

**City of Moorhead  
City Council Meeting  
Meeting Minutes  
August 08, 2011 at 5:30 PM  
City Hall Council Chambers**

Pursuant to due call and notice thereof, a regular meeting of the City Council Meeting was held in the City Hall Council Chambers, on August 08, 2011, at 5:30 PM.

**Roll call of the members was made as follows:**

1st Ward Council Member:	Luther Stueland	Present
1st Ward Council Member:	Nancy Otto	Present
2nd Ward Council Member:	Diane Wray Williams	Present
2nd Ward Council Member:	Mark Altenburg	Present
3rd Ward Council Member:	Dan Hunt	Present
3rd Ward Council Member:	Brenda Elmer	Present
4th Ward Council Member:	Mark Hintermeyer	Present
4th Ward Council Member:	Greg Lemke	Present
Mayor:	Mark Voxland	Present

**City Council Meeting**

1. [Call to Order and Roll Call](#)

Minutes: Mayor Voxland called the meeting to order.

2. Recognitions - Presentations

A. [Proclamation Recognizing "National Health Center Week"](#)

Minutes: Mayor Voxland presented the Family Healthcare Center with a proclamation recognizing "National Health Care Week."

3. [Approve Minutes](#)

A. [July 18, 2011 \(Adjourned Council Meeting\)](#)

B. [July 18, 2011 \(Committee of the Whole\)](#)

C. [July 25, 2011 \(City Council Meeting\)](#)

Motion to Approve made by Nancy Otto and seconded by Brenda Elmer  
**Approve Minutes of July 18, 2011 (Adjourned Council Meeting), July 18, 2011 (Committee of the Whole), and July 25, 2011 (City Council Meeting)**  
**Motion Passed**

For: 8

4. [Citizens Addressing the Council](#)

Minutes: Ross Perrin, Bakery Confectionery Tobacco Workers & Grain Millers Workers Association (BCTGM), addressed the Mayor and Council regarding loss of jobs and worker lockout at American Crystal Sugar.

5. [Agenda Amendments](#)

Minutes: No agenda amendments were noted.

6. [Consent Agenda](#)

All items listed with an asterisk ( \* ) are enacted by one motion.

Minutes: The following agenda items were removed from the consent agenda:

- #12 - Resolution to Approve House Moving Permit (603 9th Street South)
- #14 – Resolution to Approve Land Lease in MCCARA Business Park
- #15 – Resolution to Award Bid & Approve License Agreement for the Phase 1 Miscellaneous Flood Project at Bluestem Center for the Arts. Eng. No. 11-13-2

Motion to Approve made by Luther Stueland and seconded by Dan Hunt

**Approve Consent Agenda as Amended**

**Motion Passed**

For: 8

7. Mayor and Council Appointments

A. [Resolution to Approve Appointment to Park Advisory Board \(Ward 1\)](#)

Motion to Approve made by Luther Stueland and seconded by Nancy Otto

**Resolution to Approve Appointment to Park Advisory Board (Ward 1)**

Motion Passed: **Resolution 2011-0808-1**

For: 8

8. [Mayor and Council Reports](#)

Minutes: Council Member Wray Williams provided a brief report on a meeting recently convened by Sanford Health regarding the local homeless population.

Council Member Elmer and Council Member Altenburg thanked City staff and the community regarding the successful "Night to Unite" events hosted August 2.

9. [Permanent Flood Protection Discussion/Update](#)

Minutes: Council Member Otto reported that the first meeting of the Metro Flood Diversion Project Board of Authority will be held this week.

It was reported that that the United States Senate Committee on the Budget will hold a Field Hearing on August 10 at Fargo City Hall to consider the topic of, "Fargo-Moorhead Metro: Achieving Permanent Federal Flood Protection". Mayor Voxland and Mayor Walaker, City of Fargo, will provide testimony at the hearing.

Michael Redlinger, City Manager, reported that the Mayor and City Council will receive a comprehensive 2011-12 Flood Mitigation Program update at the August 15, 2011 Committee of the Whole meeting.

## Public Hearings

10. [Public Hearing to Consider Actions Related to the Horizon Shores 8th Addition Street & Underground Utility Improvements. Eng. No. 11-A2-5](#)

Minutes: Public hearing opened at 5:45 p.m.

Tom Trowbridge, Assistant City Engineer, provided a brief overview of the Horizon Shores 8th Addition street and underground utility improvements and clarified the following in response to Mayor and Council questions:

- A roundabout intersection has been planned from the outset and is consistent with the developer's wishes.
- City staff is not aware of any snow removal issues specific to a roundabout intersection. Snow removal in undeveloped areas causes the most difficulty due to blowing and drifting.

No citizens addressed the Mayor and Council.

Public hearing closed at 5:52 p.m.

Minutes: It was noted that roundabout intersections are being developed in other parts of Minnesota and are very navigable.

Motion to Approve made by Luther Stueland and seconded by Diane Wray Williams

### **Resolution to Order Improvements**

Motion Passed: Resolution #'s noted below

For: 8

- A. [Resolution to Order Improvements](#)  
**Resolution 2011-0808-2**
- B. [Resolution to Award Bid](#)  
**Resolution 2011-0808-3**
- C. [Resolution to Approve Parking Restrictions](#)  
**Resolution 2011-0808-4**

## Community Services Department

11. [\\*Resolution to Approve Preliminary and Final Plat of Ascension Addition](#)  
**Resolution 2011-0808-A**
12. [Resolution to Approve House Moving Permit \(603 9th Street South\)](#)

Minutes: Kristie Leshovsky, City Planner, provided a brief report on the house moving permit.

City staff clarified the following in response to questions by the Mayor and

Council:

- A moving permit is not contingent on a specific route. An alternate route may be established and approved by staff at a later time.
- Building Codes staff verifies that the house is structurally sound and can withstand the move.
- Applicants must comply with all of the same conditions as Conditional Use permits.
- All house moving companies are required to be licensed with the State of MN. Liability insurance is likely a required part of the license.
- A bond is required by the City in order to cover any damage caused to public infrastructure.
- MLA Properties is current on all owed property taxes.
- If the house is moved, a slab on grade or new basement would be required at the site.

The following Moorhead residents addressed the Mayor and Council regarding concerns over the house moving permit being issued to MLA Properties due to recent events at other properties under their management:

- Deborah White, Moorhead resident
- John Sherman, Moorhead resident

The Mayor and Council Members stated the following:

- Concern was noted over the management practices of MLA properties.

Motion to Amend made by Diane Wray Williams and seconded by Mark Altenburg  
**Amend resolution to require MLA Properties to provide proof of \$250,000 in liability insurance**

**Amendment Failed**

Motion to Approve made by Dan Hunt and seconded by Mark Altenburg  
**Resolution to Approve House Moving Permit (603 9th Street South)**

Motion Passed: **Resolution 2011-0808-5**

For: 5 – Luther Stueland, Nancy Otto, Dan Hunt, Brenda Elmer, Mark Hintermeyer;

Against: 3 - Diane Wray Williams, Mark Altenburg, Greg Lemke

13. [\\*First Reading of Ordinance 2011-12: An Ordinance to Amend and Reenact Subsection 6-1-4E of the Moorhead Municipal Code Relating to Park Rules and Regulations: Pets Ordinance 2011-12](#)
14. [Resolution to Approve Land Lease in MCCARA Business Park](#)

Minutes: City staff clarified the following in response to Mayor and Council questions:

- The contract is consistent with other agricultural land leases and the method for contract award is compliant with the City's past practice.

The Mayor and Council Members stated the following:

- Concern was noted in that a bidding process was not followed prior to award of the contract.
- The property remains subject to sale at any time.

City staff was directed to provide a list of properties with agricultural land leases and revenue received by the City.

Motion to Approve made by Mark Altenburg and seconded by Nancy Otto

**Resolution to Approve Land Lease in MCCARA Business Park**

Motion Failed: **Resolution 2011-0808-6**

For: 7; Against: 1 – Luther Stueland

### **Engineering - Wastewater Treatment**

15. [Resolution to Award Bid & Approve License Agreement for the Phase 1 Miscellaneous Flood Project at Bluestem Center for the Arts. Eng. No. 11-13-2](#)

Minutes: City staff clarified the following in response to Mayor and Council questions:

- The Bluestem facility is a City-owned property.
- Engineering staff have communicated with property owners adjacent to Bluestem who may be interested in extending the levee for additional private property protection.
- Grant funding from the Department of Natural Resources (DNR) was previously secured for this project. The project will not utilize any of the \$16.5M that was recently awarded to the City of Moorhead by the State legislature.
- Geotechnical work was considered in the design of the project. The levee will be constructed to protect to a flood elevation of 44 feet.

Motion to Approve made by Brenda Elmer and seconded by Dan Hunt

**Resolution to Award Bid & Approve License Agreement for the Phase 1**

**Miscellaneous Flood Project at Bluestem Center for the Arts. Eng. No. 11-13-2**

Motion Passed: Resolution #'s noted below

For: 8

- A. [Resolution to Award Bid](#)  
**Resolution 2011-0808-7**
- B. [Resolution to Approve a Stormwater Soils Removal License Agreement](#)  
**Resolution 2011-0808-8**

### **Police Department**

16. Actions Related to Ordinance 2011-11: An Ordinance to Create and Enact Section 4-4-20 of the Moorhead Municipal Code Relating to Drug Paraphernalia
- A. Resolution to Approve Second Reading of Ordinance 2011-11

B. Resolution to Approve Title and Summary of Ordinance 2011-11

Minutes: David Ebinger, Moorhead Police Chief, and Matthew Greenly, Assistant Clay County Attorney, provided a brief overview of the ordinance.

City staff clarified the following in response to Mayor and Council questions:

- Seven votes are required to publish the Title and Summary of an ordinance. If seven votes are not received, the full text of the ordinance would be published automatically.
- A 30-day waiting period following ordinance publication would allow the Moorhead Police Department to meet with local business owners to clarify the law and answer questions regarding compliance.
- The Moorhead Business Association and Economic Development Authority have not provided feedback regarding the proposed ordinance.
- A recent District Court ruling upheld the constitutionality of a drug paraphernalia ordinance in Hastings, MN. The Hastings ordinance is almost identical to the proposed Moorhead ordinance.
- Defense of a lawsuit against the constitutionality of the ordinance would be at the cost of Clay County. There is a possibility that a party could seek an injunction against the City prohibiting enforcement of the ordinance.
- The ordinance is specifically targeted at illegal drugs and provides a definition that prevents a defense that the owner or retailer did not know the product is intended for use, or designed for use with a controlled substance.
- Prosecution of drug paraphernalia possession is routinely occurring in Fargo with products purchased in Moorhead.
- The ordinance would more clearly define the objects that are identified as drug paraphernalia and clarify the culpability of the individual selling drug paraphernalia items.
- Hookahs would not be identified as drug paraphernalia under this ordinance as it can legitimately be used as a tobacco product.
- The Moorhead Police Department would discuss and clarify the ordinance with local tobacco product shop owners prior to enforcement.
- Local police and prosecutors believe the ordinance is a necessary tool to prevent the sale of drug paraphernalia.
- It is relatively straightforward to distinguish those items that have a useful tobacco product purpose and those items that are specifically designed for the use of illegal substances.
- Individuals that purchase products legally in MN tobacco product shops will be prosecuted for possession of those items in ND as they are defined as drug paraphernalia under ND Century Code.
- Introduction of the ordinance is an attempt to become consistent with law enforcement efforts across the region.

- Possession of drug paraphernalia in the State of ND will result in a felony charge. In MN it is a petty misdemeanor charge.

The following individuals addressed the Mayor and Council regarding their support of the proposed ordinance:

- Sue Kuhn, Moorhead resident
- Arnie Kuhn, Moorhead resident

The following individuals addressed the Mayor and Council regarding their opposition to the proposed ordinance:

- Tom Tepley, Discontent Disc & Tape
- Brady Bredell, Mother's Music
- Diana Grant, Fargo resident
- Toby Mulvihill, Mellow Mood
- Corey Cook, Moorhead resident
- Thomas Seim, Dilworth resident
- Dustin Ellingson, Fargo resident

The Mayor and Council Members stated the following:

- Concern was noted about any potential cost of a lawsuit against the City if the ordinance is approved.
- The definition of drug paraphernalia in this ordinance is not new to the area and is regularly enforced in Fargo through the ND Century Code.
- Concern was noted regarding the financial consequences of this ordinance on local businesses.
- Concern was noted regarding the use of an ordinance to regulate "morally objectionable" behavior which violates the natural rights of individuals.
- It was noted that it is believed this ordinance may violate the U.S. Constitution.
- It is preferred that City staff and tobacco product shop owners engage one another in collaboratively identifying and addressing the problem instead of enacting an ordinance.
- An ordinance is needed so that tobacco product shop owners come into compliance with conducting sales of products with only legitimate tobacco uses.
- Concern was noted regarding deteriorated relationships and cooperation between law enforcement and local business owners if the proposed ordinance is approved.
- It was noted that it is not necessarily a good rationale to replicate ND

Century Code as Moorhead is its own distinct community.

- Law enforcement in the region is indicating that there is a problem with drug paraphernalia originating from Moorhead.

Motion to Approve made by Dan Hunt and seconded by Brenda Elmer

**Actions Related to Ordinance 2011-11: An Ordinance to Create and Enact Section 4-4-20 of the Moorhead Municipal Code Relating to Drug Paraphernalia**

Motion to Table made by Mark Altenburg and seconded by Diane Wray Williams

**Motion to Table Approved**

For: 5 – Luther Stueland, Diane Wray Williams, Mark Altenburg, Greg Lemke, Mayor Voxland; Against: 4 – Nancy Otto, Dan Hunt, Brenda Elmer, Mark Hintermeyer

**Administration**

17. [\\*Consider a Resolution Adding a Seventh Member to the Park Advisory Board](#)  
**Resolution 2011-0808-B**
18. [\\*Authorize Early Draw on Johnson Farms LOC to Accommodate Land Transfer](#)  
**Resolution 2011-0808-C**
19. [\\*Actions Related to Ordinance 2011-05: An Ordinance to Repeal Article D of Chapter 6, Title 2 of the Moorhead Municipal Code Relating to Tattoos, Body Art and Body Piercing](#)
  - A. [\\*Resolution to Approve Second Reading of Ordinance 2011-05](#)  
**Ordinance 2011-05**
  - B. [\\*Resolution to Approve Title and Summary of Ordinance 2011-05](#)  
**Resolution 2011-0808-D**
20. [\\*Approve Licenses - Permits](#)
  - A. [\\*Resolution to Approve Licenses – Permits](#)  
**Resolution 2011-0808-E**
21. [City Manager Reports - Updates](#)

Minutes: The Mayor and Council Members stated the following:

- Concern was noted regarding recent delays initiated by Federal Highway Administration (FHWA) related to the I-94 & SE Main Ave/CSAH 52 Interchange Ramps.
- Closure of the ramps has caused significant harm to residents and business owners.

City staff clarified the following in response to Mayor and Council questions:

- The Engineering Department is comfortable with the FHWA's recent request for additional technical analysis. This analysis will allow FHWA to determine whether they will accept the City's change order to allow the ramps to be reconstructed.
- Authorization of the construction project by Congress does not



preclude the City of Moorhead to comply with Federal law or rules administered by FHWA.

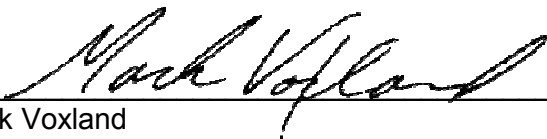
- In light of the recent technical request by FHWA, City staff is cautiously optimistic that a decision on the matter is progressing in the City's favor.
- The City does not have the legal authority to request an opinion on the matter from the U.S. Attorney.

City staff were directed to determine the City's legal or other recourse if FHWA does not approve City's change order request and that an update on the issue be provided at the August 22, 2011 City Council meeting.

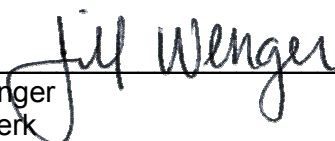
Minutes: City staff were directed to place the topic of the 12th Avenue N. Toll Bridge on the August 22, 2011 City Council agenda as a Council Member intends to request to take the matter from the table.

Meeting adjourned at 8:36 pm.

APPROVED BY:

  
\_\_\_\_\_  
Mark Voxland  
Mayor

ATTEST:

  
\_\_\_\_\_  
Jill Wenger  
City Clerk

The proceedings of this meeting are digitally recorded and are available for public review.

*Respectfully submitted by:*  
*Jill Wenger, City Clerk*