

MINUTES OF THE REGULAR MEETING OF THE AMES CITY COUNCIL

AMES, IOWA

OCTOBER 9, 2012

The regular meeting of the Ames City Council was called to order by Mayor Ann Campbell at 7:00 p.m. on October 9, 2012, in the City Council Chambers in City Hall, 515 Clark Avenue. Present from the Ames City Council were Jeremy Davis, Matthew Goodman, Jami Larson, Peter Orazem, and Victoria Szopinski. Council Member Tom Wacha was brought in telephonically at 9:38 p.m. *Ex officio* Member Sawyer Baker was also present.

Mayor Campbell announced that the Council would be working from an Amended Agenda. The additional item pertaining to the Library's purchase of Radio Frequency Identification equipment, would follow Item No. 18. She also brought the Council's attention to a revised Council Action Form for Item No. 22; the correct amount for the State Revolving Fund Sewer Revenue Loan and Disbursement Agreement is in an amount not to exceed \$3,121,000. Item No. 20 pertaining to the MEC Interconnection 161-kV Transmission Line was pulled by staff, and Item No. 25, Flood Damage - Bank Erosion (326 North Russell Drive and Stuart Smith Park) will be a report of bids only.

PROCLAMATION FOR CHARACTER COUNTS! WEEK: Mayor Campbell proclaimed the week of October 21 - 27, 2012, as Character Counts! Week. Accepting the Proclamation were Erin Kennedy, Mary Jo Mattila, and Police Chief Chuck Cychosz.

CONSENT AGENDA: Moved by Davis, seconded by Larson, to approve the following items on the Consent Agenda:

1. Motion approving payment of claims
2. Motion approving Minutes of Special Meetings of September 17, 2012, and October 4, 2012, and Regular Meeting of September 25, 2012
3. Motion setting December 4, 2012, and December 18, 2012, as Regular Council Meeting dates; and January 29, 2013, as a Special Council Meeting date
4. Motion approving certification of civil service applicants
5. Motion approving Report of Contract Change Orders for September 16-30, 2012
6. Motion approving renewal of the following beer permits, wine permits, and liquor licenses:
 - a. Class C Liquor – London Underground, 212 Main Street
 - b. Class C Liquor – Angie's Cantina, 2414-2416 Lincoln Way
 - c. Special Class C Liquor – Le's Restaurant, 113 Colorado Avenue
 - d. Class C Beer & B Wine – Aldi, Inc., #48, 1301 Buckeye Avenue
7. RESOLUTION NO. 12-529 approving Kathranne Knight to fill vacancy on Public Art Commission
8. RESOLUTION NO. 12-530 approving addition of five street lights in Ringgenberg Park Subdivision, 3rd Addition, per existing Street Lighting Agreement with Alliant Energy
9. RESOLUTION NO. 12-531 approving preliminary plans and specifications for Ames Public Library Renovation Project; setting November 15, 2012, as bid due date and November 27, 2012, as date of public hearing
10. RESOLUTION NO. 12-532 awarding a contract to Environmental Edge, of Ottumwa, IA, for Fall 2012 Asbestos Removal for the Power Plant in the amount of \$77,500
11. RESOLUTION NO. 12-533 approving contract and bond for South Duff Avenue/Southeast 16th Street Frontage Road
12. RESOLUTION NO. 12-534 approving contract and bond for 2008/09 and 2009/10 Skunk River Trail Extension (Hunziker Youth Sports Complex to Southeast 16th Street)
13. RESOLUTION NO. 12-535 accepting completion of 2008/09 Arterial Street Pavement

Improvement Project (North Dakota Avenue)

14. RESOLUTION NO. 12-536 approving Plat of Survey for 517 Grand Avenue

Roll Call Vote: 5-0. Resolutions/Motions declared adopted/approved unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

PUBLIC FORUM: No one spoke during this time.

IOWA STATE UNIVERSITY (ISU) HOMECOMING REQUESTS FOR OCTOBER 26,

2012: Mayor Campbell announced that, per information received from City staff, Lynn Avenue will not need to be closed to facilitate this event.

Iowa State University Homecoming Chairpersons Alicia Snyder and Morgan Foldes were present. Ms. Snyder noted that this year marks the 100th anniversary of Homecoming observances at Iowa State University. Several of the activities that will be happening this year were highlighted by Ms. Foldes.

Moved by Davis, seconded by Szopinski, to adopt/approve the following:

- a. RESOLUTION NO. 12-537 approving closure of portions of Ash Avenue, Gray Avenue, Pearson Avenue, and Sunset Drive between 6:30 p.m. and 11:00 p.m.
- b. Motion approving temporary obstruction permit for area inside street closures
- c. Motion approving Fireworks Permit for ground effects fireworks shoot on Central Campus at midnight on October 27

Roll Call Vote: 5-0. Resolutions/Motions declared adopted/approved unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

REQUEST FROM MAIN STREET CULTURAL DISTRICT (MSCD) FOR DOWNTOWN EMPLOYEE PARKING HANG TAG PILOT PROGRAM:

Traffic Engineer Damion Pregitzer stated that the MSCD had submitted a proposal to the City to improve the parking situation for employees who work in Downtown Ames. Currently, employees in the Downtown have three options: metered spaces, two- or four-hour spaces in City lots, or 24-hour Reserved spaces at a cost of \$35/month. The MSCD's proposal was to add an Employee Hang Tag option that would allow employees to park for a period of nine hours in the four-hour spaces in the Central Business District (CBD) Lots X, Y, and Z only. The cost of the Tag would be \$144 annually (\$12/month). It was anticipated that the pilot program would be evaluated after one year.

Mr. Pregitzer explained that this proposal was a follow-up to a 2011 survey conducted by the MSCD asking Downtown employees whether they would support an Employee Hang-Tag Program. It was noted that, at the time the survey was given, employees taking the survey based their responses upon a proposed annual fee of \$120 (\$10/month).

A brief revenue analysis based on the results of the survey as to what impact the pilot program could potentially have on the City's Parking Fund was provided by Mr. Pregitzer. He noted that the analysis took into account the potential lost revenue by employees terminating their 24-hour rental spaces and switching to the lower-cost hang tag option as well as the potential revenue gain by new hang tag users who are not currently paying for parking. The City would need to sell at least 73 hang tags at an annual cost of \$144 for the Parking Fund to break even. However, as indicated by the MSCD survey, only 42 people said that they would purchase a hang tag, while 19 more indicated that they *may* purchase a hang tag (42 to 61 potential participants).

Therefore, if only 42 employees ultimately purchase a hang tag, the annual cost of the tag would have to be \$250 (approximately \$21/month) in order to generate enough revenue to break even.

Four potential options were outlined by Mr. Pregitzer:

1. Approve a 1-Year Pilot Employee Hang Tag Program at the annual cost of \$144/year (\$12/month). According to Mr. Pregitzer, this is the preferred option of the Main Street Cultural District representing the desire of the Downtown businesses to have an all-day parking option for their employees. However, based upon the survey this option could potentially result in a net loss in revenue for the Parking Fund. If the Hang Tag Program continues at the estimated rate in the future, parking fees may need to be adjusted to offset the loss.
2. Approve a 1-Year Pilot Employee Hang Tag Program at the annual cost of \$144/year (\$12/month) – Requiring Minimum Presale. This option would use the same conditions as in Option 1 but add the requirement of the Main Street Cultural District to pre-sell a minimum number of hang tags needed to ensure that the Parking Fund breaks even. Under this option, prior to the start of the pilot year and issuance of any hang tags, at least 73 people must commit to participating in the Hang Tag Program. Payments of cash or by check would be held by the City until the start of the Program. Those payments would be fully refunded if the minimum sold threshold was not met. This option would provide for a hang tag cost in line with what is preferred by the MSCD, yet eliminate the financial risk to the City's Parking Fund.
3. Approve a 1-Year Pilot Employee Hang Tag Program at the annual cost of \$250/year (approximately \$21/month). This option reflects a more conservative estimate of the number of employees (42) who will purchase the hang tags. As a result of this lower participation as compared to the first two options, the annual hang tag fee would have to be greater (approximately \$250/month).
4. Do Not Approve a 1-Year Pilot Employee Hang Tag Program. Mr. Pregitzer pointed out that, with the closure of the Innova office building on Main Street, the demand for employee parking in the area has decreased substantially to the point a change might no longer be needed.

City Manager Schainker noted that it was difficult to arrive at an accurate analysis of the impacts to the Parking Fund because there were a lot of unknowns. Mr. Pregitzer pointed out that was why it was being called a pilot program as it would be evaluated after one year.

Mr. Schainker recalled that the President of the Ames Historical Society (AHS) had sent a letter to the City Council on September 28, 2011, voicing opposition to a hang tag system that would offer parking for less than the market rate in the Downtown. It was noted that the Historical Society currently rents spaces on its property at 120-5th Street at a cost of \$25/month and was concerned that a Hang Tag Program could negatively impact its ability to generate enough revenue to pay its bank loan, snow removal, and property taxes. Upon being asked, Mr. Pregitzer replied that he was unsure if the AHS allows 24-hour parking in its lot.

Tom Drenthe, Director of the MSCD, 312 Main Street, Ames, advised that the MSCD has had discussions with Bob Bourne, President of the AHS Board. Mr. Drenthe explained that the

District in no way wanted the Hang Tag Program to adversely affect private parking options or the City's Parking Fund. He described the proposed program as a way for employees in the Downtown not to have to move their vehicles every four hours. It is a method to increase employee productivity at the businesses as if there is only one person working at the time and that person has to leave the store to move his or her vehicle, the store has to close momentarily. Mr. Drenthe provided a copy of an email from Mr. Bourne to the MSCD advising that if the AHS has a noticeable decline in revenue from the lot due to the Hang Tag Program, he will contact the MSCD.

Mr. Drenthe advised that Options No. 2 or No. 3 from the Council Action Form would not meet the objective of the proposed Hang Tag Program. He encouraged the Council to approve Option No. 1. The Council was told by Mr. Drenthe that the MSCD intends it to be a pilot program.

Council Member Goodman stated that he believes requiring a minimum pre-sale would be an acceptable option in order to prove the need for such a Program and ensure that the Parking Fund remains viable.

At the inquiry of Council Member Orazem, Mr. Drenthe advised that it is unknown how many people actually work in the Downtown who might use the Hang Tag Program. Mr. Pregitzer added that it is not proposed for the Hang Tag to be specific to any employee; the Tag may be moved from vehicle to vehicle. He also added that having a hang tag would not guarantee a parking spot. According to Mr. Pregitzer, there are 65 Reserved spaces in the City lots, of which 35 are currently rented. Council Member Larson suggested that the non-rented Reserved spaces be used for the pilot program.

Moved by Goodman, seconded by Larson, to approve Option 2 [approving a one-year pilot Employee Hang Tag Program at the annual cost of \$144/year (\$12/month) requiring a minimum presale].

Vote on Motion: 5-0. Motion declared carried unanimously.

TRAFFIC CALMING STUDIES: Traffic Engineer Pregitzer advised what constituted traffic-calming measures. He recalled that, on December 20, 2011, the City Council had referred to staff to analyze, using the new Neighborhood Traffic Calming Handbook: (1) Hayes Avenue between 24th Street and 20th street, (2) Ridgewood/Summit/Crescent streets between 16th Street and 13th Street, and (3) Jewel/Diamond streets from S. Duff Avenue to its end at Kate Mitchell Elementary School.

According to Mr. Pregitzer, in order to collect traffic data during the time of year that had the highest potential for speeding – months without snow and ice – staff conducted the studies during the months of April and May and made sure to collect data while school was in session. Mr. Pregitzer reported that many data were evaluated during the studies such as speed, roadway and intersection geometry, sight distance, crash history, and inventory of traffic control devices, as well as receiving input from local residents during public meetings. Though all of these data were important for the review, staff found that the public input and speed data were most critical in evaluating the particular locations.

Mr. Pregitzer described criteria used in the evaluation. He advised that, after initial investigation, the analyses of the first two locations (Hayes & Ridgewood/Summit/Crescent) were conducted together due to a common contributing factor of both sites – the Ames High School - since the

main concern for calming traffic seemed to result from ingress/egress traffic to the High School.

The findings and analyses for Hayes Avenue, Ridgewood/Summit/Crescent, and Jewel/Kate Mitchell School Area were reported. Mr. Pregitzer then provided recommended traffic calming methods to improve those areas, as follows:

Hayes: Install two Dynamic Speed Feedback signs at a cost of between \$5,200 to \$8,000 (basic sign versus one that collects the data).

Ridgewood/Summit/Crescent: Install six removable rubber speed humps - three along Ridgewood Avenue and three along Summit Avenue - at a cost of approximately \$12,000. Removable rubber speed humps are being recommended to ensure that it is the safest option and would not create a hazard.

Jewel/Kate Mitchell School: Install three Speed Humps near S. Duff Avenue along Jewel Drive at a cost of approximately \$6,000 and install four Dynamic Speed Feedback signs - two along Jewel Drive between Opal Drive and Diamond Street and two along Jewel Drive between Diamond Street and Kate Mitchell School - at a cost of between \$10,400 to \$16,000.

Mr. Pregitzer explained that a different traffic-calming method was being recommended for this area because the data were heavily influenced by the traffic of those traveling to and from Kate Mitchell School.

According to Mr. Pregitzer, an alternate solution for the Jewel/Kate Mitchell School would be to install Dynamic Speed Feedback signs and monitor both speed and the reactions of the neighborhood. If the residents find that treatment to be ineffective, the City could choose to increase the level of treatment by adding Speed Humps in areas C, D, and E (for an additional six Speed Humps at a cost or approximately \$12,000).

It was noted by Mr. Pregitzer that staff's recommendation was written to be consistent with the findings of the data collected. He emphasized that the residents of the Jewel Neighborhood expressed the strongest concerns about speeding along Jewel Drive in the areas where the street turns and heads south to the School, not in the areas near S. Duff Avenue. Mr. Pregitzer advised that staff's main concern with installing the Speed Humps in "Area A" is that, unlike the case of Ridgewood and Summit, the Jewel Drive area is not well isolated and there is a higher potential that the Speed Humps would simply cause a shift in traffic patterns to other streets such as Garden Road or possibly Crystal Street. According to Mr. Pregitzer, that would simply be transferring the safety issue to other parts of the Southdale area.

Council Member Larson voiced his concern that the highest percent of vehicles in all of the studies that exceeded the parking limit by more than ten miles per hour (mph) was in a one-block area: Opal Drive to South Duff Avenue; yet, no permanent traffic-calming method was being recommended for that street.

City Manager Schainker asked the City Council members to indicate if staff was "on track" with what they had intended when they had directed traffic-calming studies. He asked if the Council agreed with the concept; if so, monies would need to be budgeted to allow for purchase of the signs, speed humps, etc. Council Member Szopinski said that she believed staff had met the

Council's objectives and would like staff to move forward to include traffic-calming methods in the 2013/14 budget decisions.

LIBRARY RADIO FREQUENCY IDENTIFICATION (RFID) PROJECT, PHASE II: Acting Library Director Lynne Carey recalled that the project to convert the Library collection to a Radio Frequency Identification (RFID) system for circulation, security, and management was approved in the 2011-2016 Capital Improvements Plan (CIP) in two phases. Phase I, budgeted at \$125,000 in FY 2011/12, was earmarked for the tags and equipment necessary for tagging the collection; that phase of the project was completed at a cost of \$92,719. Phase II, budgeted at \$153,400 in FY 2012/13, is intended to finance the acquisition of the equipment necessary for self-serve circulation, security gates, and equipment supporting inventory management.

Ms. Carey asked the City Council to approve \$32,280 in savings from Phase I along with \$7,367 from funds budgeted in the current year to purchase a portion of the equipment needed for the new RFID system. The equipment needed at this time would include dual aisle security gates, software, installation, and training at a cost of approximately \$12,123; and five self-serve check-out machines at a cost of approximately \$27,524.

It was reported by Ms. Carey that SirsiDynix/Bibliotheca of Huntsville, Alabama, had been selected as the vendor for both phases of the RFID project based on response to the Library's original Request for Proposals. The prices for the equipment had been offered in the original proposal dated January 17, 2012. The equipment needed to be purchased this month in preparation for the Library's relocation to temporary quarters in November. Ms. Carey told the Council that, after this purchase, the Library does not plan to purchase the other remaining equipment needed to complete the RFID Project until it can be installed in the renovated and expanded building.

Moved by Davis, seconded by Goodman, to adopt RESOLUTION NO. 12-546 approving the purchase of RFID equipment needed for use in the Library's temporary location in the amount of \$39,646.66.

Roll Call Vote: 5-0. Resolutions declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

Moved by Davis, seconded by Goodman, to adopt RESOLUTION NO. 12-547 approving the reallocation of funding

Roll Call Vote: 5-0. Resolutions declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

PROSPECTIVE PURCHASE OF 80-ACRE PARCEL OF LAND LOCATED WEST ON ONTARIO: Parks and Recreation Director Nancy Carroll introduced the two Parks & Recreation Commission members present: Alisa Frandsen and Ed Moran.

Ms. Carroll gave a presentation outlining the conceptual master plan for the approximate 80-acre parcel being recommended by the Parks & Recreation Commission for purchase by the City to utilize the funds received from the \$1.7 million Geitel Winakor bequest. A map outlining the property in question was shown.

A concern formerly expressed by Council Member Larson was addressed by Ms. Carroll. After having a discussion with the property owner, she reported that there could be a parcel of approximately seven acres that could include open green space for a recreational area (a basketball pad and play equipment). It would also include a parking lot and shelter/restroom. Ms. Carroll pointed out that that recreational open space allotment would exceed any of the existing park system acreage that is currently used for youth and adult soccer, flag football, pick-up activities, etc. It was emphasized by Ms. Carroll that that recreational open space would not be developed until residential development occurred to the south. Once there was residential development through the Huang Family property, Wilder Boulevard would be extended north to the south property line of the park to provide the necessary access to the proposed recreational area.

Ms. Carroll explained stipulations that the owners wanted put on their selling the 80-acre parcel to ensure that their land could never be developed with residential, industrial, or commercial structures. According to Ms. Carroll, the first stipulation would be that the owners would sell their land to the Iowa Natural Heritage Foundation (INHF), and the City would then purchase the parcel from INHF, which would include a Conservation Easement within the deed. The second stipulation would be that the property maintain a farm-like feel with prairie and woodland. The owners want assurance that the City would maintain the prairie, plant native oaks on the upland and structurally stabilize the barn and restore the exteriors of the barn and corn crib. According to Ms. Carroll, the cost to address structural issues related to the barn would total \$100,000; the corn crib is structurally sound. It is estimated that the total cost to make both buildings aesthetically pleasing would be \$125,000.

Council Member Orazem asked how much it would cost to build a new barn versus making the existing barn structurally and aesthetically pleasing at a cost of \$125,000. He felt that he would rather build a new barn as it seemed unreasonable to spend \$125,000 to repair the existing one. Mr. Orazem also questioned how long it would take to reconstruct the barn and whether it would be completed and usable by the time the park was open to the public. If the barn were not structurally sound by the time the park opened, he pointed out that that could be a liability for the City. Ms. Carroll said she would attempt to get information on that and follow-up with the Council.

Ms. Carroll continued with Stipulation 3: the owners would be allowed to maintain their home (located immediately adjacent to Ontario in the center of the 80-acre parcel) as a private dwelling. In addition, the owners have requested that the City pay to extend utilities (water and sewer) to their home. According to Ms. Carroll, it would cost approximately \$20,000 to extend utilities to the homestead and an additional \$10,000 for construction of a six-foot wood fence around the home to buffer the park from the residence.

The fourth stipulation, as described by Ms. Carroll, is that the owners want naming rights to the park. They are considering naming it in honor of their parents, i.e., Ted and Anna Sands Nature Park.”

Council Member Davis asked if there was going to be any recognition of Geitel Winakor, who bequeathed the funds that are allowing the City to even consider purchasing the parcel in question. Ms. Carroll told the Council that Geitel Winakor had made many financial donations to the City; however, she never wanted any name recognition.

Lisa Hein, 721 Northwestern Avenue, Ames, representing the Iowa Natural Heritage Foundation, said that the INHF had been working with the property owners for approximately 15 years on preservation of the land in question. She pointed out that the City's Park Master Plan includes a future park in West Ames.

According to Ms. Hein, the INHF had also received many donations from Geitel Winakor in the past, and land protection was of great interest to her. It was noted by Ms. Hein that the purchase price for the parcel would be based on agricultural land values.

Director Carroll outlined the estimated project expenses necessary for the development of the parcel being offered to the City. She stated that it is estimated to cost approximately \$2.6 million figured at a per-acre cost of \$8,000. Ms. Carroll reiterated that the purchase price for the parcel would be based on agricultural land values. It was noted that the INHF had contracted Hertz Farm Management to complete a formal land appraisal, which should be finished by the end of October.

Staff had prioritized the development of the proposed park into two phases. The cost for Phase I would be approximately \$1,762,600, and the cost for Phase II is estimated to be \$838,750. Ms. Carroll emphasized that the cost of the land in Phase I was merely an estimate made by staff based on an average of the cost for agricultural land; there are areas that will have less value. Phase II would not begin until Wilder Boulevard is completed to the south park property line.

According to Ms. Carroll, there might be opportunities for grants (REAP/Iowa Barn Foundation) and private fund raising to add revenue. For purposes of the estimate cost, staff was anticipating that the City would receive \$250,000 in REAP or Iowa Barn Foundation grants and \$450,000 in private fund-raising, perhaps from other naming opportunities for shelters, trails, bridges, and/or prairie area.

Ms. Carroll asked for City Council members' direction on the following issues:

1. Conservation Easement
2. Annexation of 1.6-acre of private property
3. Restoration of the structural issue associated with the barn and exteriors of both structures
4. Naming of the park
5. Development of the southwest open green recreational area/related amenities not occur until Wilder Boulevard is extended to the park's south property line

Mr. Larson noted the similarities between the parcel in question and Moore Park and cited his desire to receive community input on the proposed purchase. Alisa Frandsen, Chairperson of the Parks & Recreation Commission, told the City Council that the Commission had held a public input session during one of the Commission's meetings and also received email messages regarding how the Winakor Bequest should be spent. That public input was heavily considered as a part of the Commission's decision-making matrix it used to come up with the recommendation that the parcel in question be purchased.

Council Member Orazem asked if it were anticipated for one of the stone trails to connect the area by Clear Creek down to North Dakota. Ms. Carroll replied that it doesn't go quite far enough to the west. People can get out through City land to British Columbia, which is

immediately east of the parcel in question. Mr. Orazem expressed his desire to eventually connect the trail with the trails through Munn Woods, Emma McCarthy Lee Park, by Hyland Avenue, and onto the University land.

Council Member Larson reiterated his belief that the City might not need another 80-acre park in West Ames similar to another park already developed in the City. He is very dismayed by the owners' demands for usage of a parcel that the City will be purchasing at "market value." In his opinion, \$8,000/acre is very high considering the stipulations that the owners are placing on the property. Mr. Larson would like to see some of the restrictions removed. He pointed out that a portion of the tillable land adjacent to developable property that won't become a savannah area for 30, 40, or 50 years could be used to finance the second phase of the park's development. It is Mr. Larson's opinion that the City should be able to decide whether it needs a 60-acre park instead of an 80-acre park and could sell off the tillable land for residential development. Mr. Larson does not want to pay "top dollar" when the property owners are dictating to the City what the property can and cannot be used for, requiring renovation of existing buildings, being allowed to retain their homestead and the City constructing utilities and building a fence for them, and being given naming rights.

Ms. Carroll gave the history of acquisition of parkland in the City, specifically showing which parcels are leased, which have been gifted, and which have been purchased by the City.

Director Carroll indicated that she would have additional discussions with the property owners based on the discussion held at this meeting and report back to the City Council in the near future.

MEC INTERCONNECTION 161-kV TRANSMISSION LINE: Donald Kom, Director of Electric Services, informed the City Council that staff had pulled this item from the Agenda until all the bid numbers could be verified.

ADDITION OF PHOTOVOLTAIC SYSTEMS REBATE TO EXISTING SMART ENERGY PROGRAM: Director Kom explained the proposed addition of photovoltaic systems (active solar) Program. He indicated that inclusion of an incentive to promote the installation of photovoltaic systems would be modeled after the Commercial Custom Rebate Program and pay a one-time rebate of \$500 for every kilowatt the solar system generates/removes from the Utility's system during the City's summer peak season.

Moved by Larson, seconded by Orazem, to adopt RESOLUTION NO. 12-540 approving the addition of a photovoltaic installation rebate to the existing Smart Energy Program at a level of \$500 per KWA generated for systems installed after July 1, 2012.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

STATE REVOLVING FUND (SRF) SEWER REVENUE LOAN AND DISBURSEMENT AGREEMENT: John Dunn, Director of the Water and Pollution Control, clarified that the amount of the Loan Agreement was to be \$3,121,000.

Moved by Davis, seconded by Goodman, to adopt RESOLUTION NO. 12-541 approving entering into a State Revolving Fund (SRF) Sewer Revenue Loan and Disbursement Agreement in a principal amount not to exceed \$3,121,000.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

HEARING ON UNIT NO. 8 STEAM TURBINE PARTS: Mayor Campbell opened the public hearing. No one wished to speak, and the Mayor closed the hearing.

Moved by Goodman, seconded by Davis, to adopt RESOLUTION NO. 12-542 approving final plans and specifications and awarding a contract to ARGO Turboserve Corporation of Lyndhurst, New Jersey, in the amount of \$526,086.90, plus freight.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

HEARING ON WPC FACILITY METHANE ENGINE - GENERATOR SET NO. 2 REHABILITATION: The public hearing was opened by the Mayor. She closed same after no one came forward to speak.

Moved by Davis, seconded by Orazem, to accept the report of bids.

Vote on Motion: 5-0. Motion declared carried unanimously.

HEARING ON FLOOD DAMAGE - BANK EROSION (326 NORTH RIVERSIDE DRIVE AND STUART SMITH PARK): The Mayor declared the hearing open. The hearing was closed after no one asked to speak.

City Manager Schainker gave the history behind the City's request for FEMA funds. FEMA was to have provided written notification of funding to the City. Since that notification has not yet been received, Mr. Schainker did not want the City to enter into any contracts without that guarantee of funding.

Moved by Davis, seconded by Orazem, to accept the report of bids.

Vote on Motion: 5-0. Motion declared carried unanimously.

HEARING ON NUISANCE ASSESSMENT: Mayor Campbell opened the public hearing. There was no one wishing to speak, and the Mayor closed the hearing.

Moved by Goodman, seconded by Davis, to adopt RESOLUTION NO. 12-545 assessing the costs of property clean-up and certifying assessment to Story County Treasurer.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

HEARING ON ENVIRONMENTAL INFORMATION DOCUMENT (EID) FOR NEW WATER TREATMENT PLANT: Assistant Water and Pollution Control Director Steve Duvall told the Council that holding a public hearing on the environmental impact of the new Water Treatment Plant project construction was one of the first steps to meeting requirements of the

State Revolving Fund (SRF) loan program. The City plans to use the loan to finance the construction of a new water plant. An Environmental Information Document had been prepared by the Iowa Department of Natural Resources (IDNR) evaluating the impact of constructing the new plant. The conclusion of the EID was that the project will have no significant environmental impacts. Staff had reviewed the EID and found no errors or omissions and agreed with the conclusions offered. Mr. Duvall read the 11 summary reasons, as required by the Iowa Department of Natural Resources.

The hearing was declared open by the Mayor. She closed same after no one asked to speak.

Moved by Goodman, seconded by Szopinski, to approve the EID, as written.

Vote on Motion: 5-0. Motion declared carried unanimously.

The meeting recessed at 9:05 p.m. and reconvened at 9:11 p.m.

ORDINANCE AMENDING IOWA CODE REFERENCE PERTAINING TO CRUELTY TO ANIMALS: Assistant City Attorney Judy Parks explained that the *Ames Municipal Code* currently states that Cruelty to Animals is a public offense against the City of Ames and that it shall be charged as a simple misdemeanor. Ames' *Code* adopts the *Iowa Code* violation by reference. Iowa Code Section 380.10(2)(a)(2) states that a City may adopt a code by reference "only if the criminal penalty provided by the law adopted does not exceed the maximum fine and term of imprisonment for a simple misdemeanor." Currently, the *Municipal Code* references *Iowa Code* 717B.2, Animal Abuse, which is defined as an aggravated misdemeanor. The City is then prohibited from adopting violations that are greater than a simple misdemeanor. According to Ms. Parks, it is likely that the *Iowa Code* was amended at some time and 717B.2 changed from a simple misdemeanor to an aggravated misdemeanor. Ames' *Code* now needs be amended to reflect the changes that have been made to the Iowa Code.

In addition, *Iowa Code* Section 717B.3, Animal Neglect, is a simple misdemeanor and prohibits a person from failing to provide sufficient food or water to an animal, torturing an animal, or mutilating, beating or killing any animal "by any means which causes unjustified pain, distress, or suffering." The Animal Control Department is requesting that *Ames Municipal Code* Section 17.1(1)(f) be amended to refer to 717B.3, rather than 717B.2, so that the City can continue to prosecute cases of animal neglect and cruelty.

Moved by Szopinski, seconded by Orazem, to pass on first reading an ordinance amending *Iowa Code* reference pertaining to cruelty to animals.

Roll Call Vote: 5-0. Motion declared carried unanimously.

ORDINANCE APPROVING REDUCTION IN MEMBERSHIP FOR HUMAN RELATIONS COMMISSION: Moved by Larson, seconded by Davis, to pass on first reading an ordinance approving a reduction in membership for Human Relations Commission.

Roll Call Vote: 5-0. Motion declared carried unanimously.

ORDINANCE ADDING FIREARMS SALES AS PROHIBITED HOME OCCUPATION IN SECTION 29.1304(1)c: Mayor Campbell noted that on very rare instances, public input is accepted by the City Council on second reading of an ordinance. She said that, in light of misinformation

being circulated in the community, it had been decided to make an exception and accept public input on second reading of the ordinance adding firearms sales as a prohibited home occupation. The Mayor asked that only new information be presented at this meeting since a public hearing had been held on September 25.

Mayor Campbell stated that the matter at hand deals with a zoning issue. Assistant City Attorney Judy Parks noted that since the first passage of this ordinance on September 25, 2012, there had been many inquiries regarding the constitutionality of the text amendment in question. The main question that had surfaced in the community was dealing with an infringement on a person's constitutional right to bear arms under the Second Amendment. The answer to that the ordinance in question did not infringe on a person's constitutional right to bear arms.

It was further stated by Ms. Parks that the *Code of Iowa* states that “[a] political subdivision of the state shall not enact an ordinance regulating the ownership, possession, legal transfer, lawful transportation, registration, or licensing of firearms when the ownership, possession, transfer, or transportation is otherwise lawful under the laws of this state.” Iowa Code § 724.28. It was reported by Ms. Parks that Ames' proposed ordinance is not preempted by *Iowa Code* as the ordinance that was passed on first reading on September 25th does not, in any fashion, regulate the personal possession, ownership, legal transfer, transportation, registration or licensing of firearms within the City of Ames. The ordinance only prohibits the ability to sell firearms as a permissible home occupation (home-based business).

Assistant City Attorney Parks stated that the U.S. Supreme Court recently addressed municipal gun regulation in *McDonald v. City of Chicago*, 130 S.Ct. 3020 (US 2010). In *McDonald*, the Supreme Court stated that “individual self-defense is the central component of the Second Amendment right” and that the cities of Chicago and Oak Park, Illinois, could not ban the possession of handguns in the home. Again, the text amendment passed by the City of Ames is not related to the personal possession of firearms at all. This basic right is therefore not affected by the ordinance.

According to Ms. Parks, a similar zoning ordinance was reviewed by the Eight Circuit Court of Appeals in 2006. The Court stated that “because the operation of a firearms dealership is not a constitutionally protected right, the City ordinance must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the [ordinance].” *Koscielski v. City of Minneapolis*, 435 F.3d 898, 901 (8th Cir.Ct.App. 2006).

Mayor Campbell asked if there was anyone wishing to speak.

Luke Wadsley, 1020 Ridgewood Avenue, Ames, read a statement from William B. Stoner, Jr., 2717 Oakwood Road, Ames, who was unable to attend the meeting in person. The statement said that Mr. Stoner holds a Federal Firearms License and has had a home business since the mid-1990's and has not caused any detrimental impacts on the neighborhood. In his statement, Mr. Stoner urged that the prohibition of firearms sales as a home occupation be dropped.

Cort Pahl, 2327 Sundown Drive, Ames, presented a petition signed by 434 people of which 314 were Ames residents, in opposition to the adoption of the ordinance in question.

Suzi Houte, 1110 Carroll Avenue, Ames, said she was speaking on behalf of her neighbors John and Amy Ellis. The Ellis's are a great family in Ms. Houte's opinion. The Ellis's have a home

occupation permit to sell firearms from their home. Ms. Houte was not even aware that the Ellis's had such a permit as there have been no incidents from it and there is no evidence of it; there is no impact on the neighborhood. The business is conducted on-line, and there is no additional traffic through the area. According to Ms. Houte, any packages containing guns sent through UPS or FedEx must be signed for by the resident.

Jeff Burkett, 603 Kayla Lane, Prairie City, Iowa, representing the National Rifle Association (NRA) of America, informed the Council of the NRA's opposition to the proposed ordinance. Mr. Burkett pointed out that the City has a history of home-based holders of FFLs. He contended that those testifying in favor of the prohibition presented emotion-based arguments that had no basis in fact. Mr. Burkett asked the City Council to reject the proposed ordinance based on it not having substantiated facts to justify it.

Michael Ware, 8401 Highway S52, Baxter, Iowa, advised that he is a FFL-holder. Mr. Ware refuted the City Attorney's statement that political subdivisions are not able to regulate transfer. He stated that firearms sales are legal transfers and they are highly regulated. Mr. Ware presented for the record a print-out of the Compliance Prerequisites for all holders of Federal Firearms Licenses as well as Safety and Security Information for Federal Firearms Licenses. He contended that the City Council does not fully understand the issue. Some of the stipulations that the Zoning Board of Adjustment placed on Mr. Seaton, whose home occupation as a firearms salesman was approved for one year, are federally prohibited.

Ben Schmitt, 1035 Vermont Court, Ames, indicated that he is a resident of Spring Valley Subdivision, which is where the firearms sales as a home occupation is located. He indicated that he purchased his home approximately one year ago. Mr. Schmitt indicated that he was at one time a member of the NRA. Mr. Schmitt agreed that the issue at hand is a zoning issue, not a Second Amendment issue. He does not want a neighborhood arms dealer making gun exchanges located near where his children play and is concerned about his property values being adversely affected. Mr. Schmitt urged the Council to approve the ordinance on second reading.

Council Member Wacha, who was out of the state, was brought into the meeting telephonically at 9:38 p.m.

Jean Prestemon, 4606 Dover Drive, Ames, said citizens expect City Council members to uphold the idea that they have been elected to serve residents of neighborhoods. She and her neighbors have made a request for the City to expand the ordinance in order to keep commercial businesses in commercial areas and let residential areas remain residential areas. Ms Prestemon said it is important to neighborhoods, particularly those that contain schools.

Brian Vandewater, 1217 Grand Avenue, Ames, said that there is no problem; it does not exist. Mr. Vandewater explained some of the requirements to get a FFL. He noted that gunsmithing also requires a FFL; so if the home occupation in question is prohibited, so would gunsmithing be prohibited.

Cappie Dobyms, 4804 Utah Drive, Ames, said she is speaking as a member of the neighborhood and a school teacher. She advised that she lives across the street from the man who was recently granted a one-year home occupation for guns sales. Ms. Dobyms shared that she keeps hearing

assumptions about emotional charges and the things that residents want in their neighborhood are emotional in nature. She feels that her concerns about such home occupations are very valid; gun sales occurring in the neighborhood would deter people from wanting to purchase her home when she is ready to sell it.. Ms. Dobyons stated that at a time in the schools when lock-down drills are being practiced as often as fire drills, there is a genuine fear in the community; that fear would pervade in the selling of her home. In her opinion, there are definite causes trumping her concerns that are not just emotions.

Dusty Juhl, 1422-13th Street, Ames, stated that he was an advocate for Greg Seaton. He wished to correct what he construed to be misconceptions raised at the Council's September 25, 2012. A neighbor of Mr. Seaton had stated that there were no cities or town in this region that allowed home-based firearms sales. According to Mr. Juhl, the City of Ankeny does not ban firearms sales as a home occupation. Mr. Juhl also said that firearms sales in homes do not compete with commercial firearms retailers.

Jean Morz, 825 Idaho Avenue, Ames, advised that she has lived in the Spring Valley Neighborhood for the past nine years. Ms. Morz pointed out that there are many regulations of FFLs; however, she questioned who enforces those regulations. There needs to be provisions for oversight of those with FFLs. She urged the Council to pass the ordinance prohibiting firearms sales as a home occupation.

Kevin Martin, 203 - 21st Street, Ames, pointed out that there are a lot of companies and businesses that started out as "mom and pop" businesses, and "those people are usually good people." He believes that there is a negative stigma attached to firearms. He would like the Council to get the facts as to whether there are adverse effects from home firearms sales prior to the Council adopting an ordinance that prohibits them.

Terrence Jensen, 1121 Oklahoma Drive, Ames, advised that most large cities prohibit home firearms businesses. Stringent requirements are placed on commercial gun sales. The regulation of firearm dealers in Iowa is left up to the federal level (ATF). He reported that, according to the ATF, one percent of the Federal Firearms Licenses are responsible for selling almost 60% of the guns that are found at crime scenes and traced to dealers. In Ames, the Zoning Board of Adjustment proposed extensive restrictions on a gun sales business for Greg Seaton; however, the City has no way to enforce the restrictions and will rely on the ATF to inspect. It is estimated that due to limited personnel at the ATF, a gun dealer is inspected only about once every ten years. Mr. Jensen believes that perception is important when it comes to defining neighborhoods; to maintain attractive neighborhoods for families, it is necessary to impose uniform, sensible, and enforceable restrictions on home businesses.

Moved by Orazem, seconded by Larson, to pass on second reading an ordinance adding firearm sales as a prohibited home occupation in Section 29.1304(1)c.

Council Member Davis referenced a memo from Charlie Kuester, City Planner, that had been placed around the dais regarding local regulations pertaining to home occupations in general, and gun sales in particular, for seven other communities' in Iowa: Newton, West Des Moines, Sioux City, Johnston, Iowa City, Des Moines, and Ankeny. Council Member Davis refuted Dusty Juhl's earlier statement by noting that Ankeny does not allow home occupations in the low-density residential zone.

In Council Member Orazem's opinion, it comes down to an issue, in essence, of a dispute over property rights. In this particular case, a person wants to use their residential area for a business and there are neighbors who feel that that business is going to lower their enjoyment of their own property. Mr. Orazem said it doesn't matter if people do not believe that they don't have the right opinion or the right facts. The right of people to use their home as they want to only goes as far as it does not affect their neighbors. But when it affects neighbors, the state has to step in and adjudicate the dispute. In this particular case, there is an overwhelming number of people in the affected neighborhood who feel that a gun sales business is going to lower their enjoyment of their own property; those feelings cannot be negated. Mr. Orazem reiterated that he believes the right to use your property as you want only goes as far as that it doesn't affect your neighbor's enjoyment of their property. He also pointed out that a firearms business could operate in a commercial area without the type of restrictions that were imposed by the City on Greg Seaton; that way the City could stop placing restrictions that it can't enforce, and the firearms dealers would be competing on a level playing field.

Council Member Larson pointed out that the City cannot enforce the ATF's rigid rules. He also noted that one of the Council's goals is to strengthen the Ames community, which includes neighborhoods. He believes that a heavily regulated business is problematic in a residential neighborhood; a firearms business belongs in a commercial neighborhood.

Council Member Davis said that he views this not an issue that deals with the Second Amendment; it is a zoning issue. The Second Amendment allows persons to keep and bear arms; it does not state that individuals have the right to commercially profit from bearing arms. Mr. Davis believes that it is important to note what fits in a residential zone and what does not.

Council Member Goodman said he wrestled with the proposed ordinance because of the fear being only perceived. He believed that it is reasonable for residents to ask their government to not allow the profit motive to increase the presence of something in their neighborhoods. It was pointed out by Mr. Goodman that the City is not being asked to disallow people from purchasing or having firearms.

Council Member Szopinski expressed her opinion that it is very much a quality of life issue. She used the example that people are not allowed to sell gasoline out of their garages.

Roll Call Vote: 6-0. Motion declared carried unanimously.

ORDINANCE VACATING ALLEY WEST OF AMES PUBLIC LIBRARY: Moved by Davis, seconded by Larson, to pass on second reading an ordinance vacating the alley west of the Ames Public Library.

Roll Call Vote: 6-0. Motion declared carried unanimously.

ORDINANCE TO ALLOW LIMITED RESIDENTIAL USES ON FIRST FLOOR IN DOWNTOWN SERVICE CENTER (DSC) ZONE: Moved by Goodman, seconded by Davis, to pass on third reading and adopt ORDINANCE NO. 4125 to allow limited residential uses on the first floor in the DSC Zone.

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 Davis, seconded by Larson, to refer to staff for a recommendation the letter from Dan Culhane, as President and CEO of Ames Economic Development Commission dated September 27, 2012, pertaining to sharing costs of an Industrial Park Analysis.

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

Moved by Davis, seconded by Goodman, to refer to staff, for a memo back to the City Council, the letter from Doug Pyle dated October 5, 2012, requesting a waiver of development standards in order to develop property at 125 Hyland Avenue, 118 Campus Avenue, and 122 Campus Avenue as a single lot.

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

Council Member Goodman noted that the Ames School District Board has made certain properties available for sale and for anyone interested in purchasing any of those properties to come forward. He thought it would be reasonable to ask staff members to bring back their thoughts as to whether there are any opportunities for the City from those properties. The Mayor pointed out that there is already an existing government zoning overlay over the properties. Council Member Davis said that he did not want the City to overstep its bounds; the School District needs to be able to sell its property. Council Member Larson said he would rather empower the City Manager to have discussions with School Superintendent Tim Taylor. Mayor Campbell encouraged the City Council to work with the School Board as a unit, rather than independently. Council Member Goodman reported that he had received many emails on this subject. Council Member Orazem cited his concerns about interfering with negotiations of another entity with proposed purchasers of properties, unless the properties are given to the City.

Moved by Goodman, seconded by Szopinski, to direct staff to provide information back to the City Council as to whether it sees any opportunities for City use of any of the properties potentially being offered for sale by the Ames School District.

Council Member Larson added that the City Council does have the right to determine land use. If there is a potential purchaser, it is very important for that person to know what uses are allowed on the property.

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

Ex officio Member Sawyer Baker reminded the City Council that it would be meeting with the Government of the Student Body on October 24, 2012, at 7:00 p.m. in the Memorial Union.

HUMAN RESOURCES: Moved by Davis, seconded by Goodman, to hold a Closed Session as provided by Section 20.17(3), *Code of Iowa*, to discuss collective bargaining strategy.

Roll Call Vote: 6-0. Motion declared carried unanimously.

The meeting was reconvened in Regular Session at 10:41 p.m.

Moved by Orazem, seconded by Goodman, to refer to staff the letter from David E. Carlson, on behalf of the Greater Iowa Credit Union, requesting that the portion of 2nd Street that runs east

of N. Elm Avenue be changed from allowing parking on both the north and south sides to only allowing parking on the north side of the street

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

ADJOURNMENT: Moved by Davis to adjourn at 10:43 p.m.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor