



**City of Newport  
City Council Minutes  
February 18, 2016**

**1. CALL TO ORDER**

Mayor Geraghty called the meeting to order at 5:30 P.M.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL -**

**Council Present** – Tim Geraghty; Tom Ingemann; Bill Sumner; Tracy Rahm;

**Council Absent** – Dan Lund

**Staff Present** – Deb Hill, City Administrator; Matt Yokiell, Asst. Supt. of Public Works; Steve Wiley, Fire Chief; Renee Eisenbeisz, Assistant to the City Administrator; Fritz Knaak, City Attorney; Larry Osterman, Sergeant; Jon Herdegen, City Engineer; Sherri Buss, TKDA Planner

**Staff Absent** – Bruce Hanson, Supt. of Public Works;

**4. ADOPT AGENDA**

**Mayor Geraghty** - We have a liability coverage waiver form to add to the consent agenda. We do that every here.

**Motion by Rahm, seconded by Ingemann, to adopt the Agenda as amended. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

**5. ADOPT CONSENT AGENDA**

**Motion by Ingemann, seconded by Rahm, to approve the Consent Agenda as amended, which includes the following items:**

- A. Minutes of the February 4, 2016 Regular City Council Meeting
- B. Minutes of the February 4, 2016 City Council Workshop Meeting
- C. List of Bills in the Amount of \$86,459.70
- D. **Resolution No. 2016-4** - Accepting Donations for the Period of January 15 - February 10, 2016
- E. **Resolution No. 2016-5** - Supporting Proposed Special Legislation for a Redevelopment Tax Increment Financing District in the City of Newport by the Washington County Housing and Redevelopment Authority
- F. Gambling Permit
- G. Liability Coverage Waiver Form (see attached)

**With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

**6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE**

**A. South Washington Watershed District Update**

Matt Moore, Administrator of the South Washington Watershed District, was present to provide updates on several activities for 2015 and 2016. Some of the accomplishments of the Watershed for 2015 are: the second phase of the overflow project was completed and work has begun on phases three through four; helped Public Works

with the MS4 permit and inspections; assisted in inspecting the Gerdau system; continue to provide legal assistance for the acquisition of properties on the levee; helped Public Works with the vegetation at the North Ravine project. There is also a cost share program for residents if they wish to do something on their property. For 2016, the Watershed will continue to work with Public Works on the North Ravine vegetation and will hopefully do some sub-watershed assessments.

**Councilman Sumner** - Can you talk about the projects for homeowners?

**Mr. Moore** - Typically, they are rain gardens and we have a staff member that can help residents design something. Residents can get information on our website or give us a call. It's \$5,000 per pound of phosphorous.

**Councilman Sumner** - Every summer someone mows the vegetation at the North Ravine project, is that you?

**Mr. Moore** - You had a contract for someone to do that. We've been trying to get the clover cut back so that the natives can grow and get exposed. We might be looking at a burn in the next couple years too.

**Councilman Sumner** - Do you see the natives coming in?

**Mr. Moore** - Yes, they are there. We're hoping this work will get them exposed.

**Eric Myers, Government Affairs Director, St. Paul Area Association of Realtors** - I believe you received my letter in regards to our concerns with the City's point of sale ordinance. Fundamentally, we're opposed to point of sale ordinances because they interfere with private property rights and it's not an affective policy tool due to the fact that there are only 9 to 10 homes turning over at any given time in the City. All nine properties up for sale now, none of them would be impacted anyways. We have three concerns with your ordinance, one of them being weather and what our members should be advising clients during the time of the year where they can't lay concrete or asphalt. We were unaware of the ordinance and left with the question of what we are supposed to tell the seller during the winter.

**Mayor Geraghty** - Escrow the funds to do the driveway.

**Mr. Myers** - The ordinance doesn't provide language allowing that. If we're left to assume an escrow or letter of intent would be allowed, we don't know and we need to advise our members on what they need to do. Thirdly, the penalties section seems unreasonable to us. I'd hate to see grandma sell her home and face up to 90 days in jail. Just a couple concerns there. Anything you can do to help us, I would be happy to be a liaison.

**Mayor Geraghty** - Do the realtors do any due diligence to find out ordinances?

**Mr. Myers** - Yes, we have a list on our website and haven't seen a similar ordinance in the past. If this ordinance stays, we would be recording it and letting people know. I would be in position to let everyone know about the change. Short of telling everyone about it, we still have a number of questions.

**Mayor Geraghty** - If you have questions, you can call and ask us for an interpretation.

**Mr. Myers** - So is an escrow allowed? If there's any guidance you can provide to us, I'd be happy to distribute that information but this ordinance doesn't give us a lot of answers.

**Councilman Rahm** - I wonder if we should put in some clarifying language.

**Attorney Knaak** - There's nothing unusual about this ordinance, it was passed a long time ago and has been effective. This is the way you get compliance. You don't want sand going into the streets. This is the ordinance on the books and it's actually working. You get someone who sells a house and doesn't do this for whatever reason

and thinks it's unfair when they're informed of it. I don't think there was any opposition when the Council approved it.

**Councilman Ingemann** - Can we put in language about the escrow?

**Attorney Knaak** - I think it's assumed and on the responsibility of the seller. The requirement couldn't be clearer. If I got that call, I'd give that advice.

**Mr. Myers** - So the answer on what to do if we sell in the winter is what?

**Mayor Geraghty** - Escrow the funds.

**Mr. Myers** - Would a letter of intent work? From our standpoint, the ordinance doesn't provide language for any of that.

**Attorney Knaak** - I would say not.

**Mr. Myers** - From our standpoint, we're left questioning what needs to be done and I hesitate to tell them to contact the City on a case by case basis. We haven't experienced this in any other community and it wasn't on our radar at all and is creating some issues.

**Attorney Knaak** - It isn't a rarity and outlier. There's a reason why communities require paved driveways. If you or your members want to write a letter, I'd be happy to respond and lay out the City's legal position.

**Mr. Myers** - It'd be great to have something to advise them with.

**Mayor Geraghty** - They should escrow.

**Attorney Knaak** - In the 30 odd years I've been practicing real estate law, I've never seen a title company reluctant to escrow funds. I expect where your members are getting some heartburn is that it can be a significant amount of money to ensure the law is complied with. The answer that any title agency would give you is that we'll escrow the funds.

**Mr. Myers** - How much should be escrowed? Shouldn't that be determined by the City?

**Attorney Knaak** - No, that should be on the title agency to ensure they get enough. Why should the City be in the business of regulating escrows.

**Mr. Myers** - Why should they be in the business of regulating driveways?

**Attorney Knaak** - For many reasons, they don't like sand on the streets. This is the type of stuff that ends up in storm sewers.

**Mr. Myers** - I need to give information to my members. These aren't brand new members and looked to me asking what they're supposed to do. The ordinance doesn't provide any answers. There's some technical specs but if I was a resident, I would be concerned about this ordinance because I wouldn't know when I have to sell so I wouldn't know how to pour a driveway in December.

**Attorney Knaak** - I'll send a letter.

**7. MAYOR'S REPORT** – Nothing to report.

**8. COUNCIL REPORTS –**

**Councilman Rahm** - I attended a South Washington County Telecommunications meeting where the Board approved an agreement with Century Link. This agreement is one of the first of its kind in MN. Century Link has been approved to start building and marketing immediately. This agreement includes requirements to build at the same percentage rate in all member communities. I think this will spur competition.

**Councilman Sumner** - So they have to build in Newport?

**Councilman Rahm** - Yes at the same percentage rate that they do in Woodbury or Cottage Grove. They're starting to do fiber optic.

**Councilman Sumner** - So this is adding a new company?

**Councilman Rahm** - Yes.

**Councilman Sumner** - When will they begin?

**Councilman Rahm** - They've been approved to begin immediately.

**Councilman Sumner** - Do we need to approve them coming in to lay that cable?

**Mayor Geraghty** - Have they put any of the fiber in yet?

**Councilman Rahm** - I think they already have some.

**Councilman Ingemann** - I was at the Planning Commission meeting last week and we talked about horses and what's coming up shortly. Gas is \$.10 cheaper across the river.

**Councilman Sumner** - I wanted to remind people about the housing program at the New Brighton Community Center next Thursday. There's contact info, I plan to go.

**9. ADMINISTRATOR'S REPORT –**

**A. Resolution No. 2016-6 - Approving a Conditional Use Permit and Variance for 910 Hastings Avenue**

Sherri Buss, TKDA Planner, presented on this item as outlined in the February 18, 2016 City Council packet.

**Councilman Rahm** - How many trucks?

**Ms. Buss** - Between 400 and 1200 per day and up to 10% of that could be trucks?

**Councilman Rahm** - And what are the hours?

**Ms. Buss** - They're asking for 24 hours per day. Do you have a sense of specific hours?

**Daniel Madrigal, Scannell Development** - We would request 24 hours per day but the majority of our tenants run during that day. It's just to have that flexibility if they want after hours. We're working with a couple potential tenants. We agree that going to the south is the most logical, we just don't want to be held to only going that way.

**Councilman Ingemann** - The berm was put there for the golf driving range and can be taken down.

**Ms. Buss** - The County asked about that and just want to see the final plans.

**Mayor Geraghty** - Will the trucks have backup beepers? Would that be an issue for residents?

**Mr. Madrigal** - The likelihood is that it wouldn't be because we wouldn't be running in the evenings. We'd have the trucks facing east. I don't anticipate it being an issue.

**Councilman Ingemann** - The residents are to the north of the buildings.

**Councilman Rahm** - We've talked about that before and it's unclear to me if there's always going to be beepers.

**Mayor Geraghty** - It's just a concern. How soon will you break ground?

**Mr. Madrigal** - At this point, it could go either way. The likelihood of breaking ground in June is high but we have other projects going on as well.

**Motion by Ingemann, seconded by Rahm to approve Resolution No. 2016-6 as presented. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

## **B. Data Practices Policy Amendment**

Asst. to the City Admin. Eisenbeisz presented on this item as outlined in the February 18, 2016 City Council packet.

**Councilman Sumner** - The only question I have is on the juvenile records. It says that language was added to notify juveniles that they can request that access be denied to their parents. Is that state law?

**Attorney Knaak** - Yes and you are just informing the public of the law.

**Councilman Sumner** - Kids of any age?

**Attorney Knaak** - Yes.

**Councilman Sumner** - So a 13 year old that's truant could have that information withheld?

**Attorney Knaak** - Yes.

**Asst. to the City Admin. Eisenbeisz** - The policy does state: "In determining the best interest of the juvenile, the Responsible Authority or Designee will consider: Whether the juvenile is of sufficient age and maturity to explain the reasons and understand the consequences; Whether denying access may protect the juvenile from physical or emotional harm; Whether there is reasonable grounds to support the juvenile's reasons." I would consult with the Attorney on any juvenile data.

**Councilman Ingemann** - I have a feeling the parents would know about it.

**Attorney Knaak** - This took a lot of work and staff did an excellent job.

**Councilman Rahm** - Do we think it's clear on what's private or public data? I still sometimes in my head have to ask the attorney. Our policies have been trying to make things more transparent but that may lead to more questions and requests but I want to make sure we're balancing that.

**Mayor Geraghty** - Renee, do you think it's pretty clear?

**Asst. to the City Admin. Eisenbeisz** - Yes and I would always consult with Attorney Knaak if I had a question. We don't get many requests for private data.

**Councilman Sumner** - Does this mesh with data that you'll release from the Sheriff's Office?

**Asst. to the City Admin. Eisenbeisz** - They have to go through Washington County to get that information.

**Attorney Knaak** - My guess is that the County's policy would be virtually identical.

**Motion by Ingemann, seconded by Geraghty, to approve the Data Practices Policy Amendment. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

### **C. Lawful Gambling Items**

Asst. to the City Admin. Eisenbeisz presented on this item as outlined in the February 18, 2016 City Council packet.

**Councilman Ingemann** - On the Section 450.02, Subd. 1, item B, where it says "one-third of the organization's members reside in the City" I think that's way too high. I don't think we have one-third of the Lions in Newport much less the Cottage Grove Athletic Association. I'd like to see that drop down to one-fifth or one-tenth. Our kids play in Cottage Grove but our people don't belong to that association. I'd like to see that eliminated or dropped down to a reasonable number.

**Councilman Sumner** - Do we have to put a number?

**Mayor Geraghty** - We don't want anyone coming.

**Attorney Knaak** - This is for your discussion. These were options that were discussed at the workshop and we can adjust that as you see fit.

**Councilman Ingemann** - I think they should have at least one member from Newport.

**Councilman Sumner** - Does the Athletic Association have a member from Newport?

**Councilman Ingemann** - I don't believe so.

**Councilman Sumner** - So we would need to say "or Council approval."

**Attorney Knaak** - Another alternative would be changing it to "one-third must reside within the trade area." This language was designed to make sure you don't have organizations that are completely foreign to the area. The trade area is defined as the City and adjoining cities.

**Councilman Ingemann** - Our kids play in the Cottage Grove and Woodbury associations. We used to have one and they're trying to get it back up and running.

**Attorney Knaak** - You could say "one-third of the organization's members reside in the City of Newport or the immediate trade area."

**Mayor Geraghty** - That would work.

**Councilman Ingemann** - And then there's a change on the second page.

**Attorney Knaak** - I have to tip my hat to Councilman Ingemann for catching this typo. Section 450.04, Subd. 1, should reference 349.166.

**Councilman Rahm** - On page 2, item H, it says "Expenditures for police, fire, and other emergency or public safety-related services, equipment, and training. NOT ALLOWED: Contribution to pension or retirement funds. - Specifically, training and equipment for the Fire Department." Why is that since it says that they are allowed. It seems they contradict each other.

**Mayor Geraghty** - You can't put it into the pension fund.

**Councilman Rahm** - But it says "specifically, training and equipment." It seems redundant.

**Asst. to the City Admin. Eisenbeisz** - That's what we were recommending. Sorry if it's confusing.

**Councilman Sumner** - Then I will argue on the distribution to Friends in Need.

**Mayor Geraghty** - Let's do the ordinance first.

**Motion by Geraghty, seconded by Ingemann, to approve Ordinance No. 2016-3 as amended. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

**Councilman Sumner** - This is where we have \$200 towards the Friends in Need Food Shelf?

**Asst. to the City Admin. Eisenbeisz** - We haven't put a specific amount on the resolution yet, that's what you'll need to discuss.

**Mayor Geraghty** - Remind me again what type of money we're talking about?

**Councilman Ingemann** - Over the last couple years, it's been \$70,000.

**Asst. to the City Admin. Eisenbeisz** - That's for the 25%, the 10% has been about \$20,000 for the last four years.

**Councilman Rahm** - Maybe we should have higher percentage for the summer rec.

**Councilman Ingemann** - I did the percentages, the Summer Rec Staff have gotten 16.2%, Summer Rec Supplies got 2.2%, NAA got 14.2%, Fire Training got 50%, Library supplies got 0.05% and Friends in Need got 1.1%. I think you could add Stone Soup to that as well.

**Mayor Geraghty** - I'd like to see 50% go towards the youth programs.

**Councilman Ingemann** - That would be the NAA, Summer Rec Staff, Supplies, and Library Supplies? I think they're getting that now.

**Admin. Hill** - The NAA has one member right now. They have about \$9,000 in the bank right now and are struggling to get members.

**Councilman Rahm** - What about the Fire Department? I think that's a high item.

**Councilman Ingemann** - This is money that you can't guarantee.

**Asst. to the City Admin. Eisenbeisz** - It's varied monthly.

**Mayor Geraghty** - Should we do 10% for the Friends in Need Food Shelf and Stone Soup?

**Councilman Rahm** - Yes. I think the NAA should get 10% as well.

**Mayor Geraghty** - Do we really have to get down to this level?

**Attorney Knaak** - I think the more guidance you give the better.

**Mayor Geraghty** - So 10% for the Friends in Need Food Shelf and Stone Soup, 10% towards the Athletic Association, you want to do 20% towards the Fire Department?

**Councilman Ingemann** - No, I want to do 50%. This money has bought a lot of equipment for the City. It would come out of the budget if we didn't get it.

**Councilman Sumner** - The whole City benefits from the Fire Department.

**Councilman Rahm** - Should we do 15% for the other two and 50% for the Fire?

**Mayor Geraghty** - Yes.

**Asst. to the City Admin. Eisenbeisz** - So: 10% to the Friends in Need Food Shelf and Stone Soup, 15% to the Summer Rec wages and supplies, 10% to the NAA, 15% to the Library and Community Center youth programs, and 50% to the Fire Department training and equipment?

**Councilman Rahm** - Yes.

**Motion by Geraghty, seconded by Ingemann to approve Resolution No. 2016-7 as amended. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

**Admin. Hill** - Just one more item, at the last strategic planning session, the Council directed Bruce to look at the update of City Hall and opportunities. We've had a couple meetings with Chief Wiley and will be looking at that building too so the Council will have a clear picture of the state of our buildings. They'll be meeting next week.

## **10. ATTORNEY'S REPORT -**

**Attorney Knaak** - You've been getting our prosecution reports. One quick note on the Maxwell property, we've received confirmation that they are in agreement with our assessment of the property. I'm anticipating that we'll have an agreement in a couple weeks and quite possibly a deed.

**Mayor Geraghty** - Then we can talk to the Department of Transportation to negotiate payment?

**Attorney Knaak** - Yes.

**Mayor Geraghty** - Could we have it up for sale this spring?

**Attorney Knaak** - I'll take that as a directive.

**11. WASHINGTON COUNTY SHERIFF'S OFFICE REPORT -** Nothing to report.

**12. FIRE CHIEF'S REPORT -** Nothing to report.

## **13. ENGINEER'S REPORT -**

### **A. 2016 Street and Utilities Improvement**

Luke Jones, MSA Engineer, presented on this item as outlined in the February 18, 2016 City Council packet.

**Mayor Geraghty** - Would this be submitted to the Met Council?

**Engineer Jones** - No.

**Councilman Sumner** - This is just a change to our projects?

**Engineer Jones** - Yes, we'll look at different ways to do this for the Raceway to Fun site and old Public Works site.

**Motion by Ingemann, seconded by Sumner, to direct staff to revise the existing CIP and 2013-2015 Street Improvements Projects Feasibility Study. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

## **B. Facility Plan**

Luke Jones, MSA Engineer, presented on this item as outlined in the February 18, 2016 City Council packet.

**Admin. Hill** - Councilman Lund sent an email and said that the report was very well done.

**Councilman Sumner** - This gives us the option of having as big a project as possible and go down from there.

**Engineer Jones** - Yes.

**Motion by Sumner, seconded by Ingemann, to approve the Facility Plan as presented. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

## **14. SUPERINTENDENT OF PUBLIC WORKS REPORT -**

**Asst. Supt. Yokiell** - We did the deer survey this past week and counted 40 deer within City limits.

**Admin. Hill** - That was the same count as last time. The DNR uses a multiplier so 40 actually means 52. They've measured and we have 18 deer too many.

**Councilman Sumner** - This was done on a chopper?

**Asst. Supt. Yokiell** - Yes. The rinks will also be closed this weekend due to the weather.

**Councilman Sumner** - How many weeks did we get?

**Councilman Rahm** - About 4 weeks.

**Councilman Sumner** - Were they well used?

**Asst. Supt. Yokiell** - It seems like it.

## **15. NEW/OLD BUSINESS**

**Councilman Ingemann** - This thing from Dakota County and Scott County, I'd like to put it in the next packet. It's about the Met Council being an unit that taxes without representation because everything is appointed. It seems that only a couple counties benefit. I think we should be included saying that it should be by election, not appointment.

**Mayor Geraghty** - Do they have a resolution template?

**Councilman Ingemann** - I believe so.

**Mayor Geraghty** - I think they wanted it on March 8th. We can do something for our first meeting?

**Councilman Rahm** - Could we also discuss the deer hunt in the future? I got some comments about the number of times we closed our parks last year. They thought four was extensive.

**Mayor Geraghty** - We can talk about it. We're not making much headway.

**Councilman Rahm** - People were concerned because the parks were closed.

**16. ADJOURNMENT**

**Motion by Geraghty, seconded by Ingemann, to adjourn the regular Council Meeting at 6:42 P.M. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.**

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

Respectfully Submitted,

Renee Eisenbeisz  
Assistant to the City Administrator



CONNECTING & INNOVATING  
SINCE 1913

## LIABILITY COVERAGE – WAIVER FORM

**LMCIT members purchasing coverage must complete and return this form to LMCIT before the effective date of the coverage. Please return the completed form to your underwriter or email to [pstech@lmc.org](mailto:pstech@lmc.org)**

This decision must be made by the member's governing body every year. You may also wish to discuss these issues with your attorney.

League of Minnesota Cities Insurance Trust (LMCIT) members that obtain liability coverage from LMCIT must decide whether to waive the statutory tort liability limits to the extent of the coverage purchased. The decision has the following effects:

- If the member does not waive the statutory tort limits*, an individual claimant would be able to recover no more than \$500,000 on any claim to which the statutory tort limits apply. The total all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would be limited to \$1,500,000. These statutory tort limits apply regardless of whether the city purchases the optional excess liability coverage.
- If the member waives the statutory tort limits and does not purchase excess liability coverage*, a single claimant could potentially recover up to \$2,000,000 for a single occurrence. (Under this option, the tort cap liability limits are waived to the extent of the member's liability coverage limits, and the LMCIT per occurrence limit is \$2 million.) The total all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would also be limited to \$2,000,000, regardless of the number of claimants.
- If the member waives the statutory tort limits and purchases excess liability coverage*, a single claimant could potentially recover an amount up to the limit of the coverage purchased. The total all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would also be limited to the amount of coverage purchased, regardless of the number of claimants.

Claims to which the statutory municipal tort limits do not apply are not affected by this decision.

City of Newport  
LMCIT Member Name

Check one:

The member **DOES NOT WAIVE** the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04.

The member **WAIVES** the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04 to the extent of the limits of the liability coverage obtained from LMCIT.

Date of city council/governing body meeting Feb 18, 2016

Signature Debra D'Almeida

Position City Administrator