

(12) COUNCIL COMMENTS.

Councilmember Gonzales noted that the City recently received a score of a C- on the our website and that work continues on its upgrade.

Mayor Berry thanked City Staff for all they had done to complete the agreement with the County for use of the jail facility.

Mayor Berry proposed that consideration of Items 14 & 15 be tabled to allow the Council more time for review of Mr. Hancock's self evaluation.

Upon a motion by Councilmember Calvin, seconded by Councilmember Gonzales, the Council voted to table consideration of Agenda Items 14 & 15 until the November 19, 2012 regular City Council meeting. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

- (13) AN EXECUTIVE SESSION MAY BE HELD UPON A MAJORITY VOTE OF THE COUNCIL FOR THE ANNUAL EVALUATION OF THE JOB PERFORMANCE OF CITY MANAGER J. JEFF HANCOCK.

Upon a motion by Councilmember Calvin, seconded by Councilmember Gonzales, the Council voted to move into an executive session for the annual evaluation of the job performance of City Manager J. Jeff Hancock at 8:37 P.M. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

The Mayor then stated for the record that at this time, pursuant to the Nebraska Open Meetings Act, a closed session will be held for the purpose of the annual evaluation of the job performance of City Manager J. Jeff Hancock. The Council will reconvene in public session following this closed session.

Upon a motion by Councilmember Calvin, seconded by Councilmember Gonzales, the Council voted to move out of executive session at 9:20 P.M. The motion passed upon the following roll call vote: YEA: Berry, Gonzales, Calvin, Hepp, McDowell. NAY: None.

- (14) APPROVE EMPLOYMENT AGREEMENT WITH CITY MANAGER J. JEFF HANCOCK AND AUTHORIZE THE MAYOR TO SIGN.

Consideration of this item was tabled until the November 19, 2012 City Council meeting.

- (15) INTRODUCE AND APPROVE UNDER SUSPENSION OF THE RULE ORDINANCE NO. 2012-2888 SETTING THE SALARY AND COMPENSATION OF CITY MANAGER J. JEFF HANCOCK.

Consideration of this item was tabled until the November 19, 2012 City Council meeting.

- (16) ADJOURNMENT.

There being no further business to come before the Council, Mayor Berry declared the meeting adjourned at 9:23 P.M.

Dennis Berry, Mayor

ATTEST:

Lea Ann Doak, City Clerk