

REGULAR MEETING DE SMET COMMON COUNCIL
February 14, 2018

The De Smet Common Council met in regular session on February 14, 2018, at 5:00 p.m., with the following present: Don Bohn, Lowell Hansen, Larry Jensen, George Cavanaugh, Norma Whitaker, Mayor Gary Wolkow, City Attorney Todd Wilkinson, and Finance Officer Tracey Larson. Absent: Jay Slater.

Mayor Wolkow called the meeting to order at 5:00 PM.

ANNOUNCEMENTS: Mayor Wolkow welcomed Dashia Ohman, who was attending the meeting to write an article regarding the council meeting for a college class; and announced that the Hazel L. Meyer Memorial Library was listed as a Star Library in the Library Journal Index of Public Library Service.

MINUTES: Motion was made by Whitaker, seconded by Cavanaugh, to approve the minutes of the January 10, 2018 Regular Meeting, all voting aye, motion carried.

CLAIMS: Motion by Whitaker, seconded by Bohn, to approve payment of the claims as presented, all voting aye, motion carried. The claims are as follows: PAYROLL \$36,390.38; OASI Benefit 2,783.89; Aflac, ins. premium 371.76; Dearborn National, life insurance 140.80; Farm Bureau Bank, health savings 1,000.00; Delta Dental of South Dakota 457.52; VSP 200.81; Wellmark Blue Cross Blue Shield, health insurance premium 6,009.12; SDRS, retirement benefit 4,045.86; American Bank & Trust, Event Center loan principal * interest 51,611.38; American Red Cross, supplies 200.00; American Water Works Assoc., 2018 renewal 79.00; Arbor Day Foundation, annual dues 35.00; Avid Hawk LLC, web site fee 35.00; Blake Hojer, deposit refund 275.00; Brianne Martens meter deposit refund 75.00; Brookings Register, marketing 269.00; Butler Machinery Co., supplies 34.30; Center Point Large Print, supplies 29.21; Century Link, utilities 504.91; City of De Smet, utilities 256.80; City of De Smet, petty cash 77.97; CMI, repairs 40.90; Connecting Point, repair and supplies 225.00; Cook's Wastepaper & Recycling, residential garbage collection 7,134.54; Country, supplies 29.98; Cowboy Country Store, fuel 445.59; De Smet American Legion Post, supplies 120.00; Dept. of Revenue, lab fees 28.00; The De Smet News, publishing 636.26; The De Smet News, library publishing 101.20; Eugene Watters, meter deposit refund 75.00; Farmers Brothers Coffee, supplies 208.51; Ferguson Waterworks, repairs & maintenance 2,872.31; Good Things Media and Design, marketing 480.00; H & I Grain, meter deposit refund 75.00; Hawkins, Inc., chemicals 1,953.67; Health, magazines 19.97; Heartland Paper Co., supplies 104.36; Heiman Fire Equipment, fire extinguishers inspection & repairs 706.45; Horizon, supplies 38.00; Internet Domain Name Services, supplies 45.00; Jerry Kott, meter deposit refund 75.00; Kingsbury Electric Cooperative, repairs & maintenance 562.24; Kingsbury Electric Cooperative, maintenance 220.00; Kingsbury County Auditor, law enforcement contract 6,283.33; Kingsbury Electric Cooperative, utilities 1,093.77; Maynard's, supplies 65.16; Micro Marketing LLC, supplies 264.45; NAPA, supplies 18.54; Norlab, supplies 79.00; Northwestern, utilities

1,937.72; O'Keefe Implement, Inc., supplies 105.65; Office Peeps, Inc., supplies 166.37; Office Peeps, Inc., supplies 512.78; Ottertail, utilities 6,824.32; Postmaster, supplies 102.00; Reader Service, supplies 17.22; REED, Inc., debt service payment 1,448.41; REED, Inc., debt service 690.58; REED, Inc., debt service 2,500.00; Rich's Gas & Service, fuel & supplies 559.38; Rod Zell - Country Garage, repairs 223.54; Ryland Strom, deposit refund 50.00; SD Dept. of Revenue, garbage sales tax 487.97; SD One Call, locates 38.08; Share Corp, chemicals 6,474.00; Sioux Falls Two Way Radio SVC., supplies 777.97; Smith's Lumber, supplies 137.50; State of SD, utilities 8.66; Waylor Enterprises, repair & maintenance 8,641.68; Wilkinson Insurance Agency, bond insurance 1,083.00; Mediacom, utilities 257.69; Mediacom, utilities 66.60; and visa, internet, supplies & registration 739.25.

BOARD OF EQUALIZATION: Tammy Anderson, Kingsbury County Director of Equalization, addressed the Council regarding the upcoming Board of Equalization meeting and provided information on the process for property owners to appeal the valuation, classification or taxable status of their property. The deadline for a property owner to file an appeal is March 15, 2018, and the appeal must be in writing. The Board of Equalization must meet by law starting Monday, March 19, 2018. Anderson informed the council that all residential and commercial lots will be increased by 10% to keep the city's assessed valuations in compliance with state law via sales.

SPECIAL LIQUOR LICENSE: Karen Hansen, owner of Wheaties Bar & Grill, requested a special liquor license for an event to be held on the street in front of Wheaties Bar & Grill at 112 Calumet Ave. SE on February 23, 2018 from 5:30 PM to 2:00 AM and for an event to be held at the De Smet Event on March 2, 2018 from 12:00 PM to 2:00 AM. Motion was made by Cavanaugh, seconded by Whitaker, to approve two special liquor licenses for Wheaties Bar & Grill, for an event to be held on the street at 112 Calumet Ave. SE on February 23, 2018 from 5:30 PM to 2:00 AM, an event to be held at the De Smet Event Center on March 2, 2018 from 12:00 PM to 2:00 AM, and to approve blocking the street in front of 112 Calumet Ave. SE on February 23, 2018 during the event, all voting aye, motion carried.

ARMORY/GYM FACILITY COORDINATOR: Armory Coordinator, Marv McCune met with the council to discuss his responsibilities as the coordinator and activities that he organizes each year. Those activities are primarily youth basketball tournaments that bring in 15-25 teams and require approximately 23 volunteers in addition to the high school students that help. The council asked if McCune could submit a report of activities on an annual basis. Motion was made by Cavanaugh, seconded by Jensen to renew the contract for the Armory/Gym coordinator due in the amount of \$600.00 with the condition that a yearly activity report is submitted, four voting aye, Bohn voted nay, motion carried.

FIRST READING TO AMEND THE ANIMAL ORDINANCE: An ordinance that would allow up to six chickens at a residence and the requirements was

presented and explained by Attorney Wilkinson. Several members of the council expressed concerns brought to them by De Smet residents if this ordinance were to be approved. Lonny Palmlund inquired about the distance requirement a chicken coop from a dwelling in the presented ordinance. The council will review the proposed ordinance before the next meeting. Motion was made by Cavanaugh, seconded by Jensen, to table the first reading to amend the animal ordinance until the March 14, 2018 regular council meeting, all voting aye, motion carried.

SECOND READING FOR ORDINANCE NO. VIII-10 WOOD PILES: The council reviewed the ordinance amendment that defines the amount of fire wood that could be stacked on a property. Motion was made by Hansen, seconded by Whitaker, to approve the second reading of Ordinance No. VIII-10, defining the amount of fire wood that can be stored on a property, all voting aye, motion carried.

ORDINANCE NO. VIII-10

AN ORDINANCE AMENDING the De Smet City Code regarding nuisances.

BE IT ORDAINED BY THE CITY OF DE SMET, SOUTH DAKOTA AS FOLLOWS:

Section 1.

5-3-1: PURPOSE: The purposes of this chapter are to protect the public from conditions hazardous to public health and safety, maintain community aesthetics, prevent blight conditions from arising, and generally preserve real estate values for property owners and to provide procedures for the abatement of conditions contrary to such purposes.

5-3-2: DEFINITIONS:

CORD: A unit of quantity for cut fuel wood, equal to one hundred twenty-eight (128) cubic feet in a stack measuring four feet by four feet by eight feet (4' x 4' x 8')

COST OF ABATEMENT: The total cost incurred by the City in connection with abating a public nuisance including, but not limited to: any cost incurred removing or remedying a public nuisance; a service fee for services rendered by the City in connection with inspection, notification, prosecution, and abatement procedures authorized under this chapter, which fee will be based on all services rendered by the City from initial inspection of the property for the purpose of documenting a violation of this chapter until the violation is corrected; any expense incurred by the City in collecting the costs hereto described; and any other necessary expense arising out of a nuisance violation, including the reasonable costs of attorney fees.

FIREWOOD: Neatly stacked burnable wood cut into lengths of approximately one to two feet (2') that require no further cutting of the wood prior to placing it in a wood burner or fireplace

JUNK: Any unused or unusable material that by reason of its state, condition, or excessive accumulation appears to be or have been cast aside, discarded, abandoned, worthless, useless, used up, expended, or worn out, in whole or part.

PREMISES: An identifiable unit of property associated with a particular person or entity.

PRIVATE PROPERTY: All strips of land not held open for public use.

PROPERTY: Includes both private property and public property.

PROPERTY AGENT: The owner, occupant, and/or person in charge of any house, building, lot, or premises.

PUBLIC PROPERTY or PUBLIC GROUNDS: All strips of land controlled or owned by the City which are held open for public use including, but not limited to, roadways, boulevards, parkings, right of ways, parkways and parks.

UNSIGHTLY: A visual appearance which is unattractive, disagreeable, obnoxious, intolerable, or otherwise unpleasant to a reasonable person.

5-3-3: NUISANCES GENERALLY:

- A. It is unlawful for any property agent to create, maintain, commit, or permit to be created, maintained or committed, any public nuisance.
- B. The term "public nuisance" consists of doing an act without lawful authority, or omitting to perform a duty, within the corporate limits of the City or in any public grounds, or parts belonging to the City, which act or omission either:
 1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
 2. Offends contemporary community moral standards;
 3. Does or tends to lower the value of adjacent real estate because of unsightly conditions;
 4. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage any public park, square, street, alley, right of way, or highway;
or
 5. In any way renders other persons insecure in life or in the use of property and which affects at the same time an entire community, neighborhood, or any considerable number of persons, although the extent of

the annoyance or damage inflicted upon the individuals may be unequal.

5-3-4: FIREWOOD: No property agent shall store firewood on residentially zoned property, except for use on the premises and in conformance with the following:

A. No more than two (2) cords of firewood shall be stored at any time, without the written approval of the fire department.

B. The firewood must be cut and neatly stacked and may not be stacked closer than five feet (5') to any property line and not higher than six feet (6') from grade except that firewood may be cut and neatly stacked on or near the lot line or against a fence, provided that it is no higher than the fence and that it is located a minimum of six feet (6') from any structure on adjacent property.

C. All brush, debris, and refuse from processing of firewood shall be promptly removed from the premises.

5-3-5: ACTS NOT ABROGATING NUISANCE:

A. No nuisance may be abrogated by moving, shifting, or otherwise redistributing items so that the nuisance conditions still exist on the premises or elsewhere in the corporate City limits.

B. No nuisance may be abrogated by the presence or construction of a fence, wall, or other visual barrier.

C. For purposes of this chapter, any nuisance conditions which are transient in nature but tend to re-occur repeatedly shall constitute an ongoing nuisance and be treated as though the nuisance conditions were present continuously.

5-3-6: INSPECTION: When a City official has reasonable cause to believe that there exists a nuisance on a given property or must confirm whether nuisance conditions have been corrected, a City official shall have the right to enter upon the property at reasonable times and in a reasonable manner in order to inspect the property or take other action pursuant to this chapter.

A. The City official making entry shall:

1. If such building or premises is occupied, first present proper credentials and demand entry; or

2. If such building or premises is unoccupied, first make reasonable effort to locate the property agent and demand entry.

B. The City official making an inspection may take photos or record videos, examine documents, require the production of documents and property for the purposes of examination or making copies, and may take any other lawful action to facilitate enforcement of the provisions of this chapter.

C. A City official making an inspection may take any person, equipment, machinery, apparatus, vehicle, material, or thing that the official deems necessary to effectuate or assist in the inspection.

D. While a City official is conducting an inspection pursuant to this section, no person shall:

1. Fail to comply with any reasonable request of the official;
2. Knowingly make any false or misleading statement to the official;
3. Unless authorized by the official, remove, alter, or interfere in any way with anything seized, detained, or removed by the official; or
4. Obstruct or interfere with the official or a person assisting the official.

5-3-7: CITY ALTERNATIVES UPON IDENTIFYING NUISANCE CONDITIONS:

Upon initially identifying conditions constituting a nuisance, a City official may take one or more of the following actions:

- A. Issue a written courtesy warning to a property agent allowing up to 30 days to correct the nuisance conditions.
- B. Issue a formal Order to Correct to a property agent.
- C. Under certain circumstances, direct that the nuisance be abated immediately.
- D. Cause a citation to be issued to a property agent for a violation of this chapter.
- E. Refer the matter to the City Attorney for appropriate legal action.
- F. Take any other action available at law or in equity.
- G. For purposes of this chapter, any and all property agents may be held jointly responsible for maintaining a property, correcting nuisance conditions, and for the cost of abatement under this chapter. In addition, any action taken against one property agent for a property shall not bar action against other property agents in relation to the same property nor shall such action necessitate action against other property agents in relation to the same property.

5-3-8: ORDERS TO CORRECT: An Order to Correct issued by a City official shall:

- A. Specify the municipal address or legal description of the property.
- B. State with specificity the conditions violating this chapter and list the code section(s) violated.
- C. Provide what actions must be taken to correct the conditions and the time period in which the corrective action must be completed. Such time period may later be extended by the City official, in writing, upon belief that a property agent was unable to comply with the given time period for reasons beyond their control but intends to comply within a reasonable time
- D. State that if compliance with the order is not effected as specified, the City may take the actions or measures specified to remedy the violation at the expense of the property agent, and if such person does not pay the cost of abatement, the cost of abatement shall be charged against the property concerned as a debt due to the City and recovered as taxes or assessments due and owing in respect to that property.
- E. State that if the City remedies the violation, any material being removed to effect compliance with the order can be destroyed or, if in the opinion of the City official, it has sufficient commercial value, sold and the proceeds used to offset the cost of abatement.
- F. State that the Order to Correct may be appealed within ten (10) business days.

5-3-9: OFFENSES AND PENALTY:

A. Every person is guilty of an offense under this chapter, and thereby subject to a maximum penalty of Thirty (30) day imprisonment in a county jail or Five Hundred Dollars (\$500.00) fine, or both.

1. Violates any of the provisions of this chapter;
2. Suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this chapter;
3. Neglects to do or refrains from doing anything required to be done by the provisions of this chapter;
4. Does any act which violates any provision of this chapter;
5. Fails to comply with any order, direction or notice given under this chapter; or

6. Breaches the peace, attempts to breach the peace, or otherwise obstructs any person authorized to carry out any lawful duty under this chapter by use of force, threat of force, or other means.

B. Each day that a violation remains shall constitute a separate offense.

C. A conviction for an offense for failing to comply with an order does not relieve the person convicted from complying with the order, and the judge may in addition to any fine and or jail sentence imposed, order the person to do any act or work, within a specified time, to comply with the order with respect to which the person was convicted.

D. The imposition of a penalty under this chapter shall not be a bar to further prosecution under this chapter and shall not be construed so as to exclude any other remedies or sanctions, either criminal or civil, elsewhere provided by law, including prosecution under SDCL 22-11-3 and SDCL 22-36-1.

5-3-10: LIABILITY: The City, City employees, or any other person who carries out any duties or performs work on behalf of the City in administering or enforcing this chapter is not liable for any damages caused by the inspection, the duties or work, the sale or disposing of anything, or any other lawful action necessary to carry out the requirements of this chapter.

5-3-11: SEVERABILITY: If any section, sentence, clause, or phrase of this chapter is for any reason held to be invalid, unenforceable, or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Franchise and the remainder shall remain in full force and effect.

Section 2.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective.

Adopted by majority vote of the De Smet SD City Council in regular session this 14th day of February, 2018.

City of De Smet Mayor

Attest:

(SEAL)

City of De Smet Finance Officer

First Reading: October 11, 2017
Second Reading: February 14, 2018
Published: February 28, 2018

SHOOTING RANGE: Jared Tolzin met with the council to discuss using the west portion of the Restricted Use Site for a shooting range to be used for a high school clay target league. Tolzin stated that the sport has grown over the last year. The season would start in April and end in June. The league would practice two times per week for nine weeks. RUS Supervisor Petersen expressed concerns about the safety of the patrons using the RUS, dumping when the rubble site is not open, safety of the league members, and having one entrance for both the RUS patrons and the shooting range league. Also discussed was the liability to the City, other places to build the shooting range, parking, getting the safety zone distance requirement, and having a separate approach for the range. More information will be presented at the March regular meeting.

BUILDING PERMITS: One building permit was submitted by De Smet Farm Mutual Insurance - sidewalk. Permit application was reviewed by the council. Motion by Cavanaugh, seconded by Whitaker, to approve the building permit application submitted by De Smet Farm Mutual for a sidewalk, all voting aye, motion carried.

EVENT CENTER CONCRETE: An estimate in the amount of \$10,408.18 from Castlerock Construction for 2,040 sq. ft. of concrete in two areas at the Event Center was presented to the council. The two areas to have concrete installed are the driveway area to the south overhead door and a 70 ft. x 8 ft. strip along the southeast corner of the parking lot. Motion was made by Hansen, seconded by Cavanaugh, to approve Castlerock Construction installing 2,040 sq. ft. of concrete at the Event Center in the amount of \$10,408.18, all voting aye, motion carried.

BUILDING & PARKS: Buildings & Park Supt. Richard Stoddard informed the council that he has ordered some trees to replace some of the trees that have been removed in the park. Five additional trees have been donated. Supt. Stoddard has lined up a contractor to have the stumps removed. Supt. Stoddard also reported that he has contacted several contractors for quotes to install a new roof on City Hall and work on the pool wall has been started.

EXECUTIVE SESSION: At 6:32 PM, motion was made by Cavanaugh, seconded by Whitaker, to go into executive session for contract negotiations all voted aye, motion carried. The council was declared out of executive session by Mayor Wolkow at 6:44 PM.

SEASONAL HELP: FO Larson informed the council that 11 applications were received for the swimming pool positions, one application for the softball coach position, and two applications for a seasonal helper. Motion was made by Jensen, seconded by Cavanaugh, to hire the following staff for the 2018 Swimming Pool, Softball Coach, and Summer helper: Callie Martens, lifeguard \$10.75/hour and co-head lifeguard \$750.00/season; Shannon Poppen, lifeguard \$10.75/hour and co-head lifeguard \$750.00/season, Hannah Buchheim lifeguard \$10.75/hour; Kristen Poppen, lifeguard \$10.50/hour; Reyna Beck, lifeguard \$10.50/hour; Cierra Sazue, lifeguard \$10.50/hour; Mesa Nolte, lifeguard \$10.50/hour pending she recertify her lifesaving certification; Noah Roth, lifeguard \$10.25/hour pending he passes his lifesaving certification; Jason Gruenhagen, softball coach \$1,800.00/season; and Jon Todd summer helper \$10.25/hour, all voting aye, motion carried.

FIRE DEPT. GRANT: Motion was made by Cavanaugh, seconded by Whitaker, to approve the De Smet Volunteer Fire Dept. applying for a grant in the amount of \$103,000.00 for nine SCBA units, a cascade filling station, and training to the Assistance to Firefighters Grant, all voting aye, motion carried.

CHAMBER EVENTS CONTRIBUTION: A budget of \$4,000 has been approved for the 2018 June and July Chamber events. The Car Show and Shine will have an additional expense for insurance. Motion was made by Cavanaugh, seconded by Whitaker, to approve spending up to \$4,050.00 for the Old Settler Days and July 4th events, all voting aye, motion carried.

HOSPITAL PROJECT: The De Smet Memorial Hospital project is in the final stages of completion. The City of De Smet agreed to contribute to the hospital project when the project was in the planning stage. Motion was made by Jensen, seconded by Cavanaugh, to contribute \$500,000.00 to the hospital construction project upon signing the lease agreement, all voting aye, motion carried.

BASEBALL FIELD PROJECT UPDATE: Council members Jensen and Cavanaugh updated the council on the new baseball field project with the following information: The scoreboard will need to be ordered approximately two weeks prior to installation; the bleachers have been ordered and will be delivered by February 23rd and will need to be set up.

EVENT CENTER DIRECTOR: Event Center Director, Kristy Hubbard discussed the MMA event that will be held at the Event Center, and she has

contacted the electrician and plumber for budgeted pool electric and plumbing repairs. Discussion was also help about installing a fence guard around the top of the pool fence and repairing the asphalt area at the pool.

DELOPMENT COORDINATOR REPORT: Development Coordinator Rita Anderson reported on the following: Rita Anderson and Ann Lesch will be working at a booth to promote De Smet that will be on display at the Pheasant Fest Show to be held in Sioux Falls February 16th - 18th; the "Power Hour" noon classes for businesses & individual began on February 13th and will continue into April at the Event Center on a variety of topics two times per month; De Smet was featured in the Arts Alive winter issue with a full page displaying the arts program in De Smet; the 2018 De Smet concert series will begin with five concerts to be held starting in March and go through October; many positive comments have been received from the people enrolled in the I.M.P.A.C.T.E.D. Classes with interest in continuing the classes on an annual basis; and the De Smet Community guide will be printed and available soon.

FINANCIAL REPORT: The January revenues, disbursement, and month end balance was presented by the Finance Officer. FO Officer Larson also reported that the current principal balance of the Event Center loan after the approved principal payment is \$125,277.93.

OVERTIME: Motion by Cavanaugh, seconded by Whitaker, to approve the overtime hours for the month of January as presented, all voting aye, motion carried.

OTHER: Other non-action items of discussion were as follows: 1) the January law enforcement report; 2) Street Supt. Petersen has contacted the company for applying the mag water; 3) a retaining wall & rock in the drainage area by the sidewalk along HWY 14; and 4) having the camping area looked at by the engineer before any additional improvements are made to that area.

ADJOURN: There being no further business the meeting was adjourned on motion by Hansen.

Gary Wolkow, Mayor

ATTEST:

Tracey Larson, Finance Officer

Published once at the approximate cost of \$ _____