

## MINUTES OF THE REGULAR MEETING OF THE AMES CITY COUNCIL

AMES, IOWA

DECEMBER 8, 2015

The Regular Meeting of the Ames City Council was called to order by Mayor Ann Campbell at 6:00 p.m. on the 8th day of December, 2015, in the City Council Chambers in City Hall, 515 Clark Avenue. Council Members Gloria Betcher, Amber Corrieri, Tim Gartin, Matthew Goodman, Chris Nelson, and Peter Orazem and *ex officio* Member Sam Schulte were present.

**CONSENT AGENDA:** Mayor Campbell stated that staff had requested that Item No. 10 (2015/16 Spring Special Project Commission On The Arts grants) be pulled for separate discussion.

Moved by Nelson, seconded by Goodman, to approve the following items on the Consent Agenda:

1. Motion approving payment of claims
2. Motion approving payment of claims
3. Motion approving Minutes of Regular Meeting of November 24, 2015
4. Motion approving Report of Contract Change Orders for November 16-30, 2015
5. Motion setting January 12 and February 23, 2016, at 5:30 p.m. as Conference Board meeting dates
6. Motion approving renewal of the following Beer Permits, Wine Permits, and Liquor Licenses:
  - a. Class C Liquor & Outdoor Service – Thumbs Bar, 2816 West Street
  - b. Class C Beer – Swift Stop #7, 2700 Lincoln Way
  - c. Class C Liquor – Tip Top Lounge, 201 East Lincoln Way
  - d. Class C Beer – Casey’s General Store #2298, 428 Lincoln Way
  - e. Class C Liquor – Cyclone Liquors, 626 Lincoln Way
7. Motion approving 5-day (December 12-16) Class A Liquor License for Great Caterers of Iowa at CPMI Event Center, 2321 North Loop Drive
8. Motion approving Ownership Change of Class C Liquor License & Outdoor Service for Chipotle, 435 South Duff Avenue, Ste. 102
9. Motion approving 5-day (January 2-6) Class B Beer Permit for Olde Main at Reiman Gardens, 1407 University Boulevard
10. Motion approving Encroachment Permit for sign at 427 Douglas Avenue, Octagon Center for the Arts
11. RESOLUTION NO. 15-725 approving Agreement with Iowa Department of Transportation for Curb and Intake Repair on U.S. Highway 69 [North Grand Avenue (500' north of 16<sup>th</sup> Street to 900' north of 24<sup>th</sup> Street)]
12. RESOLUTION NO. 15-726 approving preliminary plans and specifications for Ada Hayden Heritage Park Service Line Project; setting January 5, 2016, as bid due date and January 12, 2016, as date of public hearing
13. RESOLUTION NO. 15-727 approving preliminary plans and specifications for Furman Aquatic Center Pool Basin Repainting project; setting January 6, 2016, as bid due date and January 12, 2016, as date of public hearing
14. RESOLUTION NO. 15-728 awarding contract to Keck Energy of Des Moines, Iowa, for purchase of fuel for CyRide for calendar year 2016
15. RESOLUTION NO. 15-729 waiving purchase policy requirement for competitive bidding for Testing Equipment and awarding contract to OMICRON Electronics Corporation USA of Houston, Texas, in the amount of \$75,284 (inclusive of Iowa sales tax)

16. RESOLUTION NO. 15-730 approving Change Order No. 2 in the amount of \$150,000 with General Electric International, Inc., of Omaha, Nebraska for Bid No. 2 Turbine Steam Seal System for Unit No. 8
17. RESOLUTION NO. 15-731 accepting completion of Methane Engine-Generator Set No. 2 Rehabilitation project at Water Pollution Control facility
18. RESOLUTION NO. 15-732 accepting partial completion of public improvements and reducing security for Quarry Estates Subdivision
19. RESOLUTION NO. 15-733 accepting completion of public utility improvement (12-inch water main installation) and releasing security for Dauntless Subdivision, 5<sup>th</sup> Addition
20. RESOLUTION NO. 15-734 approving Plat of Survey for 535 South Duff Avenue  
Roll Call Vote: 6-0. Resolutions/Motions declared adopted/approved unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

**COMMISSION ON THE ARTS (COTA) SPECIAL GRANTS FOR SPRING 2016:** Management Analyst Brian Phillips stated that he had asked this item be pulled from the Consent Agenda because, although the Council Action Form referenced three grant contracts to be approved, only the Octagon Center had returned the appropriate paperwork for its two grants. The paperwork from Co-Motion Dance Theater had not been returned; therefore, its grant contract should not be approved at this meeting.

Moved by Goodman, seconded by Betcher, to adopt RESOLUTION NO. NO. 15-724 approving the 2015/16 Spring Special Project Commission On The Arts grant contracts with the Octagon Center. Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

**PUBLIC FORUM:** Mayor Campbell opened Public Forum.

Trevin Ward, 1012 Grand Avenue, Ames, spoke on the construction of the roundabout at Airport Road and University Boulevard. Representing the Ames Bicycle Coalition (ABC), Mr. Ward expressed disappointment that none of the facilities for pedestrians or bicyclists around the roundabout have been completed. According to Mr. Ward, this presents a significant transportation problem for pedestrians and cyclists in this area, and the problem is further compounded by winter weather. Mr. Ward stated that he had talked to City staff about installing a temporary aggregate trail; however, he was told that was not possible due to a safety assessment by the City's Risk Assessment Office. Mr. Ward alleged that the intersection will pose a danger if it is opened up without accommodations for all residents who choose to use it by whatever mode of transportation. Mr. Ward asked the City to come up with a solution.

The Mayor closed Public Forum after no one requested to speak.

**OPTIONS FOR REGULATION OF E-CIGARETTES:** City Attorney Judy Parks introduced Jessica Spoden, an Assistant City Attorney. Ms. Spoden recalled that, in Fall 2014, Council had requested staff to assess enforcement and constitutional issues potentially associated with enacting a new ordinance banning the use of electronic nicotine delivery devices in public places. She stated that follow-up discussions had occurred at the April 14, 2015; May 26, 2015; and June 19, 2015, City

Council meetings. At the June 19, 2015, meeting, Council had requested that the City Attorney prepare options as to how and where the use of e-cigarettes could be regulated. According to Ms. Spoden, the City is preempted from enacting local regulations on alternative nicotine products and vapor products to the extent that the regulation pertains to: (1) age restrictions, (2) permitting requirements, (3) taxation, and (4) product placement. However, since Chapter 453A does not address regulations related to prohibiting the use of the products in public places and The Smoke-Free Air Act (Chapter 142D) does not include a provision on uniform application, the City is not likely preempted from enacting local regulation on this specific issue.

Ms. Spoden reported that the City of Iowa City had passed an ordinance restricting the use of e-cigarettes in the same places that tobacco cigarettes are restricted. The University of Iowa had also taken action regarding e-cigarettes. Staff has not yet obtained information from Iowa State University to determine whether the University planned to take any action regarding the use of these products.

The following options were explored by Ms. Spoden: (1) adopt an ordinance prohibiting the use of those types of products in the same places as are prohibited under The Smoke-Free Air Act; (2) adopt a policy similar to the City of Iowa City; (3) adopt an ordinance prohibiting the use of the products similar to the prohibitions proposed by Iowa State University; or (4) not prohibit the use of the products in any particular areas.

At the inquiry of Council Member Nelson, Ms. Spoden stated that if the City were to pass an Ordinance similar to Iowa City's, vehicles would be included. Mr. Nelson believed it would be unenforceable, especially if someone came into the City from another community.

Council Member Betcher asked what had been done in Story County. Ms. Spoden said Story County had proposed an ordinance; it is unknown if it had been adopted yet.

Brian Vanderheyden, 1501 Illinois Avenue, Ames, said he was speaking for himself and as a member of the Healthiest Ames Board. He said that that group supports Option 1. He noted that the products produce an aerosol, not a vapor. While the long-term health effects are not known, there is evidence that the products are not safe. According to Mr. Vanderheyden, a study released today from the Harvard School of Public Health found that two of the main flavorings contain toxic substances that are linked very strongly to lung disease. The Harvard study showed that 47 of the 51 "flavorings" tested contained toxic substances.

Darlen Woods, 103 S. Riverside, Ames, and Spencer Cain, 232 South Walnut, Ames, representing the ISU Health Promotion Club, told the Council that 600 ISU students and Ames residents were surveyed on the use of e-cigarettes. The majority of the respondents had a negative impression of e-cigarettes and would be less likely to frequent restaurants that allow the use of e-cigarettes. Ms. Woods and Mr. Cain urged the City to adopt an ordinance prohibiting e-cigarettes in public places.

Dr. John Shierholz, 4788 Copperstone Drive, Ames, also a member of Healthiest Ames, advised that he has been a physician in Ames for nearly 30 years. As a radiologist, he has seen the ill effects of the use of nicotine on the user and those who are breathing the end products. Dr. Shierholz encouraged the City to adopt as restrictive policy as possible to ban electronic cigarettes in public places.

Ashley Sitzman, 5416 Thackeray Drive, Ames, and Merrina Lan, 34D Schilletter Village, Ames, representing the Mayor's Youth Committee, urged the Council to prohibit electronic smoking devices from all public spaces. They reported that studies had revealed that the aerosol released from the devices can be especially harmful to children. A survey of 631 Ames High students and staff indicated that the majority of them did not want their families or themselves subjected to electronic smoking devices. They would also be less likely to visit restaurants or public spaces where the usage of such devices were allowed. The responses also indicated that, if they could vote, they would vote to prohibit electronic smoking devices in public places.

Christine DeCoudrealux, 1305 Georgia Avenue, #5, Ames, told the Council that there are over 450 brands of electronic smoking devices and none have been approved by the FDA. She indicated the danger posted from the liquid nicotine leaking from the devices and from the high levels of nicotine. Ms. DeCoudrealux urged the City to pass an ordinance prohibiting the usage of electronic smoking devices in all public places.

Jordan VanScoy, 225 N. Hyland, Ames, indicated that he is a student at Iowa State University in Kinesiology and Health. He noted that the number of young people speaking against the usage of electronic cigarettes in public places. Mr. VanScoy said that even though he is a student here and not a permanent resident, he would not feel right if he did not speak out against an issue that is detrimental to the health of those in the community.

Thomas Hodgson, 510 Lincoln Way, Boone, indicated that his wife is the owner of VAPE ON at 510 Lincoln Way in Ames. According to Mr. Hodgson, e-cigarettes are not totally evil in that many of his store's customers have indicated that since they have been using e-cigarettes, they have not picked up another cigarettes Mr. Hodgson said that if vaping is banned in public places, they would like to have the flavor-tasting booth in their store exempted.

Marcus Amman, 4416 Toronto Avenue, #4, Ames, advised that he just recently got out of the military. While in the military, he smoked cigarettes "pretty much non-stop." Since getting out of the military, he has been using e-cigarettes and has not had a cigarette. By using e-cigarettes, he has reduced his intake of nicotine significantly. Mr. Amman stated that he totally supports the use of e-cigarettes in large open outdoor areas, such as parks. He agrees that e-cigarettes should not be allowed in restaurants. According to Mr. Amman, Oxford University recently released findings that the only chemical left behind from second-hand vapor is nicotine, but it is much less than that in second-hand cigarette smoke.

Keith Abraham, Parks and Recreation Director, reported that smoking is allowed in City parks except within 50' of a sporting or recreation activity.

Aula Heder, 324 Welch, Ames, stated that she is a senior at Iowa State University in Kinesiology with a focus on community health. She asked the Council to support a ban on the usage of e-cigarettes in public places. Ms. Heder believes that that would be a good first step.

Denise Denton, 902 Douglas, Ames, representing the Story County Prevention and Policy Board, noted that the State bans the use of e-cigarettes by those under 18 years of age. Statistics from a study referenced by Ms. Denton indicated that the use of e-cigarettes seems to make it more likely that a person will go on to use tobacco products or other harmful substances. According to Ms. Denton, when there is inconsistency in regulating certain substances, seeing people using them reduces a young person's perception of harm. When the perception of harm goes down, usage goes up. Ms. Denton also reported that the use of e-cigarettes by young people is increasing.

Council Member Gartin commented would like to see the State Legislature take the lead on this issue.

At the inquiry of Council Member Betcher, Ms. Denton advised that Story County had adopted an ordinance in July 2015 banning the use of e-cigarettes on all County property (buildings, property, vehicles). The County Park Board will be discussing this issue in January 2016.

Spencer Cain, 232 South Walnut Avenue, Ames, read information that had been given to him by Senator Herman Quirmbach. Mr. Quirmbach advised that they intend to keep the pressure up at the State level pertaining to e-cigarettes.

Sara Kolbe, Boone, said that she works at a vape shop. Ms. Kolbe said that young people do what they see others do. Ms. Kolbe stated her belief that parents need to "parent" their children and teach them what not to do. She indicated that she has asthma and works in the vape shop Monday through Friday from 1 - 7 PM. Although Ms. Kolbe has an inhaler to assist her in breathing, but she said that she has never had to use it while she is working.

At the inquiry of Council Member Gartin, City Manager Schainker indicated that enforcement of a ban on e-cigarettes would be an issue. He said that, if the City adopts an ordinance banning the use of e-cigarettes in public places, the Council might want to think of who else besides the Police Department could enforce it. The Police would prefer not be involved in enforcement of such a ban.

Council Member Betcher pointed out that there are two other entities [Story County and Iowa State University (ISU)] who have properties within the Ames city limits. Those two entities have bans on the usage of e-cigarettes; so there are conflicts within the Ames community. Ms. Betcher believes that the City's regulations should be consistent with those other two entities.

Council Member Gartin expressed his frustration that Story County and/or ISU did not contact the City of Ames about its proposed e-cigarette bans and/or policies even though those would affect people within the Ames community. Mr. Gartin reported that he had several pointed conversations with representatives of those agencies, yet no one reached out to the City.

Council Member Orazem said that, from the information that had been provided, there are ill effects from the second-hand vapor, but it is less severe than that of tobacco products. He saw no problem with prohibiting e-cigarettes as indicated in Options 2, 3, 4, and 5. It also has been made clear that the liquid nicotine contained within the e-cigarettes is harmful, especially to children. Mr. Orazem suggested that the prohibition should read "in the presence of children."

Moved by Goodman, seconded by Corrieri, to approve Option 1 with a rule overlay that duplicates the current regulation involving cigarettes smoke. (Option 1 was to adopt an ordinance prohibiting

the use of e-cigarettes in the same places as smoking is prohibited under The Smoke-Free Air Act. This would prohibit the use of e-cigarettes in all public places and some private areas including: all enclosed areas within places of employment, the seating areas of outdoor sports arenas, stadiums, amphitheaters, and other entertainment venues where members of the general public assemble to witness entertainment events; outdoor seating or serving areas of restaurants; public transit stations, platforms, and shelters; school grounds, the grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions.

Mayor Campbell clarified that the result of the motion would actually be to direct the City Attorney to bring an ordinance back to Council for approval and then request that the Parks & Rec Commission implement rules that emulate those for cigarettes.

Discussion ensued as to whether “places of employment” should be included. Council Member Nelson felt that would be unenforceable.

Council Member Betcher said that she would be comfortable with Parks & Recreation Commission making the decision on rules on the usage of e-cigarettes for the parks.

It was clarified by City Attorney Parks that, under the Smoke-Free Air Act, there is an exemption for vaping stores.

Council Member Orazem commented that he is not comfortable prohibiting activities for which more information is not yet known.

Comments were made by Council Member Gartin that he would be supporting the motion; however, he felt the Legislature is the best place to make these prohibitions.

Vote on Motion: 5-1. Voting aye: Betcher, Corrieri, Gartin, Goodman, Nelson. Voting nay: Orazem. Motion declared carried.

The meeting recessed at 7:23 p.m. and reconvened at 7:30 p.m.

**ASSET FUNDING FOR 2016/17:** Management Analyst Brian Phillips recalled that, at the November 24, 2015, City Council meeting, the Council requested additional information regarding the ASSET requests. Specifically, the Council wanted to know how many clients had been turned away for each service in the most-recent complete fiscal year. According to Mr. Phillips, there are 75 individual services being requested for FY 2016/17. He provided a summary of the agencies’ responses to whether clients were turned away. Forty-three services did not turn any clients away. Thirteen services turned away clients. Five services had some clients turned away due to eligibility requirements not being met or violations of rules. The 13 services for which clients were turned away were predominantly child-care and sheltering programs. The average request for an increase in funding among those 13 services is 10.3%; however, of those 13 services, eight have a maximum licensed capacity. Five of the 13 services that turned away clients do not have a licensed capacity cap. It was stated by Mr. Phillips that, based solely on the budget information provided to ASSET, a conclusion could be drawn that additional funds for those five services would have a direct effect in serving more clients.

Mr. Phillips also advised that, in the process of retrieving the requested information, City staff discovered that one request had been omitted from the information previously presented to the Council. The total request for City-funded services has, therefore, been revised to \$1,375,822 for FY 2016/17, which is a 13.5% increase over the current year's allocation.

Mr. Phillips explained that the City Council was being asked to establish the amount of funding to be considered by the ASSET volunteers when making their recommendations for FY 2016/17. ASSET hearings will occur on January 5 and 6, 2016, and recommendations will be made official at the January 21, 2016, ASSET and Joint Funders' meeting. City staff had been told that United Way and Story County are each considering a 5% increase. Over the past six years, United Way has averaged a 4.5% increase annually; ISU Student Government has averaged a 3.7% increase; and Story County has averaged a 2.5% annual increase, excluding 2015/16, which was the year when mental health services were shifted towards being regional.

Although the information on the number of clients turned away is good to have, Council Member Corrieri suggested that ASSET volunteer panels should be the ones who make the decision as far as what agencies have the capacity to serve more clients and what level of funding should be made available to those agencies. The ASSET volunteers will ask more questions based on the information about the number of clients turned away.

Council Member Gartin pointed out that statistics provided show that the Emergency Residence Project indicates that persons using shelter in Ames are coming from areas outside of Ames, e.g., the Des Moines Metro area and even from other states. The people being served by the Shelter do not appear to be from Ames. Mr. Gartin expressed his concerns about how the ASSET resources are being appropriated and who is utilizing the services made possible by ASSET funding.

Moved by Corrieri, seconded by Betcher, to approve a 5.5% increase in ASSET funding for 2016/17.

Council Member Goodman indicated that the need for services is much greater than that, and he would like to provide a little more. The ASSET volunteers would ultimately make the decision if additional funding is warranted for the agencies. Council Member Corrieri indicated that the agencies are always going to ask for more funding; that is just the nature of how it works. She said she doesn't want to throw the entire process out of balance with the City becoming such a large portion of the funding; it should be an equal partner with the other funders that are participating. Council Member Betcher agreed, stating that she does not want the City to be the primary funder. Council Member Goodman said that being an equal partner does not supersede the needs. He alluded to the City's passing of the Local Option Sales Tax; said fund is to be allocated to the arts, human services, and community betterment.

Vote on Motion: 5-1. Voting aye: Betcher, Corrieri, Gartin, Nelson, Orazem. Voting nay: Goodman. Motion declared carried.

**REQUEST FROM AMES ECONOMIC DEVELOPMENT COMMISSION (AEDC) FOR DONORS TO AIRPORT HANGAR TO BE GIVEN FIRST RIGHT OR NOTIFICATION:** city Manager Steve Schainker advised that the leadership of the AEDC continues its efforts to raise \$1,000,000 to finance the construction of a new hangar that is designed primarily to house corporate aircraft for short-term stays at the Ames Municipal Airport. Since that effort is slightly short of its

goal, the fund-raisers are attempting to identify creative ways to entice more private sector giving. He noted that a request from the AEDC asking that the City extend a “Right of Notification” to those interested in investing in the new Airport hangar at a level of \$50,000 or more was referred by the City Council on November 24, 2015.

Mr. Schainker explained that the Right of Notification will require the Fixed-Base Operator (FBO) to notify any of the private donors to the Airport Hangar project who contributed \$50,000 or more when space in the new hangar is available for lease. Those donors would still pay market-rate rent for space in the new hangar, as negotiated with the FBO. The Right of Notification does not bind the FBO to lease only to those donors; however, it will ensure that the qualifying donors are aware of the space in the new hangar when it becomes available, as determined by the FBO. Representatives from the AEDC currently anticipate that four companies will qualify for the notification right.

It was emphasized by the City Manager that, in order to formally satisfy the request, the Right of Notification will have to be added to the new FBO Contract that will hopefully be negotiated in Spring 2016. He also advised that, since the Notification requirement does not seem to inhibit the FBO in any way; the risk of the FBO rejecting the projecting the provision appears to be remote.

Council Member Betcher referenced an excerpt in Dan Culhane’s letter pertaining to “striking a balance between visiting aircraft and permanent aircraft.” She asked if it were possible to have a lifetime lease of the hangar. City Manager Schainker noted that the City would have to discuss that with the FBO when it gets to that point. Ms. Betcher then raised a question about what would happen if this were not approved and/or there were not additional donors. Mr. Schainker answered that if the private sector did not provide additional funding, it would fall back on Iowa State University to fill in the gap. He noted that it might ultimately affect the Ames Economic Development Commission, however, because the University would cut back on its contributions to that agency.

Moved by Betcher, seconded by Orazem, to approve the request to provide a Right of Notification to those private donors to the new Airport Hangar who contribute \$50,000 or more towards the project.

According to City Manager Schainker, this provision will be included in the FBO contract that will ultimately be drawn up by the City.

Council Member Goodman wanted assurance that this would not constitute a First Right of Refusal. City Manager Schainker replied that he believes that the FBO can contact anybody; the City does not control that. Council Member Goodman asked who would make the decision as to whom to rent the hangar. Traffic Engineer Damion Pregitzer advised that the only basis on what that decision can be made is that the person/company has a functional aircraft. Because the airport receives federal funding, the FBO can’t base the decision on anything other than the lessee must have a functioning plane. Mr. Goodman want to ensure that the hangar availability notification would be made to everyone at the same time. Again, City Manager Schainker noted that this will be part of the contract with the FBO when that time comes.

Council Member Nelson indicated that he would be abstaining from the vote due to a conflict of interest.



Vote on Motion: 5-0-1. Voting aye: Betcher, Corrieri, Gartin, Goodman, Orazem. Voting nay: None. Abstaining due to a conflict of interest: Nelson. Motion declared carried.

**REQUEST OF FIRST NATIONAL BANK PERTAINING TO EASTGATE SUBDIVISION:**

Management Analyst Phillips advised that First National Bank owns 12 lots within the Eastgate Subdivision, which is located near East 13<sup>th</sup> Street and Dayton Avenue. In 1998, the original Eastgate developer signed a Development Agreement promising payment for improvements to roads and utilities in the area. The development was the subject of a bankruptcy proceeding, and in 2001, the City entered into a Covenant that modified the owner's public infrastructure obligations. The Covenant was intended to clarify the owner's obligations and more strictly bind the property owner to pay for improvements earlier than required under the Development Agreement. The property was ultimately acquired by First National Bank through the bankruptcy proceeding. The Covenant requires payment to the City for the estimated costs of widening Dayton Avenue for a turn lane and for connections to water and sewer services. Payment is to be made upon the sale or transfer of each lot.

Mr. Phillips noted that the water and sewer connection fees have all been paid; only the road widening costs remain outstanding. Those costs were revised in 2004 to reflect increased construction costs. The amount outstanding for the 12 lots remaining in the Subdivision is \$94,710.

According to Mr. Phillips, First National Bank has now requested that it be allowed to sell the properties to its holding company (Ames National Corporation) without being required to pay the outstanding road assessment. The rationale for the transfer is that federal regulations prohibit national banks from holding real estate for periods greater than ten years. December 15, 2015, will mark the ten-year anniversary of First National Bank's acquisition of the properties. City staff previously had recommended that deferring payment for the road widening costs should be made contingent upon a revision in the amount owed, since construction costs have increased since the time when the assessment was last revised. First National Bank has requested that the construction cost not be revised because this transaction is to a corporation with essentially the same ownership. It further believes that an increase in the assessment amount will make the lots more difficult to sell for development.

It was reported by Mr. Phillips that the Covenant indicates that the original cost estimate for the road widening was only binding until May 1, 2001. The City Council revised the construction cost in November 2004; however, staff believes that the City Council has the option in the future to again unilaterally revise the construction cost estimate in response to construction cost inflation, and therefore, adjust the amount owed per lot for the widening of Dayton Road. Assistant City Attorney Spoden emphasized that the request to transfer the ownership of the property does not preclude adjustments in the construction cost estimate from being made in the future.

According to Mr. Phillips, modifying the Covenant and Development Agreement will have two additional effects: (1) It will allow the Development Agreement to be clarified as to what components remain incomplete and in what manner those components have been superseded by the Covenant, and (2) It will extend the duration of the Covenant another 21 years from the date of revision. Currently, the Covenant is only binding until February 2022.

Council Member Goodman asked what would happen if Ames National Corporation would retain and develop one or more of the lots itself. Assistant City Attorney Spoden said that the Covenant and

Development Agreement could be modified to state that the fees would be payable upon the sale and/or development of the lot(s). Scott Bauer, First National Bank, indicated that Ames National Corporation would not be developing any of the lots.

Moved by Goodman, seconded by Corrieri, to adopt RESOLUTION NO. 15-735 approving modifications to the Covenant and Development Agreement with First National Bank for the Eastgate Subdivision to allow properties to be sold to Ames National Corporation without requiring payment for road widening costs, with the small change to state that the fees would be payable upon the sale and/or development of the lot(s).

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

**2017 - 2021 FEDERAL AIRPORT IMPROVEMENT PLAN:** Traffic Engineer Damion Pregitzer explained that it is an annual requirement of the Federal Aviation Administration (FAA) that the City submit an Airport Improvement Program (AIP) to the FAA showing the next five federal fiscal years of airport projects. The information in the AIP is then copied into the Airport Improvements Program of the City's own Capital Improvement Plan to ensure the obligation of local matching funds required for each project. Mr. Pregitzer summarized the proposed AIP 5-Year Program. It was noted that the remaining projects are in the Long-Range Needs Assessment, which are the remaining steps necessary to extend the Main Runway 01/19 to a length of approximately 8,000 feet. That will include land acquisition in 2022, grading in 2023, road alignment in 2024, and paving in 2025.

Moved by Corrieri, seconded by Nelson, to adopt RESOLUTION NO. 15-736 approving the 2017-2021 Federal Airport Improvement Plan.

Roll Call Vote: 5-1. Voting aye: Betcher, Corrieri, Gartin, Nelson, Orazem. Voting nay: Goodman. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these Minutes.

**AGREEMENTS PERTAINING TO UNMANNED AIRCRAFT SYSTEMS WITHIN AMES AIRSPACE FOR CALENDAR YEAR 2016:** Traffic Engineer Pregitzer stated that, on June 9, 2015, City Council granted an interim approval to Hunziker Development to operate an Unmanned Aerial Vehicle (UAV) a/k/a a drone, within the airspace controlled by the Ames Municipal Airport. It should be noted that the approval for Hunziker expires on December 31, 2015. On November 10, 2015, the City Council granted special approval to Hunziker to take video from the public right-of-way of Downtown, Campustown, Somerset, and the South Duff business districts, as well as various City parks. In recent months, staff has been approached by Terry Lankford and Kevin Buck with Skeye 1 LLC, a business that provides UAV Services, which is also seeking approval to to operate a drone within the Ames area. Skeye 1 LLC has submitted its FAA Certificate of Authorization and insurance as required of all commercial UAS operators. Skeye 1 LLC provides data collection services, such as agricultural surveys, aerial photography, and topographic surveys using post processing software. Mr. Pregitzer noted that the FAA approval, like Hunziker, limits Skeye's operation to line-of-sight and daytime hours only. It is also subjected to all the same state and federal standards as Hunziker (and all UAS operators).

According to Mr. Pregitzer, the proposed agreements would authorize Hunziker and Skeye 1 LLC to operate within the five-mile area around the Ames Airport for the calendar year 2016. Each entity will be subjected to all applicable state and federal rules, as well as any specific requirements outlined in their Certificates of Authorization. Because of the ongoing evolution in regulations and standards on

a national level, City staff has not yet been able to complete a comprehensive, specific policy and standards for the City of Ames. Therefore, the Agreements with Skeye and Hunziker refer to two documents that will be established as new information becomes available: (1) The Ames Administrative Policy on UAS Operations and (2) the Ames Minimum Operating Standards for UAVs. This will allow for flexibility in those documents to be approved and updated without requiring each user to enter into a new agreement.

City Attorney Parks told the Council that the Agreements with Hunziker Development and Skeye 1, LLC, pretty much mirror each other. There is one exception in that staff had learned that Skeye had been deleted from the Secretary of State's corporation listing, as it is not currently in good standing. Ms. Parks advised that Skeye was now in the process of getting that rectified.

Council Member Betcher commented that when Hunziker first came to the City for approval of its UAS, she was concerned that the City did not a policy governing the use of UAS devices. Council voted to approve Hunziker's first request with the understanding that information would be gleaned that would assist the City in its creation of such a policy. Now there has been another request, and the City still doesn't have a policy. Ms. Betcher asked if it could be mandated that the City get feedback from the second company if its request would be approved. Mr. Pregitzer indicated that he felt the City would get information twice as fast.

Moved by Goodman, seconded by Corrieri, to adopt RESOLUTION NO. 15-737 approving the Agreements with Hunziker Development and Skeye !, LLC, to allow operation of Unmanned Aircraft Systems within Ames airspace for Calendar Year 2016.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

**ELECTRIC REVENUE BONDS IN AN AMOUNT NOT TO EXCEED \$10,360,000:** Finance Director Pitcher told the Council that bids were received today on the sale of approximately \$10,350,000 in bonds. Suzanne Gerlach, PFM, the City's Financial Advisor, advised that three bids from over 30 firms were received. The bids ranged from 2.14 to 2.19% over 12 years. According to Ms. Gerlach, there was an exceptional premium on the bonds. Hutchison, Shockey, Erley & Co., of Chicago, Illinois, came in with the best bid at 2.1444%.

Moved by Betcher, seconded by Corrieri, to adopt RESOLUTION NO. 15-738 accepting bids and authorizing sale and issuance of Electric Revenue Bonds in an amount not to exceed \$10,360,000 to Hutchison, Shockey, Erley & Co., of Chicago, Illinois.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

**TAX ABATEMENT FOR 2320 LINCOLN WAY:** Planning and Housing Director Kelly Diekmann reviewed the history behind this request.

Moved by Gartin, seconded by Nelson, to adopt RESOLUTION NO. 15-739 approving the final tax abatement for 2320 Lincoln Way.

Roll Call Vote: 5-0-1. Voting aye: Betcher, Corrieri, Gartin, Nelson, Orazem. Voting nay: None. Abstaining due to a conflict of interest: Goodman. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these Minutes.

**AMENDMENT TO CAMPUSTOWN URBAN REVITALIZATION PLAN:** Director Diekmann recalled that the City Council had reviewed potential changes to the Campustown Urban Revitalization Plan Criteria on both June 9, 2015, and September 8, 2015. Council had directed staff to include amendments to the URA Criteria that addressed nine different issues. He indicated that staff had added minor changes to clarify that a small production facility is an allowed use on the ground floor of a mixed-use building as is permitted with the CSC zoning and that front facade means all front facades of a corner building.

Mr. Diekmann detailed the requirements for Non-Formula Retail. He noted that it was important for the Council to review the appendix of Attachment A. Staff had clarified how to administer the occupancy requirement. Under the staff's recommendation, Occupancy of Non-Formula Retail space will be required at the time of initial approval of tax abatement, but, that space will not be required to be continuously occupied during the life of tax abatement. This covers two scenarios that could arise over a ten-year tax abatement: (1) The business grows after it is initially located in Campustown and exceeds the ten location limit, and (2) It addresses a circumstance that a business may fail and that the space could be vacant while searching for a new tenant. However, only a new Non-Formula Retail tenant could then occupy the required space reserved for Non-Formula Retail. The appendix also clarifies that to be eligible for tax abatement, a project must be in compliance with a site development plan, have building occupancy, and maintain required features for the life of the tax abatement. An application for final tax abatement approval must include documentation from the property owner in support of a finding of compliance with the Criteria.

At the inquiry of Council Member Gartin, Director Diekmann advised that the Campustown Action Association has not had a board meeting since the amendment to the Campustown Urban Revitalization Plan had been prepared.

Russell Broderick, real estate professional with Gilbane Development, which is the owner of 2310 Lincoln Way and 2311 Chamberlain, indicated that the tax abatement program in place in the City of Ames is very effective. It is one of the reasons Gilbane chose to develop in Ames. Mr. Broderick told the Council that the proposed alterations as presented will basically nullify the benefit of the tax abatement. He explained that, with the occupancy criteria now being included, investors and banks will see that as a risk factor. Mr. Broderick believes that developers can't control when they sign a tenant and presents a challenge from an underwriting standpoint. The developer has to put in a parking structure and have brick exteriors on the buildings, which are very expensive; these are required. Mr. Broderick also alleged that the sliding scale is inequitable. Mr. Broderick said that he is not against the Non-Formula Retail concept; his challenge is with the occupancy criteria. He believes that Campustown is the right place for retail, and it is important to have the space leased-up and be active. That is their intent, but the leasing of the space/the timing of the lease is not under the control of the building's owner.

Council Member Gartin explained that the Council is concerned that if the overall project is cash-flowing without all the retail space being occupied, the spaces might be allowed to remain vacant. Mr. Broderick said he did not understand why any real estate professional would let space remain vacant.

Speaking to Gilbane's project located at 2311 Chamberlain Avenue, Mr. Broderick recalled that a Prior Approval for Tax Abatement request had been submitted on March 31, 2015; however, the

request to change the criteria did not come out until December 4, 2015. The Building Permit application was submitted before the staff report was complete; that staff report did not reference an occupancy requirement. This project is now five and one-half months into the project. Mr. Broderick acknowledged that the tax abatement has not yet been approved; however, the occupancy requirement was not included when this project started and the developer did not include it when talking to the underwriter. Mr. Broderick said they began this project agreeing to a set of standards, and if the Plan amendment is approved, those standards would change.

Ryan Jeffrey, Business Improvement Director for Campustown Action Association (CAA), indicated that the CAA would rather forgo the occupancy requirement criteria rather than risk the destruction of the tax abatement system for the project located at 2311 Chamberlain. The CAA believes that the occupancy requirement trigger is a good idea in general, but in this case, it doesn't seem to work and could "torpedo" the project.

Council Member Betcher asked Mr. Jeffrey if he knows the cost of rent for the older Campustown buildings. Answering, Mr. Jeffrey advised that rents in the older portion of Campustown seem to rent between \$15 and \$24/square foot.

Council Member Betcher raised the possibility of incentivizing the rental of areas in new buildings. If the buildings are cash-flowing with empty retail space, couldn't the same be true if the rents were lowered to incentivize retail.

Council Member Goodman expressed his concerns over not having occupancy as a piece of the criteria. He would like to give this a little time to see what would happen. Because of the large numbers of the cash flow of the project in general, the occupancy requirement might not be a big deal.

Moved by Goodman to adopt RESOLUTION NO. 15-740 approving Alternative No. 1, approving the Amendment to the Campustown Urban Revitalization Plan, with the addition that the project at 2311 Chamberlain Avenue be exempted.

Council Member Betcher asked if Council could first act on the Amendment without the exemption for 2311 Chamberlain Avenue.

Director Diekmann advised that the Council can't approve a Plan and then approve an exemption to it. Under a separate motion, the Council could approve a project where the improvements are completed by a certain date, e.g., December 31, 2016.

Motion withdrawn.

Council Member Gartin commented that to him this is a matter of fairness. The rules would in essence be changed after the developer was over five months into this project. Mr. Gartin expressed his concern that if that would be allowed, it would be setting a dangerous precedent. Director Diekmann explained that it would not be setting a precedent because each request for tax abatement is independent; each one is not the same.

Council Member Goodman again pointed out that the developer would have no incentive to lease up the retail space if the occupancy requirement were to be taken out.

According to Council Member Orazem, forcing the space to be occupied by a certain renter and requiring occupancy by a certain date would drive the rents up. The cost of financing the project would increase. He believes that could put the entire project at risk.

Council Member Corrieri asked if there would be any value in getting additional feedback from Campustown. Director Diekmann asked to whom staff would reach out, as they had already done that. Mr. Broderick brought forward the developer's prospective tonight; staff didn't have that previously.

Moved by Goodman, seconded by Betcher, to adopt RESOLUTION NO. 15-740 approving Option 1, which is to amend the Campustown Urban Revitalization Plan with the criteria included in Attachment A.

Director Diekmann offered that Council could approve an option, could delay the effective date for the standards, or it could ask staff to come back at the next meeting with the correct language to do with exempting a certain time frame for projects.

Council Member Betcher expressed her concerns about the variation in the total retail square footage being required for different tax abatement projects.

Council Member Orazem suggested that there be a separate incentive for the non-formula retail. Director Diekmann said that he would have to get clarification from the City Assessor on that.

Motion withdrawn.

Moved by Gartin to approve Option 1, with a modification to Column C, striking the second paragraph pertaining to the occupancy requirement, with the corresponding change to the Appendix.

Motion died for lack of a second.

Council Member Goodman said his desire was to send the occupancy and percentage issues to the CAA Board to get input.

Moved by Orazem, seconded by Goodman, to continue the hearing until January 12, 2016, to allow feedback from the CAA Board to be received.

Council Member Orazem asked to know the options to bifurcate the requirement so that the entire project is not being put at risk on the basis of that criteria; in other words, have a qualifying tax abatement known up front with no uncertainty. Director Diekmann stated that they couldn't get the bank financing answer, but staff could talk to the Assessor.

Vote on Motion: 6-0. Motion declared carried unanimously.

Moved by Goodman, seconded by Betcher, to get feedback from the CAA on the percentage, sliding scale, and the occupancy conversation and add the bifurcation concept.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

**ORDINANCE SETTING PARKING REGULATIONS FOR NEW AND/OR EXTENDED STREETS:** Moved by Goodman, seconded by Corrieri, to pass on first reading an ordinance setting parking regulations for new streets (Aberdeen Drive, Aldrin Avenue, Allerton Drive, Bellflower Drive, Brighton Circle, and Cartier Avenue) and/or extended streets (Coy Street, Dotson Drive).  
Roll Call Vote: 6-0. Motion declared carried unanimously.

**ORDINANCE REVISING CHAPTER 23 PERTAINING TO BICYCLE PLANS AND BIKEWAYS:** Moved by Goodman, seconded by Corrieri, to pass on second reading an ordinance revising Chapter 23 pertaining to Bicycle Plans and Bikeways.  
Roll Call Vote: 6-0. Motion declared carried unanimously.

**ORDINANCE REZONING PROPERTY AT 205 SOUTH WILMOTH AVENUE:** Moved by Goodman, seconded by Corrieri, to pass on second reading an ordinance rezoning property at 205 South Wilmoth Avenue from Residential Low Density (RL) to Residential High Density (RH).  
Roll Call Vote: 6-0. Motion declared carried unanimously.

**ORDINANCE REZONING PROPERTY AT 101, 105, AND 107 SOUTH WILMOTH AVENUE:** Moved by Goodman, seconded by Corrieri, to pass on second reading an ordinance rezoning property at 101, 105, and 107 South Wilmoth Avenue from Residential High Density (RH) with University West Impact Overlay to Residential High Density (RH).  
Roll Call Vote: 6-0. Motion declared carried unanimously.

**ORDINANCE ESTABLISHING SOUTH WILMOTH AVENUE URBAN REVITALIZATION AREA:** Moved by Goodman, seconded by Corrieri, to pass on second reading an ordinance establishing the South Wilmoth Avenue Urban Revitalization Area.  
Roll Call Vote: 6-0. Motion declared carried unanimously.

**ORDINANCE REZONING PROPERTY AT 516 SOUTH 17<sup>TH</sup> STREET:** Moved by Goodman, seconded by Betcher, to pass on second reading an ordinance rezoning property at 516 South 17<sup>th</sup> Street from Highway-Oriented Commercial (HOC) to Residential High Density (RH).  
Roll Call Vote: 6-0. Motion declared carried unanimously.

**ORDINANCE PERTAINING TO SOLAR ENERGY SYSTEMS REGULATIONS:** Moved by Nelson, seconded by Gartin, to adopt ORDINANCE NO. 4236 pertaining to solar energy systems regulations.  
Roll Call Vote: 6-0. Ordinance declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

**COUNCIL COMMENTS:** Moved by Nelson, seconded by Orazem, to refer to staff the request outlined in the ISU Student Government Senate's Resolution of support for changing the parking restrictions on Welch Avenue between Storm Street and Lincoln Way, on Chamberlain between Hayward and Lynn, to allow for parking between 3 and 6 AM on Friday, Saturday, and Sunday.  
Vote on Motion: 6-0. Motion declared carried unanimously.

Moved by Goodman, seconded by Gartin, to refer to a future agenda the email from Trevin Ward, on behalf of the Ames Bicycle Coalition, pertaining to winter pedestrian and bicycle accommodations at Airport Road and University.

Vote on Motion: 6-0. Motion declared carried unanimously.

**ADJOURNMENT:** Moved by Betcher to adjourn the meeting at 9:43 p.m.

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Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor