

**City of Moorhead
City Council Meeting
Meeting Minutes
July 25, 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 July 25, 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	Absent
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. [Dilworth Centennial Appreciation Week](#)

Minutes: Mayor Voxland presented Chad Olson, Mayor of the City of Dilworth, with a proclamation recognizing Dilworth Centennial Appreciation Week.

B. [Mary King Osterfield Appreciation Day](#)

Minutes: Mayor Voxland presented Mary King Osterfield with a proclamation recognizing her 100th birthday.

C. [Master Chorale of Fargo Moorhead](#)

3. [Citizens Addressing the Council](#)

Minutes: No citizens addressed the Mayor and Council.

4. [Agenda Amendments](#)

Minutes: No agenda amendments were noted.

5. [Consent Agenda](#)

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

Minutes: The following agenda items were removed:

- #11 – Resolution Authorizing a Contract with Mn/DOT for New Freedom Section 5317 Transportation Services for Mobility Management
- #15 – Consider Actions Related to the 20th St Improvement Project (6th to 12th Ave S). Eng. No. 12-A2-2
- #22.B – Resolution to Approve Circus License

Motion to Approve made by Nancy Otto and seconded by Dan Hunt

Approve Consent Agenda

Motion Passed

For: 7; Absent: 1 - Diane Wray Williams

6. Mayor and Council Appointments

Minutes: No appointments were presented by the Mayor and Council.

7. [Mayor and Council Reports](#)

Minutes: Council Member Otto provided a brief report on the Metro Flood Study Work Group.

Council Member Lemke provided a brief report on the Metro Council of Governments (Metro COG). It was noted that a conference call will be scheduled in the near future between City staff and Federal Highway Administration (FHWA) headquarters to answer technical questions regarding the City's SE Main Avenue/I-94 ramp request. Mayor Voxland will participate in this conference call.

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

Minutes: Mayor Voxland reported that the City will receive \$16.5 million in flood mitigation funding through a Special Session Bonding Bill.

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

- Infrastructure projects will be bid and awarded this year and likely operational by spring 2012. Additional infrastructure projects are slated for construction in 2012.
- Property acquisitions will proceed with lowest elevation and highest risk properties.
- A Phase 2 study will be conducted to determine other potential flood mitigation projects.
- City staff has communicated with the Department of Natural Resources (DNR) about the possibility of utilizing DNR funding for property acquisitions that have not typically been eligible in the past. No clear decision has been made at this time.
- Residents that are interested in acquisition are encouraged to notify the City as soon as possible.

- City staff will provide an update to the Mayor and Council regarding plans for future targeted acquisition at an upcoming Council Meeting.

Public Hearings

9. [Public Hearing to Consider Matters Related to the 1st Ave N \(Central Corridors\) Redevelopment Project](#)

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

Scott Hutchins, Community Services Director, provided a brief overview of the 1st Avenue North (Central Corridors) Redevelopment Project plan and clarified the following in response to Mayor and Council questions:

- Approximately 25 Tax Increment Financing (TIF) Districts have been established throughout the life of the City. Currently there are 12 active TIF Districts. These districts are scattered throughout the City for housing and redevelopment projects.
- All proposed projects for the TIF District would be considered individually and require approval by the Mayor and Council.
- All projects would need to comply with the City's zoning regulations and comprehensive plan.

The following individuals addressed the Mayor and Council regarding their concerns over establishment of the TIF District and/or requested information related to redevelopment plans:

- Donna McMaster, Moorhead resident
- John Sherman, Moorhead resident
- Lyle Landstrom, Moorhead resident
- Rob Kupec, Moorhead resident
- Cindy Forster, Moorhead resident

City staff clarified the following in response to questions posed by individuals addressing the Mayor and Council:

- All redevelopment projects within the TIF district must meet the City's eligible use regulations.
- Parking lots near residential areas could be part of a new development.
- Per State Statute, reimbursable expenses can include project-related acquisition, demolition, and remediation which occurred prior to establishment of the TIF district.
- Expansion and adjustments of TIF district boundaries occurred as a result of discussions at the Economic Development Authority (EDA) Board.
- Advantages of enlarging the TIF district include a greater economy of

scale and the ability to pool funds throughout the district.

- All areas in the TIF district meet the State's required blight test.
- The size of the proposed TIF district resembles a previous downtown TIF district.
- The statutory allowance for TIF districts is 25 years.
- The Moorhead school district operating levy, which was approved by vote, are taxes solely on the basis of market value. These taxes are not captured in TIF districts.

Public hearing closed at 6:36 p.m.

A. [Resolution Establishing the 1st Avenue North \(Central Corridors\) Redevelopment Project, Redevelopment Plan, Tax Increment Financing District and Plan](#)

Minutes: The Mayor and Council Members stated the following:

- This action is an attempt to revitalize downtown Moorhead.
- This area of Moorhead is observed by up to 20,000 vehicles per day.
- Once established, all financial risk for approved developments are on the developer, not the taxpayer.
- Throughout the process the Mayor and Council encourage community engagement and input.
- Taxes received at the time of the TIF district establishment remain the same. The increased value of property within the TIF district is captured until redevelopment costs are satisfied. TIF is not a reduction in taxes and will result in increased taxes following conclusion of the TIF district.
- Concern was noted regarding the unintended consequences of attending to one area of the City and neglecting others. It is preferred that the City reduce barriers to development instead of continuing to offer tax incentives to spur redevelopment.

Motion to Approve made by Nancy Otto and seconded by Dan Hunt

Resolution Establishing the 1st Avenue North (Central Corridors) Redevelopment Project, Redevelopment Plan, Tax Increment Financing District and Plan

Motion Passed: **Resolution 2011-0725-1**

For: 6; Against: 1 - Luther Stueland; Absent: 1 - Diane Wray Williams

10. [Public Hearing to Consider Amendment to Program of Projects for Federal Transit Administration Grant Application](#)

Minutes: Public hearing opened at 6:45 p.m.

Lori Van Beek, Mass Transit Manager, provided a brief overview of the projects proposed for the Federal Transit Administration Grant Application and clarified the following in response to Mayor and Council questions:

- Large buses are needed to meet peak transit times and fulfill future transit needs throughout the 15 year life span of the bus.

No citizens addressed the Mayor and Council.

Public hearing closed: 6:51 p.m.

A. [Authorization to File Application with the Federal Transit Administration for Receipt of Federal Operating, Planning and Capital Assistance](#)

Motion to Approve made by Brenda Elmer and seconded by Dan Hunt
Authorization to File Application with the Federal Transit Administration for Receipt of Federal Operating, Planning and Capital Assistance
Motion Passed: **Resolution 2011-0725-2**
For: 7; Absent: 1 - Diane Wray Williams

Community Services Department

11. [Resolution Authorizing a Contract with Mn/DOT for New Freedom Section 5317 Transportation Services for Mobility Management](#)

Minutes: Lori Van Beek, Transit Manager, provided a brief overview of the contract.

Motion to Approve made by Greg Lemke and seconded by Brenda Elmer
Resolution Authorizing a Contract with Mn/DOT for New Freedom Section 5317 Transportation Services for Mobility Management
Motion Passed: **Resolution 2011-0725-3**
For: 6; Against: 1 - Luther Stueland; Absent: 1 - Diane Wray Williams

12. [*Resolution to Request City of Fargo to Continue Provision of MAT Paratransit Service During State Shutdown](#)
Resolution 2011-0725-A

13. [*Resolution to Approve Specifications and Advertise Request for Proposals for an Automatic Vehicle Announcement System for Mass Transit](#)
Resolution 2011-0725-B

14. [*Resolution of Authorization to Perform a Quiet Title Action \(Parking Lot between 3rd and 4th Street South, North of RR and South of Center Ave\)](#)
Resolution 2011-0725-C

Engineering - Wastewater Treatment

15. [Consider Actions Related to the 20th St Improvement Project \(6th to 12th Ave S\). Eng. No. 12-A2-2](#)

A. [Resolution to Order & Receive Engineer's Report and Order Plans & Specifications. Eng. No. 12-A2-2](#)

B. [Resolution to Approve Parking Restrictions. Eng. No. 12-A2-2](#)

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

- At least seven favorable votes are ultimately required to approve the

project as there would be an assessment.

- Inclusion of medians in the project does not significantly affect the project cost.
- The project occurs at a transitional section of pavement. To the south there are no medians, to the north there is a divided highway with medians.
- A temporary gravel roadway will be planned for access to the apartment complexes near 20th Street.

The Mayor and Council Members stated the following:

- Concern was noted regarding the inclusion of medians due to snow removal and proximity to a railroad track crossing.
- City Staff are encouraged to notify Centro Cultural de Fargo-Moorhead of the proposed project and potential impact on access to their office space and local residents.

City staff was directed to schedule a discussion regarding the project design at a future Committee of the Whole meeting in order to consider the pros and cons of the current design and provide direction to City staff on the Council's preferred option.

Motion to Approve made by Dan Hunt and seconded by Mark Altenburg
Resolution Approving Actions Related to the 20th St Improvement Project (6th to 12th Ave S). Eng. No. 12-A2-2

Motion to Table made by Nancy Otto and seconded by Brenda Elmer
Motion to Table Approved

For: 7; Absent: 1 - Diane Wray Williams

16. [*Resolution to Consider Utilizing Funds from G.O. Build America Improvement Bonds 2010A for the Rehabilitation of 19th St \(from 8th to 12th Ave S\). Eng. No. 11-A2-3](#)
Resolution 2011-0725-D

17. [Consider a Resolution to Authorize an Application for a TIGER Discretionary Grant for the SE Main Ave/20th St/21st St Railroad Grade Separation Project, Approve an Engineering Services Agreement with SRF Consulting Group, and Approve a Budget Adjustment](#)

Minutes: Bob Zimmerman, City Engineer, provided a brief description of the Application for a TIGER Discretionary Grant and clarified the following for the Mayor and Council:

- City staff is not certain on the likelihood of grant selection.
- Pursuing the grant application includes a budget adjustment for consultation services. as drafting the application is beyond available time of engineering staff.
- Barb Rhode, the City's transportation lobbyist, informed staff that TIGER grants will likely replace direct Congressional appropriations for funding projects of this magnitude. Rhode encourage the City to submit the application.

- The SE Main Avenue project is the most appropriate project to pursue at this time due to project readiness.
- A grant could be pursued for a project along 11th street after the site is suitably prepared.

The Mayor and Council Members stated the following:

- There is interest in seeking future TIGER Discretionary Grant funding for the project along 11th Street.

Motion to Approve made by Luther Stueland and seconded by Nancy Otto
Resolution to Authorize an Application for a TIGER Discretionary Grant for the SE Main Ave/20th St/21st St Railroad Grade Separation Project, Approve an Engineering Services Agreement with SRF Consulting Group, and Approve a Budget Adjustment

Motion Passed: **Resolution 2011-0725-4**

For: 7; Absent: 1 – Diane Wray Williams

18. [*Resolution to Award Bid for the River's Edge Subdivision Flood Mitigation Project. Eng. No. 11-13-3](#)
Resolution 2011-0725-E
19. [*Resolution to Award Bid for the Phase 4 Flood Mitigation Project for Levees & Sluice Gates. Eng. No. 09-A5-2B, Ph. 4](#)
Resolution 2011-0725-F
20. [*Resolution to Approve an Encroachment Agreement and a Reimbursement Agreement with Magellan Pipeline Company for the River Haven Road Flood Mitigation Project, Phase 2. Eng. No. 09-A13-2B](#)
Resolution 2011-0725-G

Police Department

21. [Resolution to Approve First Reading of Ordinance 2011-11, An Ordinance to Create and Enact Section 4-4-20 of the Moorhead Municipal Code Relating to Drug Paraphernalia](#)

Minutes: John Shockley, Assistant City Attorney, provided a brief explanation of the difference between zoning and licensing regulations and ordinances used to prohibit unlawful activities.

- Zoning and licensing regulations are used to regulate the sale of a lawful activity (e.g. adult uses). This ordinance intends to regulate the sale of devices that can be utilized for the consumption and production of an illegal substance and is the best method to prohibit this unlawful activity. It is not recommended that the City utilize zoning or licensing regulations to attempt to address this issue.

Chief David Ebinger, Moorhead Police Department, and Matthew Greenley, Assistant Clay County Attorney, provided an overview of the purpose and goal of the ordinance and clarified the following in response to Mayor and Council questions:

- Minnesota State Statutes vaguely define drug paraphernalia but allow local authorities to prohibit or further regulate the manufacture, delivery, possession, or advertisement of drug paraphernalia.
- Drug Paraphernalia is explicitly defined in North Dakota Century Code. With this ordinance it is intended that the Fargo-Moorhead metro area have consistent regulation regarding drug paraphernalia.
- Enforcement of this ordinance is subject to prosecutorial discretion and many layers of due process.
- The ordinance explicitly lists types of drug paraphernalia and provides factors a court or other authority shall consider in determining whether an object is drug paraphernalia.
- The ordinance clarifies that it is unlawful when a person “reasonably” knows that drug paraphernalia will be used in conjunction with a controlled substance.
- There are difficulties in prosecuting cases under current MN Statutes against individuals selling drug paraphernalia due to the fact that there is a high burden of proof to show intent.
- The Clay County Sherriff was involved in discussions regarding the proposed ordinance. The Clay County Attorney’s Office may consider drafting a similar ordinance for all Clay County cities or develop a county-wide ordinance.
- Businesses would be provided with proper notice if the ordinance passes and will be able to continue selling legal products within their stores.
- The ordinance would become enforceable 30 days following publication.
- Under the proposed ordinance, possession of drug paraphernalia would result in a petty misdemeanor (\$300 fine), sale of drug paraphernalia would result in a misdemeanor (\$1,000 fine or 90 days in jail) and seizure of all contraband.

The Mayor and Council Members stated the following:

- There is interest in seeking ways to further discourage sale of drug paraphernalia through zoning and/or licensing regulations wherever possible.
- Illegal use of controlled substances continues to be widespread. The ban of drug paraphernalia only appears to address the symptom.
- The ordinance appears to be a good tool for law enforcement.

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

- Randall Tigie, Attorney representing Discontent Disc & Tape
- Tom Tepley, President of Discontent Disc & Tape
- David Hammond, Moorhead resident

Motion to Approve made by Dan Hunt and seconded by Brenda Elmer
Resolution to Approve First Reading of Ordinance 2011-11, An Ordinance to Create and Enact Section 4-4-20 of the Moorhead Municipal Code Relating to Drug Paraphernalia

Motion Passed: **Ordinance 2011-11**

For: 6; Against: 1 - Luther Stueland; Absent: 1 – Diane Wray Williams

Administration

22. [Approve Licenses – Permits](#)

A. [*Resolution to Approve Licenses – Permits](#) **Resolution 2011-0725-H**

B. [Resolution to Approve Circus License](#)

Motion to Amend made by Greg Lemke and seconded by Mark Altenburg
Amend Resolution to add a requirement that the applicant will provide a Certificate of Animal Health prior to the event

Amendment Passed

For: 7; Absent: 1 - Diane Wray Williams

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

Resolution to Approve Circus License

Motion Passed: **Resolution 2011-0725-5**

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

23. [Resolution providing for the Competitive Negotiated Sale of General Obligation Improvement Bonds, Series 2011A and General Obligation Improvement Bonds, Series 2011B](#)

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

- A 1.5% interest over the bond rate is calculated into the bond in order to cover issuance costs, capitalized interest, pre-payments and delinquencies.
- Past practice demonstrates that this rate is reasonable and provides for appropriate debt service cash flows.
- North Dakota law sets a ceiling at up to 2% over the bond rate. Other Minnesota cities typically set the rate at 1.5% over the bond rate or higher.
- Additional information regarding bond interest rates is currently being compiled and will be distributed to the Mayor and Council.

Motion to Approve made by Dan Hunt and seconded by Brenda Elmer
Resolution providing for the Competitive Negotiated Sale of General Obligation Improvement Bonds, Series 2011A and General Obligation Improvement Bonds, Series 2011B

Motion Passed: **Resolution 2011-0725-6**

For: 6; Against: 1 – Luther Stueland; Absent: 1 - Diane Wray Williams

24. [*Resolution to Approve Services & Lease Agreement with Electro Watchman](#)

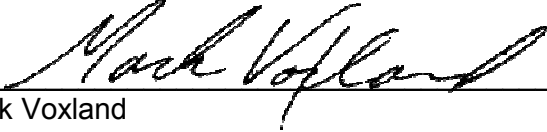
Resolution 2011-0725-I

25. City Manager Reports - Updates

Minutes: No reports were presented.

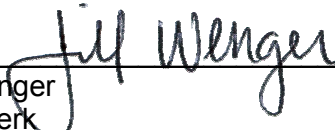
Meeting adjourned at 8:41 p.m.

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