

MCCOOK CITY COUNCIL
April 20, 2015
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 Gonzales, Councilmembers Calvin, Hepp, McDowell, Weedin.

Absent: None.

City Officials present: City Manager Schneider, City Attorney Mustion; City Clerk/Treasurer Doak, Police Sergeant Darling, Utilities Director Dutcher, Fire Chief Harpham, Public Works Director Potthoff, and Senior Services Director Siegfried.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on April 16, 2015, 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 Gonzales 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.

No one was present for the invocation.

(2) PLEDGE OF ALLEGIANCE.

Councilmember Calvin led the Council and audience in the Pledge of Allegiance.

(3) CITIZEN'S COMMENTS.

John Hubert addressed the Council regarding drainage issues from Valmont and the Industrial Park as its runs south to the river. He suggested that sales tax dollars could be used for a pipe or tube from Ravenswood Road to the river.

(4) ANNOUNCEMENTS & RECOGNITIONS.

City Manager Schneider informed the Council that drop box locations will be established for collection of the mail-in ballots for the Sales Tax question.

(5) APPROVE THE PROCLAMATION DESIGNATING APRIL 24, 2015 AS "ARBOR DAY" IN THE CITY OF MCCOOK AND AUTHORIZE THE MAYOR TO SIGN.

Upon a motion by Councilmember Hepp, seconded by Councilmember Calvin, the Council voted

to approve the proclamation designating April 24, 2015 as "Arbor Day" in the City of McCook and authorize the Mayor to sign. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

Public Works Director Potthoff informed the Council this year Nebraska Public Power District will be sponsoring a tree planting ceremony on April 22 at 12:30 p.m. at Felling Field. During this ceremony four trees including a Shademaster, Honey Locust, a Kentucky Coffeetree, and two Princeton Elms will be planted. They have invited approximately 125 McCook third graders to help celebrate Arbor Day and to assist in the planting of these trees. In order to promote the planting of trees within the City of McCook the tree rebate program will run from March 30 thru June 12 and then again in the fall from August 31 thru November 27.

(6) PUBLIC HEARINGS:

ITEM A PUBLIC HEARING - CONSIDER CLARY SUBDIVISION REPLAT NO. 2, LOT 1, LOT 2, AND LOT 3, BLOCK 1, AND WEST 8½, A REPLAT OF LOT 2A, BLOCK 1 OF THE ADMINISTRATIVE REPLAT OF LOT 1, BLOCK 1, CLARY SUBDIVISION TO THE CITY OF MCCOOK, RED WILLOW COUNTY, NEBRASKA.

Upon a motion by Councilmember Calvin, seconded by Councilmember Weedon, the Council voted to recess as a City Council and convene a public hearing for the purpose of receiving public comment on the proposed Clary Subdivision Replat No. 2, Lot 1, Lot 2, and Lot 3, Block 1, and West 8½, a Replat of Lot 2A, Block 1 of the Administrative Replat of Lot 1, Block 1, Clary Subdivision to the City of McCook, Red Willow County, Nebraska with the City Attorney to act as hearing officer. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

The City Attorney offered and received into evidence Exhibit #1 - the City Manager's Report prepared for the April 20, 2015 City Council meeting; Exhibit #2 - Notice of Hearing published, Exhibit #3 -ownership listing of those receiving Notice of Hearing; Exhibit #4 - proposed Resolution No. 2015-11; Exhibit #5 - proposed Subdivision Agreement, containing two pages; Exhibit #6 - minutes of the April 13, 2015 Planning Commission meeting; Exhibit #7 - Map of Clary Subdivision Replat No. 2.

City Manager Schneider informed the Council that at the March 9, 2015 Planning Commission meeting, a final recommendation for approval of the Clary Village Planned Unit Development was made. Subsequently, at its March 16, 2015 meeting, the City Council approved the final Planned Unit Development. The final step is to modify the administrative replat of the Clary Village area through the subdivision process, so as to create the final legal description and plat map. Included is the Subdivision Agreement which is the same as the Planned Unit Development Agreement setting out the requirements of each party.

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: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

ITEM B ADOPT RESOLUTION NO. 2015-11 PROVIDING FOR THE APPROVAL OF THE CLARY SUBDIVISION REPLAT NO. 2, LOT 1, LOT 2, AND LOT 3,

BLOCK 1, AND WEST 8½ STREET, A REPLAT OF LOT 2A, BLOCK 1 OF THE ADMINISTRATIVE REPLAT OF LOT 1, BLOCK 1, CLARY SUBDIVISION TO THE CITY OF MCCOOK, RED WILLOW COUNTY, NEBRASKA.

Upon a motion by Councilmember Hepp, seconded by Councilmember Weedon, the Council voted to adopt Resolution No. 2015-11 providing for the approval of the Clary Subdivision Replat No. 2, Lot 1, Lot 2, and Lot 3, Block 1, and West 8½ Street, a Replat of Lot 2A, Block 1 of the Administrative Replat of Lot 1, Block 1, Clary Subdivision to the City of McCook, Red Willow County, Nebraska. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

ITEM C APPROVE THE SUBDIVISION AGREEMENT FOR CLARY SUBDIVISION REPLAT NO. 2 BETWEEN THE CITY OF MCCOOK, THE MCCOOK ECONOMIC DEVELOPMENT CORPORATION ("OWNER"), AND CLARY VILLAGE L.L.C. ("DEVELOPER").

Upon a motion by Councilmember Calvin, seconded by Councilmember Hepp, the Council voted to approve the Subdivision Agreement for Clary Subdivision Replat No. 2 between the City of McCook, the McCook Economic Development Corporation ("Owner"), and Clary Village L.L.C. ("Developer"). The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

ITEM D PUBLIC HEARING - CONSIDERATION OF A LIMITATION ON THE SPECIAL EXCEPTION GRANTED TO DAN AND LIZANN MILLER FOR THEIR PROPERTY LOCATED IN THE SE1/4NE1/4 OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 29 WEST OF THE 6TH P.M., RED WILLOW COUNTY, NEBRASKA, SAID PROPERTY LOCATED WITHIN THE CITY OF MCCOOK'S TWO MILE EXTRATERRITORIAL JURISDICTION.

Upon a motion by Councilmember Calvin, seconded by Councilmember Hepp, the Council voted to recess as a City Council and convene a public hearing for the purpose of receiving public comment on the consideration of a limitation on the special exception granted to Dan and Lizann Miller for their property located in the SE1/4NE1/4 of Section 6, Township 2 North, Range 29 West of the 6th P.M., Red Willow County, Nebraska, said property located within the City of McCook's two mile extraterritorial jurisdiction with the City Attorney to act as hearing officer. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

The City Attorney offered and received into evidence Exhibit #1 - City Manager's Report prepared for the April 20, 2015 City Council meeting; Exhibit #2 - Notice of Hearing published, Exhibit #3 - ownership listing of those receiving Notice of Hearing; Exhibit #4 - Land use Action Request Form filed by Daniel and Lizann Miller, containing six pages; Exhibit #5 - USDA Class A Breeder license and the State of Nebraska Department of Agriculture Bureau of Animal Industry Facility license issued to Dan and Lizann Miller; Exhibit #6 - email from Robert M. Gibbens, Regional Director, Animal Care Western Region; Exhibit #7 - District Court of Red Willow County, Nebraska, Case No. CI07-161, Order; containing five pages; Exhibit #8 - Notice of Granting Special Exception recorded on February 5, 2009; Exhibit 9 - District Court of Red Willow County, Nebraska, Case No. CI 14-53, Order, containing seven pages; Exhibit #10 - Adler v. Lynch case, containing sixteen pages; Exhibit #11 - City of McCook Zoning Ordinance Article 7, Agricultural District, containing four pages; Exhibit #12 - City of McCook Zoning Ordinance Article 24, Special Exceptions,

containing two pages; Exhibit #13 - Notes presented by Joe Williams at the April 13, 2015 Planning Commission meeting; Exhibit #14 - minutes of the April 13, 2015 Planning Commission meeting; and Exhibit #15 - Observation Log, in lieu of testimony, from Peter Burger, attorney for Dan and Lizann Miller.

City Manager Schneider outlined the history of this request. When reviewing this matter, City Staff utilized Article 24 of the Zoning Ordinance as its benchmark. These benchmarks include special exception considerations a - i which the Council must address before granting a special exception. Notice was submitted to the owners of the property in February of 2015. Due to conflicts in timing, a request was made by the owners to move the public hearing to the April Planning Commission meeting. Staff agreed that an extension would be appropriate and the parties agreed to move the date of the public hearing to the April meeting. Staff's concerns with the special exception considerations are threefold. First, Staff is concerned with the noise and odor effects of the special exception on adjoining properties and properties generally in the district. Second, Staff is concerned with screening and buffering with reference to the type and character of the kennel operation. Third, Staff is concerned with the general compatibility of the increase in size of the kennel with adjacent properties and other property in the district. These concerns are sufficient enough for Staff to believe a limitation on the special exception is necessary. Staff is asking that the Special Exception contain a contingency that the kennel size not be expanded past the original 10' x 20' request. The Planning Commission voted 6-0 to restrict the special exception to a 10' x 20' enclosed structure at the April 13, 2015 Planning Commission meeting.

Mr. Schneider informed the Council that he had contacted B-2 Engineering regarding the possibility of measurement of the noise and odor to provide information to be utilized for determination of the special exception request.

Joe Williams, property owner across the road to the east of Millers, expressed concerns with the noise from the barking; the number and size of the dogs, they started with 30 small dogs and it has grown to 109 small dogs with 57 puppies, the size of the dogs has increased; the odor on hot humid days; does not feel the kennel is compatible with what was there when it was put in, does not support the restrictions, and is against the special exception.

Maggie and Scott Repass, property owners to the east along Highway 83, expressed concerns with the barking. They live 3/4 of a mile away and can hear it.

Dan Miller, property owner of the kennel, expressed concerns with the City not following the process initially; feels that they have done everything that the Council and USDA have asked of them, including building first to get license before approval of the special exception; the fact that no limitations were placed on the special exception approval; does not feel that limiting the size of the building will address the concerns; in December quit disposing the waste upon their property upon the request of Utility Director Dutcher due to an EPA investigation; and the fact that he has not heard from the City regarding the outcome.

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

ITEM E APPROVE A LIMITATION OF A SPECIAL EXCEPTION FOR A KENNEL LOCATED IN THE AGRICULTURAL DISTRICT (AD) FOR PROPERTY

OWNED BY DAN AND LIZANN MILLER, LIMITING THE SIZE OF THEIR DOG KENNEL TO A 10' X 20' KENNEL ENCLOSURE, SAID MODIFICATION TO BE BASED UPON ARTICLE 24 OF THE MCCOOK ZONING ORDINANCE, CONSIDERATIONS A - I.

Councilmember Calvin introduced a motion to approve a limitation of a special exception for a kennel located in the Agricultural District (AD) for property owned by Dan and Lizann Miller, limiting the size of their dog kennel to a 10' x 20' kennel enclosure, said modification to be based upon Article 24 of the McCook Zoning Ordinance, considerations a - i. Councilmember Weedon seconded the motion.

Council discussion included that the granting of the special exception will not adversely affect the public interest; that satisfactory provisions and arrangements have been made by the applicant concerning special exception considerations a - i; that the original application stated the building would be 10 x 20; that the pens would be enclosed; needing firm data, such as the engineering study of the noise and odor, before making a decision; and the use of conflict resolution (mediation) between the parties.

Councilmember Calvin withdrew his motion.

Councilmember Calvin introduced a motion to direct staff to conduct a conflict resolution/mediation meeting between the parties and to contact a consultant for an engineering study of the noise and odor to determine the cost and what they can do. Councilmember McDowell seconded the motion.

Mayor Gonzales introduced a motion to amend by inserting "attempt" before "to conduct a conflict resolution/mediation meeting". Councilmember McDowell seconded the motion.

Bob Reynolds, attorney for area property owners, encouraged the Council not to table consideration of the placement of restrictions on the special exception; if the Millers had done what they said they would do in the original application, there would be no odor or noise issues; a reasonable person would have done something to address the neighbors issues; he did not know if the area owners would be receptive to mediation.

The Mayor then stated the question: "Shall the motion on the floor to amend by adding "attempt" to conduct mediation be passed?" Upon roll call vote the following Councilmembers voted YEA: Gonzales, Calvin, Hepp, McDowell, Weedon. NAY: None. Motion carried.

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: Gonzales, Calvin, Hepp, McDowell, Weedon. NAY: None. Motion carried.

(7) CONSENT AGENDA:

ITEM A APPROVE THE MINUTES OF THE APRIL 6, 2015 REGULAR CITY COUNCIL MEETING.

Upon a motion by Mayor Gonzales, seconded by Councilmember McDowell, the Council voted to approve the minutes of the April 6, 2015 regular City Council meeting. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

ITEM B RECEIVE AND FILE THE MINUTES OF THE MARCH 11, 2015 LIBRARY ADVISORY BOARD MEETING AND THE APRIL 13, 2015 PLANNING COMMISSION MEETING.

Upon a motion by Mayor Gonzales, seconded by Councilmember McDowell, the Council voted to receive and file the minutes of the March 11, 2015 Library Advisory Board meeting and the April 13, 2015 Planning Commission meeting. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

ITEM C RECOMMEND TO THE NEBRASKA LIQUOR CONTROL COMMISSION APPROVAL OF THE APPLICATION FOR ADDITION TO LIQUOR LICENSE #I-003702, KNIGHTS OF COLUMBUS 1126, 308 EAST 9TH STREET, TO ADD A PATIO (BEER GARDEN) TO THE SOUTHEAST CORNER OF THE EXISTING BUILDING.

Upon a motion by Mayor Gonzales, seconded by Councilmember McDowell, the Council voted to recommend to the Nebraska Liquor Control Commission approval of the Application for Addition to Liquor License #I-003702, Knights of Columbus 1126, 308 East 9th Street, to add a patio (beer garden) to the southeast corner of the existing building. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

ITEM D DECLARE THE LISTED ABANDONED AND UNCLAIMED VEHICLES AND BICYCLES AND OTHER LISTED CITY PROPERTY AS SURPLUS CITY PROPERTY TO BE DISPOSED OF IN THE APPROPRIATE LEGAL MANNER.

Upon a motion by Mayor Gonzales, seconded by Councilmember McDowell, the Council voted to declare the listed abandoned and unclaimed vehicles and bicycles and other listed city property as surplus city property to be disposed of in the appropriate legal manner. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

ITEM E APPROVE THE APPLICATION FOR A SPECIAL DESIGNATED LIQUOR LICENSE SUBMITTED BY LOOP BREWING CO., LLC, LIQUOR LICENSE #LK-093351, FOR A RECEPTION TO BE HELD AT THE MCCOOK MUNICIPAL AUDITORIUM, 302 WEST 5TH STREET, ON JUNE 6, 2015 FROM 3:00 P.M. TO 1:00 A.M.

Upon a motion by Mayor Gonzales, seconded by Councilmember McDowell, the Council voted to approve the application for a Special Designated Liquor License submitted by Loop Brewing Co., LLC, Liquor License #LK-093351, for a reception to be held at the McCook Municipal Auditorium, 302 West 5th Street, on June 6, 2015 from 3:00 P.M. to 1:00 A.M. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

ITEM F APPROVE THE APPLICATION FOR A SPECIAL DESIGNATED LIQUOR LICENSE SUBMITTED BY LOOP BREWING CO., LLC, LIQUOR LICENSE #LK-093351, FOR A RECEPTION TO BE HELD AT THE 4-H BUILDING, RED WILLOW COUNTY FAIRGROUNDS, 1400 WEST 5TH STREET, ON AUGUST 22, 2015 FROM 4:00 P.M. TO 1:00 A.M.

Upon a motion by Mayor Gonzales, seconded by Councilmember McDowell, the Council voted to

approve the application for a Special Designated Liquor License submitted by Loop Brewing Co., LLC, Liquor License #LK-093351, for a reception to be held at the 4-H Building, Red Willow County Fairgrounds, 1400 West 5th Street, on August 22, 2015 from 4:00 P.M. to 1:00 A.M. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

ITEM G ADOPT RESOLUTION NO. 2015-10 CERTIFYING THAT THE CITY OF MCCOOK IS CONSIDERED TO BE CAPABLE OF PROVIDING PUBLIC TRANSPORTATION FOR ITS CITIZENS.

Upon a motion by Mayor Gonzales, seconded by Councilmember McDowell, the Council voted to adopt Resolution No. 2015-10 certifying that the City of McCook is considered to be capable of providing public transportation for its citizens. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

REGULAR AGENDA

(8) RECEIVE A REPORT FROM REX NELSON AND APPROVE THE CONCEPTUAL DESIGN FOR THE PROPOSED MCCOOK SKATEPARK FROM GRINDLINE.

Rex Nelson presented the conceptual design of the skatepark to the Council.

Upon a motion by Councilmember Calvin, seconded by Councilmember Hepp, the Council voted to approve the conceptual design for the proposed McCook Skatepark from Grindline. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

(9) ACCEPT THE PETER KIEWIT FOUNDATION GRANT OF \$25,000 TO ASSIST WITH THE CONSTRUCTION OF THE KELLEY PARK SKATEPARK CONTINGENT UPON EXTENSION OF THE PRESCRIBED AUGUST 31, 2015 COMPLETION DATE.

Upon a motion by Councilmember Calvin, seconded by Councilmember Weedin, the Council voted to accept the Peter Kiewit Foundation grant of \$25,000 to assist with the construction of the Kelley Park skatepark contingent upon extension of the prescribed August 31, 2015 completion date. The motion passed upon the following roll call vote: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

(10) INTRODUCE AND APPROVE ORDINANCE NO. 2015-2916 AMENDING THE MUNICIPAL CODE OF THE CITY OF MCCOOK, NEBRASKA; AMENDING SECTION 31.23 - MEETING DAY AND TIME - QUORUM - CALL TO ORDER; SETTING THE TIME FOR REGULAR CITY COUNCIL MEETINGS AT 6:30 P.M., UPON ITS FIRST READING.

Mayor Gonzales introduced Ordinance No. 2015-2916 by title. The Clerk read the Ordinance by title:

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AMENDING THE MUNICIPAL CODE OF THE CITY OF MCCOOK, NEBRASKA; AMENDING SECTION 31.23 -

MEETING DAY AND TIME; QUORUM; CALL TO ORDER; SETTING THE TIME FOR REGULAR CITY COUNCIL MEETINGS AT 6:30 P.M.; TO PROVIDE FOR THE REPEAL OF ANY OTHER CONFLICTING ORDINANCES; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

Ordinance No. 2015-2916 was introduced and read by title only. Motion was made by Councilmember Calvin, seconded by Councilmember Hepp, to approve Ordinance No. 2015-2916 on its first reading. Upon roll call vote the following Councilmembers voted YEA: Gonzales, Calvin, Hepp, McDowell, Weedin. NAY: None. Motion carried. Whereupon the Mayor declared said Ordinance No. 2015-2916 approved on its first reading.

(11) COUNCIL COMMENTS.

Council comments included Councilmember Hepp receiving a letter from the Governor addressing his visit to the McCook Work Ethic Camp, encouraging the public to contact them regarding their wishes regarding a convention center; thanked Rex Nelson for all of his hard work on the skatepark, and that the updates at Felling Field look very nice and are the result of a team effort between the City and the Little League Baseball.

(12) ADJOURNMENT.

There being no further business to come before the Council, Mayor Gonzales declared the meeting adjourned at 9:25 P.M.

Michael D. Gonzales, Mayor

ATTEST:

Lea Ann Doak, City Clerk