

The Mayor and Council of the City of Fairbury met in regular session in the Council Chambers located at 612 D Street, Fairbury, Nebraska, on the 5th day of May, 2015, at 7:30 p.m. Mayor Ward called the meeting to order.

Notice of meeting was given in advance thereof by publication in the Fairbury Journal News, Fairbury, Nebraska, the designated method of giving notice, as shown by affidavit of publication. The Open Meetings Act was posted in the meeting room and pointed out by Mayor Ward as required by law.

Roll call found the following Council Members present: Doug Brown, Rick Carmichael, Roger Bailey, Phil Rogge, Ed Friesen, and Brad Kuzelka. Absent: Tim Polson and Kelly Davis.

Mayor Ward called for the submittal of forms to request future agenda items. No forms were submitted during the meeting.

Mayor Ward read the Consent Agenda:

1. Approval of the minutes of the regular meeting of April 21, 2015.
2. Approval of claims.
3. Approval of the appointment of Andrew Schroeder to the Safety Committee.
4. Approval of the appointment of Nick Georgi to the Retirement Plan Committee.

Rogge moved to approve the Consent Agenda. Motion seconded by Carmichael. On roll call, Polson, Bailey, Carmichael, Brown, Rogge, Friesen, and Kuzelka all voted "yes". Davis abstained. Motion carried.

Friesen moved to authorize Mayor Ward to sign Contract No. 14-PP-012 between the State of Nebraska Department of Economic Development and the City of Fairbury for the 2014 CDBG Planning Grant, not to exceed \$30,000.00, to be used for a community park master plan and feasibility study. Motion seconded by Bailey. On roll call, Polson, Bailey, Carmichael, Brown, Rogge, Friesen, Kuzelka, and Davis all voted "yes". Motion carried.

Polson moved to authorize Mayor Ward to sign the Professional Service/Consultant Agreement between Southeast Nebraska Development District (SENDD) and the City of Fairbury for administrative assistance in the amount of \$1,500.00 for the 2014 CDBG Planning Grant, Contract No. 14-PP-012, to be used for a community park master plan and feasibility study. Motion seconded by Davis. On roll call, Polson, Bailey, Carmichael, Brown, Rogge, Friesen, Kuzelka, and Davis all voted "yes". Motion carried.

Mayor Ward stated agenda items #3 and #4 under current business will be postponed until further insurance information is gathered: Agenda item #3, Consider recommendation from the Public Works Committee regarding request from the Fairbury City Fire Department to block off City Pool Drive (located between the pool and community center) and for use of electricity and dumpsters for National Night Out on August 4, 2015 from 6:00 p.m.–8:00 p.m. (rain date August 6, 2015). Agenda item #4, Consider additional liability coverage on the City's policy in the amount of \$100.00 for the National Night Out on August 4, 2015 for the water fight and obstacle course.

Brown moved to approve the recommendation from the Personnel Committee to approve the City Administrator Employment Agreement between the City of Fairbury and Collin Bielser. Motion seconded by Carmichael. Council member Phil Rogge asked how the cost benefit was determined for the sizeable salary increase from the former city administrator. Brown stated the Personnel Committee had a very thorough discussion over the wage itself and felt that Bielser was such a good candidate, they did not want to risk losing him by trying to save a few thousand dollars. Brown feels we will be very pleased with this individual. Carmichael stated the last city administrator did not receive a raise for a few years; so the previous figure would have been a little higher if he would have gotten the raises. Rogge thought maybe we could get him with a six month evaluation; he understands that Bielser has a lot of economic development experience that we didn't have previously. Rogge just wanted the rationale for the money being spent. Brown stated the base salary is \$86,400.00 plus an annual automobile allowance in the amount of \$3,000.00 and an annual cell phone allowance of \$600.00. The automobile allowance and the cell phone allowance remains the same as it was previously. On roll call, Polson, Bailey, Carmichael, Brown, Rogge, Friesen, Kuzelka, and Davis all voted "yes". Motion carried.

Rogge moved to adopt Resolution No. 971 which authorizes and directs the sale of the following parcel of real property owned by the City of Fairbury:

a tract of land (east of Wastewater Treatment Plant) located on a part of the Southwest Quarter of Section 23, Township 2 North, Range 2 East, Jefferson County, Nebraska more fully described below.

For the purpose of this legal description, the basis of bearings is the North line of the Southwest Quarter of said Section 23, having an assumed reference bearing of S 88°05'16" W. Referring to the Center Quarter Corner of said Section 23; thence westerly S 88°05' 16" W, on the North line of the Southwest Quarter of said Section 23, 45.80 feet; thence southerly S 01°02'21" E, 25.00 feet to the Northeast Corner of a tract of land recorded in the Jefferson County Register of Deeds, Deed Book 1 00, Page 365; thence westerly S 88°05'16" W, on the North line of said tract, said North line also being 25.00 feet southerly from the North line of the Southwest Quarter of said Section 23, 200.18 feet, to a point of intersection with the West line of said tract, said West line being marked by 14" Pinched Pipes found on the West line of said tract, said point also being the Point of Beginning; thence southerly S 01°00'36" E, on the West line of said tract in Deed Book 100, Page 365, 200.63 feet, to the Southwest Corner of said tract, said Southwest Corner being marked by a 14" Pinched Pipe, said Corner also being on the North line of a tract of land recorded in the Jefferson County Register of Deeds, Deed Book 120, Page 527; thence westerly S 88°06' 31" W, on the North line of said tract, 1 00.00 feet, to the Northwest Corner of said tract, said Corner being marked by a

14" Pinched Pipe; thence northerly N 01°00'35" W, 200.60 feet, to a point 25.00 feet southerly from the North line of the Southwest Quarter of said Section 23; thence easterly N 88°05'16" E, on a line 25.00 feet southerly from the North line of the Southwest Quarter of said Section 23, 100.00 feet to the True Point of Beginning: Containing a calculated area of 0.460 acres more or less. Subject to all easements, restrictions, and reservations of record.

Motion seconded by Carmichael. Assistant Street Superintendent Laura Bedlan stated this parcel is a tract of land which is the city farm; we do not generate a lot of money from this parcel of land and the land is not easy to farm. Bedlan stated parties are interested in this parcel. On roll call, Polson, Bailey, Carmichael, Brown, Rogge, Friesen, Kuzelka, and Davis all voted "yes". Motion carried.

Mayor Ward read from the agenda: "Ordinance No. 3052: AN ORDINANCE AMENDING FAIRBURY MUNICIPAL CODE §§ 133.20 AND 133.22 ADDING VAPOR PRODUCTS AND ALTERNATIVE NICOTINE PRODUCTS TO PROVISIONS REGARDING TOBACCO USE OFFENSES. Brown moved to introduce and give 1st reading to Ordinance No. 3052. Motion seconded by Friesen. Police Chief Chad Sprunk stated he wanted vaping added to the ordinance; had to change wording as the City cannot be more restrictive than state statute. City Attorney David Barga stated the municipal code currently mirrors state statute regarding tobacco use except for the possession provision. The state statutes allow for municipalities to be more restrictive if the State grants them that authority. Barga stated with the tobacco use, state statute states that a local ordinance can be more restrictive in terms of vending machines; there is no state statute that talks about possession, only about use by the minor or sale or providing it to a minor by some other person. Barga stated he's not sure how the possession provision got in the city code. Council member Rick Carmichael asked if we have been charging people with this and going through court. Sprunk stated yes we have. Barga stated Nebraska is a Dillon's Rule State for the municipalities which means that municipalities only have those authorities specially granted by statute, those that are implied by statute, or those that are necessary to carry out the statute. Criminal codes cannot be more restrictive unless provided for. Carmichael asked about the sky lanterns fireworks. Barga stated the state allows cities to make ordinances on the sky lanterns. Barga stated we cannot assume that, if it doesn't say that. If you are not granted that power expressly, you do not have that power. Carmichael stated if municipalities would want to be more restrictive, we need to be pushing with the legislature. Carmichael suggested Sprunk going through the POAN organization to see if they could help with the legislature. Sprunk stated they are at the high school two to three times a week with kids with tobacco whether they're smoking or in possession. Council member Ed Friesen asked if there are any state statutes about being on school property. Sprunk stated schools can enforce whatever they want; usually give the students three to four days suspension. Barga stated the school may have some additional authority through federal laws. Sprunk asked since we have to mirror state statute, what is the point of having city ordinances. Carmichael stated if you write tickets on state statute and not city code, then the fines go to this school only and not split with all the school districts in the county. Barga stated that state statute allows for city police to enforce state law so in that case it is double duty to have city code. Sprunk stated we will need to go through city code to make sure they mirror state statute; there are several that do not. Barga

stated we need to update some codes. Sprunk asked Barga to find out if those monies do stay in Fairbury versus other school districts. On roll call, Polson, Bailey, Carmichael, Brown, Rogge, Friesen, Kuzelka, and Davis all voted "yes". Motion carried.

Within the Committee reports, Brad Kuzelka stated the City received the grant for the park study. Phil Rogge invited the Council to come to the Board of Public Works meeting next Tuesday morning at 8:30 a.m.; they will be demonstrating the new sewer camera.

Carmichael moved to adjourn the meeting. Motion seconded by Rogge. On roll call, Polson, Bailey, Carmichael, Brown, Rogge, Friesen, Kuzelka, and Davis all voted "yes". Motion carried. Meeting adjourned at 8:00 p.m.

Homer L. Ward, Mayor

ATTEST: Sharyl Preston, City Clerk