

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, NOVEMBER 14, 2011**

1. CALL TO ORDER.

Schneider called the meeting to order at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL

Council members James Hiller, Tony Wagner, Bob Ellingson, Dick Allendorf, Amber Greves, Brad Wiersum, and Terry Schneider were present.

4. APPROVAL OF AGENDA

Wiersum moved, Greves seconded a motion to accept the agenda with an addendum to 14B. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES:

A. October 3, 2011 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the minutes of the October 3, 2011 regular meeting. All voted "yes." Motion carried.

B. October 24, 2011 regular meeting

Greves moved, Wagner seconded a motion to approve the minutes of the October 24, 2011 regular meeting. All voted "yes." Motion carried.

C. November 2, 2011 special meeting

Allendorf moved, Wiersum seconded a motion to approve the minutes of the November 2, 2011 special meeting. Hiller, Ellingson, Allendorf, Wiersum, and Schneider voted "yes." Wagner and Greves abstained. Motion carried.

6. SPECIAL MATTERS:

A. Recognition of 2011 Police Citizens Academy

Schneider presented the certificates.

Glenn O'Meara said it was a great experience going through the academy. He learned a lot about what the department does. He said the academy should be continued in the future.

Darryl Flam praised Police Chief Mark Raquet and Crime Prevention Analyst Nicole Nelson for their great work. He said the officers and detectives did a stellar job in educating the participants on what the department does. He agreed the program should continue.

B. Retirement recognition of Larry Mueller

Schneider read the recognition.

Mueller said there had been many changes and improvements during his time with the city.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Gunyou reported on the schedule for upcoming council meetings.

Allendorf said he had the pleasure of attending the Minnetonka High School's performance of "Dracula the Musical." He commended all the students who participated.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA

No one appeared.

9. BIDS AND PURCHASES:

A. Printing bids for the Minnetonka Memo

Gunyou gave the staff report.

Wiersum moved, Greves seconded a motion to award the contract for printing the January 2012 through December 2013 Minnetonka Memo to Nystrom Publishing Company Inc. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):

A. Temporary easement to the Nine Mile Creek Watershed District

Allendorf moved, Greves seconded a motion to approve the easement. All voted "yes." Motion carried.

B. Resolutions approving Redeemer Bible Church construction of an addition for 16205 State Hwy 7

Allendorf moved, Greves seconded a motion to adopt

- 1) Resolution No. 2011-106 approving the conditional use permit
- 2) Resolution No. 2011 –107 approving site and building plan review, with parking setback variance.

All voted “yes.” Motion carried.

C. Proposed orders for tobacco license stipulations

Allendorf moved, Greves seconded a motion to approve issuing the enclosed Finding of Fact, Conclusion, and Order for Koehnen’s Amoco and DLG, Inc. All voted “yes.” Motion carried.

D. Amendment to the Twin Cities Public Health and Environmental Health Entities in Minnesota Mutual Aid Agreement providing environmental health services

Allendorf moved, Greves seconded a motion to approve the amended agreement extending the expiration date with the Minnesota Department of Health. All voted “yes.” Motion carried.

E. 2012 fee schedules for consulting engineering services

Schneider said he was glad to see the fees decreasing.

Allendorf moved, Greves seconded a motion to approve the revised 2012 fee schedules proposed by the city’s general services consulting engineering firms, and authorize the mayor and city manager to execute the Addenda to the Agreements for Professional Services with the following firms:

- AE2S Kimley-Horn and Associates, Inc.
- Albertson Engineering, Inc.
- Kjolhaug Environmental Services Co.
- American Engineering Testing, Inc.
- Northern Technologies, Inc.
- Barr Engineering Company
- Short Elliott Hendrickson, Inc.
- Brauer & Associates, Ltd.
- SRF Consulting Group, Inc.
- Hansen Thorp Pellinen Olson, Inc.
- WSB & Associates, Inc
- In-Control, Inc.

All voted "yes." Motion carried.

F. Resolution granting Comcast a franchise extension to April 16, 2012

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2011-108 approving the franchise extension. All voted "yes." Motion carried.

G. Resolution certifying the results of the November 8, 2011 Municipal Election

Schneider congratulated the winners.

City Clerk David Maeda read the results. He noted the turnout was around 13 percent.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2011-109 to certify the results of the November 8, 2011 Municipal Election. All voted "yes." Motion carried.

H. City manager performance pay

Allendorf moved, Greves seconded a motion to approve a lump sum merit pay amount of \$1,327.25. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Applications for renewed liquor licenses for 2012

Allendorf moved, Wagner seconded a motion to approve the following renewals for the 2012 calendar year:

- on-sale and Sunday on-sale intoxicating liquor
- off-sale intoxicating liquor
- on-sale wine licenses
- on-sale and off-sale 3.2 percent malt liquor licenses

Licenses will not be issued until proof of liquor liability insurance for 2012 is received.

All voted "yes." Motion carried.

B. Applications for renewed precious metal dealer licenses for 2012

Allendorf moved, Wagner seconded a motion to approve the renewed precious metal dealer license for the license year January 1, 2012, through December 31, 2012. All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES: None**13. PUBLIC HEARINGS:****A. Renewal of Minnesota Currency Exchange License for 2011 for Action Check Cashing, 11503 Excelsior Boulevard**

Gunyou gave the staff report.

Schneider opened the public hearing at 6:52 p.m. No one spoke.

Schneider closed the public hearing at 6:52 p.m.

Greves moved, Wiersum seconded a motion to approve the issuance of a renewed Minnesota Currency Exchange License for Action Check Cashing, located at 11503 Excelsior Boulevard. All voted "yes." Motion carried.

14. OTHER BUSINESS:**A. Resolution adopting a council policy on Housing Improvement Areas**

Community Development Director Julie Wischnack gave the staff report.

Wagner asked if consideration was given to getting associations together on an annual basis to provide information and get feedback about the process. Wischnack said staff had discussed gathering the associations together for an informational session. No details had been finalized. Wagner noted there was a large change being implemented and most of the associations consisted of volunteers and an annual meeting might have value.

Wiersum asked if there was any financial risk to the city with the adoption of the policy. Wischnack noted collection would be through property taxes and special assessment process so in the case of a foreclosure or default the likelihood would be that the city would eventually collect the money. Wiersum said maintaining the quality of housing stock was in the public interest. He asked if there was a cost to the city or if the costs were recouped through the program. Wischnack said it was the intent to collect all the city's costs through the fees.

Schneider said the ability to get homeowner association presidents and/or managers to talk to each other to work through issues without relying on the city to provide a consultant maybe the best way to go in the long term.

Encouraging that type of interaction as well as documenting what has worked well would be beneficial.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2011-110 approving the council policy on housing improvement areas. All voted "yes." Motion carried.

B. Vacancy in At-Large City Council Seat B

Greves recused herself.

Gunyou gave the staff report.

Schneider noted he introduced the combination of an interim appointment and special election at the last meeting. One question was if there was an appropriate statesperson to fill the interim role. After the meeting he had a conversation with two previous mayors, Karen Anderson and Tim Bergstedt who both said they would be willing to serve if asked. He also noted that the charter commission was scheduled to meet later in the month and could look at amending the charter to allow a Saturday special election that could possibly increase voter turnout. He said the charter commission would also look at changing the timeframe to fill a vacancy by appointment to allow for more time for a thorough interview process. This change would apply to future vacancies.

Wiersum noted that the biggest cost for the special election was the election judge pay. He asked if it was possible to reduce the number of polling places used in the special election. Gunyou indicated that would not be allowed under state election law.

Schneider said the way to reduce the cost of any special election would be to conduct a mail ballot election. This would take a change to state law.

Allendorf noted that four votes were needed for whatever process was chosen to fill the vacancy. He asked what the process would be if there were not four votes in favor of any of the options. City Attorney Desyl Peterson said the charter provides that if the council did not take action within 30 days, the mayor would have seven days to appoint a new councilmember. If the mayor failed to appoint someone within those seven days, then a special election would have to be scheduled within 90 days. Allendorf noted if the council could not reach consensus and a special election occurred the vacancy would be filled sometime in March. This would be similar to the schedule for a combination appointment/special election.

Wagner asked for more information on how voting requirements change when there is a vacancy on the council. Peterson said it would depend on each type of vote. The general rule would be to look at the full council in terms of the number of seats that are occupied so the vacancy would be subtracted. Wagner said the reason behind his question was a concern that all the residents have a fair hearing. He said he favored holding a special election for a two year vacancy but he did have a concern about not having a special election until the end of February and the corresponding number of meetings without a full council. In response to Wagner's question about upcoming issues, Gunyou noted the budget and levy would be decided in December and after that the meeting agendas would typically be comprised of more routine things.

Schneider indicated that the reason there were seven people on the council was that an odd number meant there would not be tie votes.

Allendorf asked if the potential statespersons indicated vacation schedules or if they would be able to attend all the meetings and workshops. Schneider said Bergstedt indicated he would be available for all meetings and Anderson indicated she would be residing in Florida but could make all the regular council meetings.

Hiller said he favored the special election. He noted the redistricting process would happen during February through June time period. The political parties' conventions would be scheduled once the redistricting maps are known. Scheduling the nonpartisan special election during the same time period would be confusing.

Wiersum said there were three issues he was looking at in considering the three alternatives. The cost would not be a factor if the council appointed someone to fill the vacancy. But because of the length of the vacancy he favored a special election. The perception was that a special election was a more open process than appointing someone. The appointment process was a more managed process where a special election would be more free and open so it would be preferable despite the cost. He said he would like to fill the vacancy as soon as possible. There were two factors that should be considered in looking at the speed of the process. One was to look at how long the seat would be vacant. Another piece was moving through the process as quickly as possible and not having to deal with another disruption of the resignation of the statesperson. He said his preferred option would be to do a regular special election but he would not stand in the way of a decision if the consensus differed from his preference.

Allendorf said he raised a concern at the last meeting about allowing enough time for the process to work and allowing enough time to allow

voters to learn about the candidates. He inquired how much lead time the League of Women Voters would need to arrange a candidates' forum. He noted it was also important for the local newspapers to print questionnaires posed to candidates about their positions on issues. The compressed nature of the special election cycle might be a problem. He said the combination of appointment and special election would address the process questions and allow voters to get to know the candidates. The statesperson would know enough background of the city to be able to knowledgeable and effectively participate.

Hiller noted it would take nine to ten weeks from the candidate filing period to the election day under either the special election only option or the combination appointment/special election alternative. Gunyou clarified that the combination option would allow candidates far more time to engage in campaign activities, since the election would have been announced several months before the filing period. Hiller said it was unlikely that newspapers would begin serious coverage until candidates had filed.

Allendorf said the filing date for a special election would begin December 7. Information would be distributed in the Minnetonka Memo sometime between November 22 and November 30. He questioned if this was enough time for people to decide if they wanted to run.

Wiersum indicated that holding a quick special election might not allow the League of Women Voters to arrange the candidates' forum. He said there was no question that the forums were valuable for the candidates and for the voters. Schneider said in this situation the forum was even more critical because there potentially could be a lot of candidates. Gunyou said staff had contacted the League of Women voters who indicated an interest in hosting a forum. Both local newspapers also indicated they would plan to cover the election like any other election and would do the questionnaires. He noted during a regular election cycle there are six months between the time candidates file and the November election.

Wagner said the biggest factor for him was determining how long the council wanted a six member council. He noted turnout for a regular city election was usually below 20 percent. He said it was likely candidates who wanted to run probably already knew they were going to run and that turnout would be low no matter when the special election was held. Like Wiersum he said he also would not stand in the way of a decision if the consensus differed from his preference of the combination appointment/special election process. He said he was favoring that process because he didn't think it was fair to have a six member council for an extended period of time.

Hiller asked if a special election could be scheduled before the statesperson resigned. Peterson said preparation for the election could begin if the statesperson submitted a letter of resignation with a resignation date.

Wiersum said his preference would be to have the statesperson serve as short a time as possible and to have the special election as soon as possible.

Wagner said he would not support a May special election as proposed in the staff report for the combination appointment/special election process. Looking at a calendar and taking into consideration holidays and spring breaks, two possible dates would be April 17 or March 27.

Schneider said the reasons he tried to come up with more flexibility in the timing was to allow more time for a potential candidate to go through the thought process in deciding whether or not to run. Another reason was to allow voters time to get to know the candidates. A third reason was because of the weather, it would somewhat disenfranchise the city's senior citizens to hold an election in February or early March or anyone with mobility issues. He said he would be very open to compressing the time period for the combination appointment/special election.

Wiersum said it was in the city's best interest to encourage voter turnout. The more people that turn out the better off the city is. He said anything that could be done to get people out and make voting accessible would serve the city's best interests.

Allendorf said another issue with the special election only option was the number of snowbirds who would be out of town. He said holding an election in late March or early April, many of the snowbirds would be back in town and would have some time to learn about the candidates. Gunyou said staff confirmed that either of the dates Wagner suggested would work.

Ellingson said he supported a special election and the April 17 date would be better. This would give people five months to prepare.

Hiller said the charter defines the process for a special election and the appointment/special election option would game the system in order to push out the date of the election. He said he had an issue with the idea of appointing a statesperson because if there were critical votes the statesperson was someone the citizens didn't have a say in having represent them. He indicated he wouldn't want someone to be put into that position. It would look awkward why the city was the only one who went with a very odd scheme and he was uncomfortable playing games with

elections. He said he would support changing the charter to allow more time in the future but the city should follow what was currently in the charter.

Schneider said using the term “game” was inappropriate because there was an open discussion about all the options. The appointment/special election option was authorized by the current charter and the reason for offering the option was to improve the voter turnout and to improve the opportunity for candidates to reach out to voters and let them know who they are. He said voters knew Bergstedt and Anderson and both intimately knew the key issues the council was currently dealing with. Both are well connected to the community and people would know how to get a hold of them. Holding a special election in sixteen weeks would mean residents would not have the seventh representative on the council until after the election.

Allendorf said he agreed with Schneider. He said the concern about putting the statesperson in a difficult position would not apply to either Bergstedt or Anderson because both knew the issues and had opinions. Having served with both, he said both served to the betterment of the community. Looking at the important issues coming up, he would be happy to have someone with familiarity to the issues rather than having six remaining members decide those issues. He said the process would allow people to decide whether they wanted to run and gives time for the residents to understand who would be the best candidate.

Wiersum said the combination appointment/special election alternative was a reasonable compromise. He said the ultimate issue was how to best get residents represented to the fullest extent possible.

Hiller clarified that he didn't mean the council was gaming the system but his concern was what the public view of the process would be. He said the two past mayors were wonderful people but because they were opinionated he was concerned about bringing in bias with people who were not elected.

Marge Hoffa, 5129 Mayview Road, said the issue was one of transparency and letting voters make the decision. She said she understood not wanting the seat to remain vacant for months, but she trusted the six elected council members and questioned how many of the council votes had been split where a seventh vote was needed. She noted there were absentee ballots for the people who would be out of town and curbside voting for those who could not get into the polling place. There were groups that go out to senior citizen groups to help them vote. She agreed voter turnout for a special election was typically low but she didn't think it would change the turnout if the election were held in February, March, April, or May. She

noted more than half the term was left on the seat. She said people that were going to run had likely already made up their mind and there was no reason not to have the election in February.

Grace Sheely, 14325 Grenier Road, asked the council to get uninvolved with the election. The election should be held as quickly as possible. She said the snowbirds she knew would vote if told how to cast an absentee ballot. She didn't want anyone on the council who was not elected. If the council was tied 3-3 on a vote she trusted they could find consensus. Making candidates go door to door for an extended period of time during the winter would not help those people. She said every time the council got involved in the election process it swayed the process.

Schneider noted the charter required the council to get involved with the process.

Allendorf moved, Schneider seconded a motion to approve the process to fill the upcoming vacancy of the At-Large City Council Seat B with an appointment followed by a special election on April 17, 2012.

Wagner said the two testifiers made a good point that there had not been a lot of 4-3 council votes. Any big decisions could be delayed. Before the combination appointment/special election option had been put forward, he was adamant about holding a special election as soon as possible.

Wiersum said he was in agreement with Wagner. He came into the meeting wanting to keep the process simple and moving forward. His biggest concern with an appointment or an appointment combined with a special election was the perception. There were no compelling reasons not to just have a special election. He agreed that people who cared would make a point to vote regardless of when the election was held.

Allendorf and Schneider voted "yes." Hiller, Wagner, Ellingson, and Wiersum voted "no." Motion failed.

Wagner moved, Hiller seconded a motion to approve a process to fill the upcoming vacancy of At-Large City Council Seat B with a special election on February 14, 2012. Hiller, Wagner, Ellingson and Wiersum voted "yes." Allendorf and Schneider voted "no." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 8:20 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk