
The Mandan City Commission met in regular session at 5:30 p.m. on January 4, 2011 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Rohr, Frank, and Jackson. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development Director Huber, and Engineering Project Manager Bechtel. City Assessor Barta was absent.

MINUTES: *Consider approval of the minutes for December 21, 2010, meeting of the Board of City Commissioners.* Commissioner Jackson moved to approve the minutes as presented. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

BIDS:

CONSENT AGENDA:

1. *Consider the Service Agreement for the City of Mandan’s Employee Assistance Program with Medcenter One.* Commissioner Rohr inquired how many times per year the employees utilize this service. Administrator Neubauer stated that the service is definitely being used and the numbers were somewhere between 25 and 50 employees assisted last year. The Board approved of the Service Agreement for the City of Mandan’s Employee Assistance Program with Medcenter One.
2. *Consider for approval Sunday openings for the Mandan Eagles for the following dates: (i) January 16, 2011 (ii) February 6, 2011 (iii) February 20, 2011.* The Board approved of the Sunday openings for the Mandan Eagles for the following dates: (i) January 16, 2011 (ii) February 6, 2011 (iii) February 20, 2011.
3. *Consider the following abatements: (i) Basin Electric Power Co. – tax exemption (ii) Morty’s LLC – duplicate tax statement generated (iii) Mary Kay Neibauer – reassessment (iv) Robert Schmidt – reassessment.* The Board approved of the following abatements: (i) Basin Electric Power Co. – tax exemption (ii) Morty’s LLC – duplicate tax statement generated (iii) Mary Kay Neibauer – reassessment (iv) Robert Schmidt – reassessment.
4. *Consider resolution to delegate the operation and leasing of the property at 609 W. Main St. to the Morton Mandan Public Library.* The Board approved of the resolution to delegate the operation and leasing of the property at 609 W. Main St. to the Morton Mandan Public Library. *(A copy of the resolution is on file open for public inspection during regular working hours in the Office of the City Administrator.)*
5. *Consider a resolution to allow the continuation of a two year property tax exemption for new construction of single family residences.* The Board approved of the Resolution to allow the continuation of a two year property tax exemption for new construction of single family residences. *(A copy of the resolution is on file open for public inspection during regular working hours in the Office of the City Administrator.)*

Commissioner Tibke moved to approve the Consent Agenda as presented. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

OLD BUSINESS:

1. *Discussion regarding hands free use of electronic devices.* Commissioner Tibke reported that at the suggestion of this Board this matter was referred to the Morton Burleigh Bismarck Mandan (MBBM) Committee for action. She stated that it was subsequently discussed at an MBBM meeting where it was, in turn, sent back to each respective entity for their separate review and disposition. Commissioner Tibke suggested the following be discussed and decided by the Commission prior to proceeding:

- (a) Does the Commission want to look at an ordinance in the City of Mandan prior to statewide legislative action?
- (b) If yes, what are the parameters of such an ordinance? Prohibit only texting? Prohibit the use of all electronic communication devices?
- (c) If no, is the wish of the commission to direct staff and Commissioners in support of a statewide legislative action? If yes, under what parameters?
- (d) Do nothing.

Commissioner Tibke indicated that Billings, Montana, has an ordinance in place that restricts the use of all hand-held devices while operating a motor vehicle and that she would favor supporting an ordinance such as that one. She indicated that she has researched this matter and research indicates that texting while operating a motor vehicle proves to be more dangerous than drunk driving. Commissioner Frank commented that she agrees that Mandan should follow suit with a ban on texting and that there be consistency with what the state legislators are moving towards. She recommended that Mandan adopt the same ban on texting that Bismarck currently has in place.

Commissioner Jackson commented that he believes this discussion is premature at this time. He pointed out that the City of Mandan does have ordinances in place that address “distractions while driving”. He stated that it is his opinion that the State should take the lead on this matter keeping in mind that the City of Mandan has an ordinance in place already to address these issues. He mentioned that it seems a moot point to enact additional ordinances when the State will be addressing this issue at some point. Mayor Helbling stated that he is in agreement with what Commissioner Jackson has outlined.

Commissioner Jackson stated that he had asked Chief Bullinger if the police department had seen an influx of accidents caused by texting. Chief Bullinger stated that he is not aware of a single accident caused as a result of texting. Mayor Helbling stated that if the state legislature approaches the City of Mandan for letters of support to ban texting, this Board can review the matter once again at that time.

Commissioner Frank indicated that she would like to have the City of Mandan consider a ban on texting while operating a motor vehicle as a preventative measure rather than addressing the matter after a fatality or serious accident occurs. Mayor Helbling stated

that he is not in favor of the possibility of passing an ordinance to ban texting while driving simply because at this time there is no documentation from the police department or emergency services that this is a problem within the community.

Commissioner Rohr stated that it would be difficult to determine if at the time of an accident that any one person was in fact using their cell phone or other device that may have caused the accident. He pointed out that police officers use several different devices while driving in a safe-like manner. Commissioner Tibke stated that the National Safety Council research shows that the reaction time when using a cell phone or texting device is similar to drunk driving. She stated that the drunken driving laws are in place to protect people and she believes this is along the same line as that. She stated that she would like to provide a letter of support for Senator Klemin's bill proposal and that a commissioner or city staff member testifies at the legislative session to encourage some type of statewide ban so there is continuity across the state.

Commissioner Frank motioned that the City of Mandan draft an Ordinance similar to what Bismarck has in place to bring forward to the next commission meeting to vote on appropriately. There was no second to the motion. The motion died for lack of second.

NEW BUSINESS:

I. Discussion regarding potential noise ordinance. Mayor Helbling stated that this matter is not for public discussion at this time and that no public comments will be taken at this meeting. He stated that discussion at this time will only be for Commissioner comments. Mayor Helbling stated that he does not agree with it. The voters did vote on the matter and it did pass in the general election. There were some technicalities and he would have preferred it had gone in a different direction, but it didn't. He indicated that he would have preferred that it had gotten resolved in a different manner dealing with just the establishments that the City was having problems with regarding the noise problems. He encouraged the Commission to adopt the ordinance as it was voted on using the same language and to bring the first reading to the next City Commission meeting. Further, if the Commission does wish to do anything that they take action after it passes, if it does pass. He stated that approximately 57% of the voters voted in favor of the Ordinance at the General Election in November.

Commissioner Jackson stated that he would recommend passing the Ordinance as it is and see what the results are. There are portions that contain issues pertaining to loud parties that may be a problem to enforce. If there needs to be changes in the future, this Board will have the ability to do so. Staff should be directed to prepare and present a Noise Ordinance at the next meeting.

Commissioner Rohr commented that it is his opinion that the Noise Ordinance will not remove the necessary noise that is caused at music events, car races, barking dogs, noisy cars, etc. He stated the City already has the means to deal with most noise issues. In general, he found throughout his 43 years of noise enforcement that for the most part, most people will cooperate in reducing or eliminating the problem. For those that do not cooperate, there are sanctions in place to assist with enforcement. He appreciates the

time and effort the supporters of the Ordinance put into the process; however, he disagrees with putting a Noise Ordinance in place.

Commissioner Frank stated that she has the same concerns brought forward by Commissioner Rohr. The wording on the ballot leads one to believe this would be a great ordinance. However, when reviewing the ordinance in its entirety, it is complex. In looking at a current Ordinance @ Section 19-5 (1) – an Ordinance that includes offenses against the public order that makes a statement for unreasonable noise (which the noises addressed here probably fall under) - she stated that she believes that this Commission should be looking at what is best for the people of the Mandan community.

Commissioner Tibke indicated she believes there are problems with the wording of the ordinance in that there is an issue here in which the parties could not resolve that issue thus this Board is now in a position to resolve the matter. She pointed out that it was not a high voter turnout when this matter was put to vote at the general election in November 2010. She mentioned she does not want to go against the vote of the people; however, she would be interested in amending it in the future. The concerns she has with the ordinance includes “where the decibel levels are measured from” along with other items within the ordinance that are “overkill” - that is not good for the community as a whole.

Commissioner Jackson offered the following comment for Commissioner Rohr and Frank’s information – that even before his (Commissioner Jackson’s) involvement with this Board – previous city commissioners stated to the homeowners “If there are problems with these bars, we’re going to take care of it”. Based on previous commissioner’s statements, this Commission needs to take action.

Commissioner Frank commented that there has been some initiative by Captain Freddy’s to remedy the noise problem and it is clear that some major improvements were made through those actions. She feels that progress has been made in resolving the noise issue, (with the assistance of the city commission). Although no specific laws or ordinances were put in place, progress has been made. She stated that if the Commission were to pass it, that it be passed as the residents outlined the original ordinance, without amendments.

Commissioner Jackson motioned that the city staff prepare a formal Noise Ordinance as a first reading and present it at the next meeting. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

2. *Consider adoption of Leadership Code for Elected Officials policy.* City Administrator Neubauer presented a request for a Leadership Code for Elected Officials. This Leadership Code deals with defining roles and responsibilities of Commissioners: Policies and Protocol Related to Conduct; Commission Conduct with One Another; Commission Conduct with City Staff; Commission Conduct with the Public; Commission Conduct with Other Public Agencies; Commission Conduct with Board and

Commissions; Commission Conduct with Media; Conflict of Interest and Personal Benefit; Sanctions; Principles of Proper Conduct. Neubauer stated there is no such policy in place at this time and it is his recommendation to consider adopting such a policy. Mayor Helbling commented that this Code would be a helpful guide for new commissioners to the Board.

City Attorney Brown clarified the difference between the ND Century Code and Roberts Rules of Order. The Century Code permits the other commissioners to waive a conflict that a commissioner might have at any given time. Roberts Rules of Order says that if you have a conflict and if you stay in the room you vote with the majority or you vote no. You cannot abstain or you can leave the room and you are shown as absent. Attorney Brown stated that it is his opinion that if there is a conflict, you leave the room. Mayor Helbling stated that he was instructed that if there is a conflict, you are to declare your conflict and the commission will vote whether you should vote on it or not. Brown concurred that is what state law indicates. Neubauer stated that this policy addresses this as follows: “City Commission members should declare a personal interest in any official actions and withdraw from participation in that action”. Commissioner Jackson stated that the Century Code should be followed and to amend the code accordingly and that this matter be tabled for now.

Commissioner Jackson moved to table the adoption of the Leadership Code for Elected Officials policy. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

RESOLUTIONS & ORDINANCES:

1. *Consider second and final reading of Ordinance No. 1088 Zone Change for Lakewood 6th Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map.*

Commissioner Tibke moved to approve the second and final reading of Ordinance No. 1088 Zone Change for Lakewood 6th Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map. Commissioner Jackson seconded the motion. Roll call vote:

Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

2. *Consider second and final reading of Ordinance No. 1089 Zone Change for Auditor Lot 2 of Lot E – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map.*

Commissioner Jackson moved to approve the second and final reading of Ordinance No. 1089 Zone Change for Auditor Lot 2 of Lot E – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

OTHER BUSINESS:

There being no further actions to come before the Board, Commissioner Jackson moved to adjourn the meeting at 6:13 p.m. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

/s/ James Neubauer

James Neubauer,
City Administrator

/s/ Timothy A. Helbling

Timothy A. Helbling,
President, Board of City
Commissioners