

**City of Moorhead
City Council Meeting
Meeting Minutes
November 14, 2011 at 5:35 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 November 14, 2011, at 5:35 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	Absent
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. [Homeless Awareness Week Presentation](#)

Minutes: John Roberts and Jen Engquist, Churches United for the Homeless, addressed the Mayor and Council regarding National Hunger and Homeless Awareness Week.

3. [Approve Minutes](#)

A. [October 10, 2011 \(City Council Meeting\)](#)

B. [October 24, 2011 \(City Council Meeting\)](#)

Motion to Approve made by Nancy Otto and seconded by Diane Wray Williams
Approve Minutes of October 10, 2011 (City Council Meeting) and October 24, 2011 (City Council Meeting)
Motion Passed

For: 7; Absent: 1 - Greg Lemke

4. [Citizens Addressing the Council](#)

Minutes: No citizens addressed the Mayor and Council.

5. [Agenda Amendments](#)

Minutes: No agenda amendments were noted.

6. [Consent Agenda](#)

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

Minutes: The following items were removed from the Consent Agenda:

- #12 – Approve 2012 Community Development Block Grant Annual Action Plan and Authorize Submission to HUD
- #14 – Amend Administrative Citation and Civil Penalty Procedures for Multi-Parcel Properties
- #16 – Resolution Awarding Contract for Purchase of Automatic Voice Announcement System for Mass Transit to RouteMatch Software, Inc.
- #21 – Resolution to Request Advance of Municipal State Aid and Federal Aid Funds from the City Municipal State Aid Account
- #23 – Resolution to Approve the Inter Municipal Agreement between the Moorhead Police Department and Dilworth Police Department
- #25 – Resolution to Approve First Reading of Ordinance No. 2011-17: An Ordinance Adopting the 2012 Fee Schedule

It was requested that item #29.A – Discussion: Tobacco/Smokeshop Zoning Ordinances (Council Member Altenburg) – be discussed prior to item #22 – 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 Approve made by Dan Hunt and seconded by Diane Wray Williams
Approve Consent Agenda as Amended

Motion Passed

For: 7; Absent: 1 - Greg Lemke

7. Mayor and Council Appointments

Minutes: No appointments were presented by the Mayor and Council

8. [Mayor and Council Reports](#)

Minutes: Council Member Wray Williams provided the Mayor and City Council with materials developed by the Minnesota Department of Transportation and noted that Sanford Health will be convening a meeting on the topic of homelessness.

Council Member Elmer provided a report on a recent meeting of the Fargo-Moorhead Diversion Authority.

Council Member Hintermeyer provided a report on a recent meeting of the Economic Development Authority.

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

Minutes: Michael Redlinger, City Manager, stated that City staff is heavily involved in the design phase of the Fargo-Moorhead Diversion. The level of work for technical staff will remain significant until such time that design tasks can be transferred to local consultants and the project management firm.

The Mayor and Council directed City staff to provide a written memorandum regarding a recent meeting between City staff and the Minnesota Department of Natural Resources.

Public Hearings (5:45 p.m.)

10. [Public Hearing: 2011 Enterprise Zone Program](#)

Minutes: Public hearing opened at 5:53 p.m.

Scott Hutchins, Community Services Director, provided a brief overview of the 2011 Enterprise Zone Program and clarified the following in response to Mayor and Council questions:

- The State-paid job credit level has been reduced from 10% to 5% as a recommendation by the Economic Development Authority (EDA) in order to retain the program for at least one more year.
- The EDA has discussed reducing the maximum cap in the next round of program participation.
- State legislators are supportive of the program and City staff continues to relay information to representatives.

Public hearing closed at 5:57 p.m.

A. [Resolution to Approve 2011 Enterprise Zone Program](#)

Motion to Approve made by Luther Stueland and seconded by Nancy Otto
Resolution to Approve 2011 Enterprise Zone Program

Motion Passed: **Resolution 2011-1114-2**

For: 7; Absent: 1 - Greg Lemke

Community Services Department

11. [Boulevard Parking Request - Sam Adams Cars](#)

Minutes: Kristie Leshovsky, City Planner, provided a brief report on the boulevard parking request and clarified the following in response to Mayor and Council questions:

- The Planning Commission was split on a recommendation related to the parking request. Three commissioners do not recommend the request and three commissioners recommend with specified conditions.
- Staff has provided an amended resolution which includes an indemnification clause related to any damages to the boulevard due

to environmental contamination.

- City staff does not have data on pedestrian traffic in the area. There is a sidewalk on the West side of Main Avenue.
- It is staff preference that the property owner not be allowed to utilize boulevard parking as it appears that the current space could be adequately utilized if the business inventory is maintained at 10 vehicles.
- If the boulevard was private property there would not be a provision for the property owner to park on a grass area.

The Mayor and Council Members stated the following:

- It appears that the property owner can utilize current parking lot space without the use of the grass boulevard.

Motion to Amend made by Nancy Otto and seconded by Luther Stueland
Amend Resolution to include Indemnification Clause related to Environmental Contamination

Amendment Passed

For: 6; Against: 1 – Diane Wray Williams; Absent: 1 – Greg Lemke

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

Approve Boulevard Parking Request - Sam Adams Cars

Motion Failed

For: 5 - Luther Stueland, Nancy Otto, Brenda Elmer, Mark Hintermeyer; Mark Altenburg
Against: 2 – Diane Wray Williams, Dan Hunt; Absent: 1 - Greg Lemke

12. [Approve 2012 Community Development Block Grant Annual Action Plan and Authorize Submission to HUD](#)

Minutes: Barbara Sipson, Moorhead resident, requested that the following information be added to the report submitted to the U.S. Department of Housing and Urban Development, "A request was made to share information on the City's website regarding how the CDBG budget, once adopted, can be changed during the course of the operating year."

The following individuals addressed the Mayor and Council regarding their support for additional funding allocation to the Human Rights Commission (HRC):

- Barbara Sipson Moorhead resident
- Michael Carbone, HRC Chair
- Del Rae Williams, former HRC Chair

Lisa Vatnsdal, Neighborhood Services Manager clarified the following in response to Mayor and Council questions:

- The HRC is funded as part of planning and capacity building related to fair housing.
- City staff can increase the HRC budget. Funds would be transitioned

from the administration budget line item.

- A citizen participation process is triggered if there is an adjustment of over 25% on any CDBG activity or if a new activity is proposed.
- A separate HRC line item will be created in order to track all funds dedicated to HRC.

Motion to Approve made by Mark Altenburg and seconded by Diane Wray Williams
Amend CDBG Annual Plan to increase the Human Rights Commission allocation to \$3,400

Amendment Passed

For: 7; Absent: 1 - Greg Lemke

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

Approve 2012 Community Development Block Grant Annual Action Plan and Authorize Submission to HUD

Motion Passed: **Resolution 2011-1114-3**

For: 7; Absent: 1 - Greg Lemke

13. [*Actions Related to Ordinance 2011-16: An Ordinance to Amend and Reenact Section 6-1-4A of the Moorhead Municipal Code Relating to Park Rules and Regulations: Intoxicating Liquors \(Unanimous Recommendation of Park Advisory Board\)](#)

A. [*Resolution to Approve Second Reading of Ordinance 2011-16](#)
Ordinance 2011-16

B. [*Resolution to Approve Title and Summary of Ordinance 2011-16](#)
Resolution 2011-1114-A

14. [Amend Administrative Citation and Civil Penalty Procedures for Multi-Parcel Properties](#)

Minutes: City staff stated that the proposed change is intended to cover the administrative burden of entering data into multiple parcel property records associated with code enforcement action.

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

Amend Administrative Citation and Civil Penalty Procedures for Multi-Parcel Properties

Motion Passed: **Resolution 2011-1114-4**

For: 6; Against: 1 - Luther Stueland; Absent: 1 - Greg Lemke

15. [*Resolution of Support for Clay County Housing and Redevelopment Authority to operate Minnesota Housing Single Family Rehabilitation Loan and Rental Rehabilitation Deferred Loan Programs in Moorhead](#)
Resolution 2011-1114-B

16. [Resolution Awarding Contract for Purchase of Automatic Voice Announcement System for Mass Transit to RouteMatch Software, Inc.](#)

Minutes: Lori Van Beek, Transit Manager, stated that the Automatic Voice Announcement (AVA) System will push real time arrival information to mobile devices and kiosks, alert bus drivers and passenger to the timeliness of transit schedules, and provide announcements automatically so drivers can keep their hands on the wheel. The City of Fargo will be adding AVA

Systems as funding becomes available.

Motion to Approve made by Diane Wray Williams and seconded by Mark Altenburg
Resolution Awarding Contract for Purchase of Automatic Voice Announcement System for Mass Transit to RouteMatch Software, Inc.

Motion Passed: **Resolution 2011-1114-5**

For: 6; Against: 1 - Luther Stueland; Absent: 1 - Greg Lemke

Engineering - Wastewater Treatment

17. [*Resolution to Approve an Engineering Services Agreement with Stantec \(formerly Bonestroo\) for the 40th Ave S Pump Station Flood Mitigation Project. Eng. No. 11-A13-2E](#)
Resolution 2011-1114-C
18. [*Resolution to Approve Change Order #4 for the Brookdale North Levee Flood Mitigation Project, Phase 2. Eng. No. 09-A13-2I](#)
Resolution 2011-1114-D
19. [*Resolution to Approve Agency Agreement No. 99905 with Mn/DOT to Appoint Commissioner of Transportation as Agent to Accept Federal Aid Funds](#)
Resolution 2011-1114-E
20. [Resolution to Approve Change Order #7 for the River Haven Road Flood Mitigation Project, Phase 2. Eng. No. 09-A13-2B](#)

Minutes: Bob Zimmerman, City Engineer, clarified the following in response to Mayor and Council questions:

- Pipeline work for the project should be completed soon. Completion of the floodwall is anticipated in late fall or early winter. River Haven Road will be opened as a gravel roadway to traffic in winter. The road will be paved in spring 2012.
- Complications with the pipeline have caused delays in the project.
- The City does not typically receive change orders in excess of 5%.

The Mayor and Council noted the following:

- Concern was noted regarding contractor accountability for project cost overruns and delays. It was requested that contractors provide a greater role in notifying residents adjacent to the project area when there are project delays.
- It was requested that City staff provide regular, detailed accounting by funding area as flood mitigation projects progress.

Motion to Approve made by Brenda Elmer and seconded by Dan Hunt
Resolution to Approve Change Order #7 for the River Haven Road Flood Mitigation Project, Phase 2. Eng. No. 09-A13-2B

Motion Passed: **Resolution 2011-1114-6**

For: 7; Absent: 1 - Greg Lemke

21. [Resolution to Request Advance of Municipal State Aid and Federal Aid Funds from the City Municipal State Aid Account](#)

Minutes: Bob Zimmerman, City Engineer, clarified the following in response to Mayor and Council questions:

- The City's Municipal State Aid (MSA) balance will not be sufficient to construct all of the projects that are currently in design. The proposed request is to reserve the opportunity to advance MSA funds if required in 2012.
- Flood mitigation projects will not effect MSA allocations.
- All projects have been included in the 2011-2015 Pavement Management & Transportation Improvement Plan.

Motion to Approve made by Mark Altenburg and seconded by Dan Hunt
Resolution to Request Advance of Municipal State Aid and Federal Aid Funds from the City Municipal State Aid Account

Motion Passed: Resolution #'s noted below

For: 6; Against: 1 - Luther Stueland; Absent: 1 - Greg Lemke

- A. [Resolution to Approve Municipal State Aid Funds Advance Resolution 2011-1114-7](#)
- B. [Resolution to Approve Federal Aid Funds Advance Resolution 2011-1114-8](#)

Police Department

22. [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: Michael Redlinger, City Manger, noted that actions related to Ordinance 2011-11 were tabled from the August 8, 2011 City Council meeting.

Chief David Ebinger and Detective Brad Stuvland, Moorhead Police Department, provided examples of products which would likely be considered drug paraphernalia under the proposed ordinance.

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

- Moorhead Police Department personnel met with Moorhead tobacco shop owners to discuss drug paraphernalia products. There was not consensus between law enforcement and business representatives on the definition of drug paraphernalia.
- Moorhead Police intend to utilize the proposed ordinance to encourage compliance through voluntary means. Prosecution would be utilized as a last resort.
- State of Minnesota law on drug paraphernalia is vague. A more

specific definition would need to be established locally to assist in enforcement efforts.

- Sale of drug paraphernalia contributes to the harm and cost of addiction and criminal behavior.
- It is unknown if the ordinance would specifically reduce drug use, but it would make it much more difficult for individuals to gain access to drug paraphernalia products locally.

Captain Pat Claus, Fargo Police Department, addressed the Mayor and Council regarding his support for the proposed ordinance and provided the following information:

- Most drug paraphernalia items confiscated in the City of Fargo originate from businesses in Moorhead.
- The Fargo Police Department has successfully enforced a nearly identical drug paraphernalia ordinance with voluntary compliance by business owners.
- Language defining drug paraphernalia in the North Dakota Century Code was patterned after Federal Code.

Matt Greenley, Assistant Clay County Attorney, addressed the Mayor and Council regarding the proposed ordinance and provided the following information:

- Federal enforcement agencies do not have the resources to pursue local drug paraphernalia law violations due to the volume and seriousness of other cases. Regulation would be more effective if conducted by local law enforcement.
- The proposed ordinance would establish a petty misdemeanor for possession of drug paraphernalia and a misdemeanor for the sale of drug paraphernalia.
- Municipalities have the ability to further regulate drug paraphernalia laws beyond Federal government regulations.

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

- Sue Kuhn, Moorhead resident
- Arnie Kuhn, Moorhead resident
- Teresa Norwig, Moorhead resident
- Heather Arntson, Moorhead resident
- Nathan Richman, Moorhead resident

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

- Joel Larson, Attorney representing Discontent
- Tom Tepley, Discontent

- Tyler Nelson, Mellow Mood
- Toby Mulvihill, Mellow Mood
- Jack McCavich, Fargo resident

The Mayor and Council noted the following:

- It is preferred that the City use education as a means of discouraging drug use, then enforcement.
- It is preferred that the City encourage legislators to amend drug paraphernalia State Statutes rather than develop an ordinance locally.
- State legislators may be more likely to amend State Statutes if affected Minnesota cities first develop ordinances locally.
- It was noted that the proposed ordinance was initiated by members of the City Council.
- It does not appear that the proposed ordinance will address the source of drug use problems.

Motion and Second to Approve were previously made at the August 8, 2011 City Council meeting, but action was tabled for reconsideration

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 Failed

For: 3 - Nancy Otto, Dan Hunt, Brenda Elmer; Against: 4 - Luther Stueland, Diane Wray Williams, Mark Altenburg, Mark Hintermeyer; Absent: 1 - Greg Lemke

Motion to Reconsider made by Mark Hintermeyer and seconded by Brenda Elmer
Reconsider 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 Reconsider Passed

For: 5 - Nancy Otto, Diane Wray Williams, Dan Hunt, Brenda Elmer, Mark Hintermeyer; Against: 2 - Luther Stueland, Mark Altenburg; Absent: 1 - Greg Lemke

Motion to Table made by Mark Hintermeyer and seconded by Brenda Elmer

Table Actions Related to Ordinance 2011-11 to November 28 Council Meeting

Motion to Table Passed

For: 5 - Nancy Otto, Diane Wray Williams, Dan Hunt, Brenda Elmer, Mark Hintermeyer; Against: 2 - Luther Stueland, Mark Altenburg; Absent: 1 - Greg Lemke

23. [Resolution to Approve the Inter Municipal Agreement between the Moorhead Police Department and Dilworth Police Department](#)

Minutes: City staff was directed to discuss the possibility of shared police services with the City of Dilworth as a means of collaboration and cost savings.

Motion to Approve made by Mark Altenburg and seconded by Luther Stueland
Resolution to Approve the Inter Municipal Agreement between the Moorhead Police Department and Dilworth Police Department

Motion Passed: **Resolution 2011-1114-9**

For: 7; Absent: 1 - Greg Lemke

Administration

24. [Resolution Providing for the Competitive Negotiated Sale of General Obligation Flood Mitigation Bonds, Series 2011C](#)

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

- The bond sale will be set at \$4.2M.
- There will be a 1.50% interest rate charged against unpaid balances.
- A lower interest rate or prepayments will lower future interest revenues and will create a condition where other revenue sources will be necessary to pay off the bond, such as the General Tax Levy.
- It is recommended that bond interest rates remain consistent with other bond sales related to previous flood mitigation projects.

Motion to Amend made by Luther Stueland and seconded by Mark Altenburg

Amend interest rate charge to 1%

Motion to Amend Failed

For: 1 - Luther Stueland; Against: 6 - Nancy Otto, Diane Wray Williams, Mark Altenburg, Dan Hunt, Brenda Elmer, Mark Hintermeyer; Absent: 1 - Greg Lemke

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

Resolution Providing for the Competitive Negotiated Sale of General Obligation Flood Mitigation Bonds, Series 2011C

Motion Passed: **Resolution 2011-1114-10**

For: 6 - Nancy Otto, Diane Wray Williams, Mark Altenburg, Dan Hunt, Brenda Elmer, Mark Hintermeyer; Against: 1 - Luther Stueland; Absent: 1 - Greg Lemke

25. [Resolution to Approve First Reading of Ordinance No. 2011-17: An Ordinance Adopting the 2012 Fee Schedule](#)

Minutes: It was noted that all fees related to Food-Beverage-Lodging licenses have been repealed now that the City of Moorhead no longer manages Minnesota Department of Health regulated facilities.

Council Members were encouraged to forward any questions related to the fee schedule to the City Manager. The fee schedule is scheduled to be adopted at the December 12 City Council meeting.

Motion to Approve made by Diane Wray Williams and seconded by Dan Hunt

Resolution to Approve First Reading of Ordinance No. 2011-17: An Ordinance Adopting the 2012 Fee Schedule

Motion Passed: **Ordinance 2011-17**

For: 7; Absent: 1 - Greg Lemke

26. [*Resolution to Waive Bonding Requirements and Authorize Issuance of Replacement Check](#)

Resolution 2011-1114-F

27. [City Manager Reports - Updates](#)

Minutes: Michael Redlinger, City Manager, provided the following updates:

- At the November 21 Committee of the Whole meeting the Mayor and Council will receive information related to homelessness and discuss the 2012 Operating & Capital Budget and General Tax Levy.
- Commissioner Frans, Minnesota Department of Revenue, will be visiting Moorhead on November 16, 2011.

It was noted that individuals who have been offered a flood buy-out will be allowed to stay in their home as time permits. City staff is cognizant of timeline requirements to enable properties to be moved or be in floodable condition before a potential 2012 flood event.

28. Executive Session

Minutes: No Executive Session was conducted.

29. New Business

A. [Discussion: Tobacco/Smokeshop Zoning Ordinances \(Council Member Altenburg\)](#)

Minutes: Council Member Altenburg provided a Memo entitled, "Zoning and Licensing of Tobacco Shops in Moorhead." Altenburg requested that the City Council examine changing tobacco licenses or zoning restrictions.

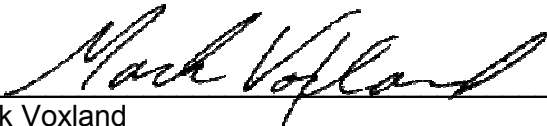
City staff clarified the following in response to Mayor and Council questions:

- There is a benefit to defining and/or prohibiting Tobacco Sampling by local ordinance as Minnesota State Statute is vague.
- Cities can elect to license Tobacco Sales and Tobacco Products Shops separately.
- A 30-day notice is required prior to an ordinance change affecting a current Tobacco Sales licensee. This notice would be provided before the first reading of the ordinance.

City staff will research possible ordinance changes and provide a comprehensive memo to the Mayor and Council.

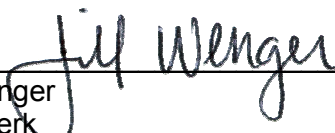
Meeting adjourned at 9:20 p.m.

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