

Unapproved Minutes
Council Special Session
August 18, 2014
Monday 12:00 noon

The special session of the City Council, City of Vermillion, South Dakota was held on Monday, August 18, 2014 at 12:00 noon at the City Hall large conference room.

1. Roll Call

Present: Collier-Wise, Erickson, Holland, Clarene Meins, Holly Meins, Price, Ward, Willson, Mayor Powell

2. Water Main replacement project - Cottage Avenue from W. Cherry Street to W. Duke Street - Jason Anderson

Jason Anderson, Assistant City Engineer, reported that in the last two months there have been two breaks in the sixteen inch water main on Cottage Street between Cherry and Duke Street. Jason stated that similar age pipe from Duke Street north is being replaced this year. Jason stated that the last break was the evening of budget hearings and, as such, this replacement was not included in the 2015 proposed budget. Jason stated that the estimated cost is \$165 to \$230 thousand depending on final quantities. Jason stated that replacement options are still being reviewed and that it will be a spring 2015 project at the earliest. Jason asked the City Council if they wanted staff to move forward with the design of the project. Jason answered questions of the City Council on the proposed project. The consensus of the City Council was for staff to move forward with the plans and specifications for bidding in the spring of 2015.

3. Landfill update - Bob Iverson

Bob Iverson, Solid Waste Director, reviewed pictures of the cell 5 construction, baler building and baler. Bob stated that the baler was put into use two weeks ago for training and has been in use since. John Prescott, City Manager, reviewed Joint Powers Agreement between the Counties of Yankton and Clay and Cities of Yankton and Vermillion. John reviewed the members of the Joint Powers Board as well as the area serviced. John noted that the large projects being completed have depleted the reserves for both Vermillion and Yankton. As such, members of the two cities will be meeting later this week to review options available that may include a rate increase.

Alderman Ward stated that he has met with Harlow Hatle and inspected the apartments with the improper sized egress windows and wanted to

know if the City Council would consider an extension of time to replace the windows.

John Prescott, City Manager, stated that the City Council adopted the building codes earlier this year that called for all egress windows less than 3 square feet in area or smaller then 18 inches in width or height be replaced by September 1, 2014 and all other non compliant egress windows need to be replaced by July 1, 2019. Discussion followed on the window size and the code requirements for fire safety. Farrel Christensen, Building Official, noted that the current code provides that the property owner can apply for an extension of the implementation date. Discussion followed on the amount of extension with the consensus that a phased plan whereby some windows are installed each year would be acceptable. Farrel stated that he would be willing to work with property owners on extensions.

Alderman Ward requested to be excused at 12:43 p.m.

4. Briefing on the August 18, 2014 City Council Regular Meeting

Council reviewed items on the agenda with city staff. No action was taken.

5. Adjourn

291-14

Alderman Willson moved to adjourn the Council special session at 12:50 p.m. Alderman Holland seconded the motion. Motion carried 8 to 0. Mayor Powell declared the motion adopted.

Dated at Vermillion, South Dakota this 18th day of August, 2014.

THE GOVERNING BODY OF THE CITY
OF VERMILLION, SOUTH DAKOTA
BY _____
John E. (Jack) Powell, Mayor

ATTEST:

BY _____
Michael D. Carlson, Finance Officer

Unapproved Minutes
City Council Regular Session
August 18, 2014
Monday 7:00 p.m.

The regular session of the City Council, City of Vermillion, South Dakota was called to order on August 18, 2014 at 7:00 p.m. by Mayor Powell.

1. Roll Call

Present: Collier-Wise, Erickson, Holland, Clarene Meins, Holly Meins, Price, Ward, Willson, Mayor Powell, Student Representative Tordsen

2. Pledge of Allegiance

3. Minutes

A. Minutes of August 4, 2014 Special Session; August 4, 2014 Regular Session, August 11, 2014 Budget Session, and August 14, 2014 Budget Session.

292-14

Alderman Holland moved approval of the August 4, 2014 Special Session, August 4, 2014 Regular Session, August 11, 2014 Budget Session, and August 14, 2014 Budget Session minutes. Alderman Clarene Meins seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

4. Adoption of Agenda

293-14

Alderman Willson moved approval of the agenda. Alderman Collier-Wise seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

5. Visitors to be Heard

A. Proclamation-Log School House Dedication

Alderman Clarene Meins read the proclamation recognizing the first permanent school house in Dakota Territory built September 3, 1864 with the replica being built to celebrate the sesquicentennial. Mayor Powell presented the proclamation to Dan Christopherson. Dan stated that he was representing the Clay County Historical Society and thanked the City for their assistance on the project. Dan invited the City Council and community to the log school house dedication on Wednesday, September 3rd from 4:00 p.m. to 7:00 p.m. at the Austin-Whittemore property.

6. Public Hearings

A. Appeal to Notice and Order requiring "hard wired" Smoke Alarms per Chapter 94, Rental Housing Code, Section 94.02, Responsibilities of Owners and Occupants of Rental Units, of the 2008 Revised Ordinances of the City of Vermillion, South Dakota

Farrel Christensen, Building Official, reported on June 10, 2014 that the City Rental Inspector completed an inspection of the rental structure located at 112 E Cherry. Farrel noted that several items were found in violation of the City's rental housing. While inspecting the units, it came to the attention of the inspector that hard wired smoke detectors were not installed as required by the Rental Housing Code adopted in 2011. City Code requires that all registered rental units shall be provided with smoke detectors that are hardwired into the electrical system with battery backup. Farrel stated that smoke detectors must be installed in each sleeping room, outside each separate sleeping area in the immediate vicinity of the bedrooms, on each additional story of the dwelling, including basements and habitable attics but not including crawl spaces and uninhabitable attics. Farrel noted that when the inspector asked the manager about the non hard wired smoke detectors he responded that the sealed battery powered units in place had been approved by the City.

Farrel noted that the inspector confirmed that no such approval had been made for the 10 year sealed battery smoke detectors installed. Farrel stated that the potential of using 10-year sealed battery powered units without connection to electricity had been discussed several times with the multi-housing association in meetings with staff and City Council. Farrel reported that the City Manager confirmed with Dan Siefken of the SD Multi-housing Association that use of the sealed battery units that are not connected to the electrical system was not conveyed to the membership as an option. Farrel stated that an inspection report was sent to the owner informing him that hard wired smoke detectors were required and in order to continue to rent the units he must provide the City with the name of the electrical contractor that would be installing the required hard wired smoke detectors and would complete the work no later than September 1, 2014.

Farrel stated that a short time after the inspection letter was sent the owner came into City Hall and proposed that the battery powered units he installed be allowed. Farrel stated that the owner was informed that the ordinance specifically requires hard wired smoke detectors and no provisions for battery power units have been made. Farrel reported that shortly after this discussion the property owner, Woody Houser, applied for an appeal.

Farrel reported that the requirement for hard wired smoke detectors was first presented to the City Council on July 18, 2011 and became

effective September 1, 2011. The ordinance gave owners until January 1, 2014 to provide all registered rental units with smoke alarms that receive their primary power from the building wiring and when primary power is interrupted shall receive power from a battery.

Farrel stated that without the correct smoke alarms in place the unit becomes substandard and if not for the owner applying for an appeal to stay the enforcement, the units would have been posted as unlawful to occupy and the tenants ordered to vacate.

Farrel reported that prior to the requirement for hard wired smoke alarms nearly 90% of the rental units inspected had smoke alarms that were not working and last month nearly 90% of the rental units inspected had working smoke alarms. Farrel noted that in two years the improvement in fire safety in registered rental units has been remarkable.

Farrel stated that the City Council, acting as the board of appeals, now has to consider the issue and determine: 1) If the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, 2) If the provisions of this code do not fully apply, 3) If the requirements of this code are adequately satisfied by other means.

Farrel stated that section 94.02 appears to be very clear that primary power must be provided (hard wired) from the building wiring and that battery power may only be used for backup power if the primary power is interrupted.

Farrel stated that the second question is whether the provision for hard wired smoke alarms applies. Farrel stated that the provisions of this code would apply as all registered rental units shall be provided with smoke alarms that operate on building wiring and must be installed by January 1, 2014.

Farrel noted that the only remaining question is whether the requirements of the code can adequately be satisfied by other means.

Farrel stated that the answer to this question is no. The installed battery power smoke alarms are not as good as the required hard wired smoke alarms. Farrel noted that hard wired smoke alarms are the only type allowed by the International Building Code in new construction. The first copies of the 2015 International Building Code came out in July and the only style allowed are hard wired. This decision was made after three years of research, hearings and testimony by the foremost experts in fire and life safety. Hard wired smoke detectors have been required since 1988 and have been proven to be the best system

available. So much so that in 2006 the International Residential Code required battery powered systems be replaced with hard wired smoke alarms whenever a building permit for alteration or additions is issued.

Farrel noted that the 10 year sealed battery power units are relatively new and, as such, have only just been issued a UL listing. Farrell noted that the ten year life span is also a problem. The units must be replaced before the battery runs out and it would be difficult for inspectors to know when that time is or to have an inspection that is always timed with battery expiration. Farrel stated that hard wired smoke alarms do not rely on batteries for their primary power so if the unit tests good the inspector knows the occupants are protected. The Code requires a smoke detector with a primary and backup source of power. The installed units have only a single source of power with no backup power.

Farrel stated that there may come a time when sealed units are proven and accepted by the International Code Council but that event has not yet occurred. It is correct that a few states are allowing the use of 10-year sealed units. South Dakota is not one of the two or three states. Mr. Houser knew what the deadline was and how the installed unit was to be powered. Farrel noted that allowing the installation of a non-approved type of unit after the fact would appear to be contrary to adopted code and would likely cause other landlords who complied with code to question the City's intent. Farrel stated that he recommended the denial of the appeal.

Janet Olson, attorney representing Woody Houser, stated that she sent a packet of information on Friday to the City for each Council member and also apologized that the appeal form and letter indicated a Cottage address when the correct location was 112 East Cherry Street. Janet stated that her client is concerned about the safety of the tenants in his rental units. She stated that the adoption of the 2012 building code has imposed many costs onto her client as a landlord. Janet stated that the cost of hard wired battery backup smoke detectors for this property is estimated at \$9,500 while the 10 year sealed battery smoke detectors cost \$2,950. She stated that in existing buildings there are obstacles to installing hard wired smoke detectors that are not present in new construction. She stated that when the battery backup in the hard wired smoke detectors reaches the end of its useful life it chirps and the tenants remove the smoke detector to keep it from chirping. Janet stated that the 10 year sealed battery smoke detectors will not chirp until the end of their life thus it remains in service much longer. She stated that the supporting documentation she provided stated that 78% of the 10 year life detectors were still functioning. Janet noted that one tenant had a problem with false alarms and since

the battery could not be removed had called the manager who relocated the detector to a better location in the unit instead of just taking the battery out or removing the unit. Janet reported that other states have allowed use of the 10 year sealed battery smoke detectors. Janet also noted that the City requirement for hard wired smoke detectors with battery backup for rental units is not being applied to owner occupied structures.

Janet stated that the landlords want to protect their tenants and feel the 10 year sealed battery smoke detector units will remain in service longer than the units required by the City. The cost of the 10 year sealed battery smoke detectors is one third of the hard wired required by the City. Janet stated that the 10 year sealed battery smoke detectors are a viable option for existing structures and requested consideration of the appeal.

Mayor Powell noted that the information provided included the National Association of State Fire Marshals Science Advisory Committee report that on page three reported that according to a 2009 American Housing Survey the death rate per 100 reported fires is twice as high in fires with smoke alarms powered by batteries compared to fires with hard wired smoke alarms.

Alderman Erickson asked City Attorney McCulloch for his opinion of the code adopted by the City. Jim McCulloch, City Attorney, reported that, in his opinion, the intention of the City Council was for the health and safety of rental housing tenants in the community. Jim stated that over the years smoke detectors had been discussed noting that the battery powered detectors were found not working in many cases and the 2011 update to hard wired detectors with battery backup improved the percentage to be found working as Farrel stated. Jim noted that the City Council provided until December 31, 2013 for rental properties to become compliant with the implementation of the updated code. Jim stated that safety issues cannot be grandfathered as a general rule in multi unit rental property. Jim stated that advances in technology in safety areas and upgrades as time goes on will require landlords to make their property compliant with these advancements.

There was discussion on a requirement for interconnections of smoke detectors with Farrel noting that there is an exception for this in existing units.

Alderman Erickson requested to allow Woody to address the City Council. Mayor Powell upon hearing no objection from the Council allowed Woody to address the Council.

Woody stated that he has hard wired smoke detectors with battery backup in other units in Vermillion and Sioux Falls but noted that, when the battery backups chirp to note the need for a new battery, the tenants are removing the units. He stated that with the 10 year sealed unit smoke detectors there is no need to change the battery, thus the tenants leave the units in place.

Upon request, Farrel stated that he has not found a study that reports the 10 year sealed battery smoke detectors are equivalent to the hard wired smoke detectors with a battery backup.

Mayor Powell asked the Council if they had any objections to allowing Janet Olson to address the Council. Upon hearing none, Janet was allowed to address the council.

Janet Olson stated that no other community has this requirement for hard wired smoke detectors for all rental units, but only requires this of new construction.

Discussion followed on the required compliance date noting that it was January 1, 2014 with Farrel noting that extensions were given when it could be shown that the owner had contracted to have the work done.

294-14

Alderman Ward moved to deny the appeal of Mr. Woody Houser for the property at 112 East Cherry to use 10 year lithium battery sealed smoke detectors in the rental units as an equally good or better form of compliance then required by ordinance section 94.02 G for hard wired smoke detectors with battery backup and to provide a reasonable time to bring the property into compliance with the City ordinance. Alderman Willson seconded the motion. Motion carried 8 to 1. Mayor Powell declared the motion adopted.

7. Old Business - None

8. New Business

A. 2013 Audited Comprehensive Annual Report

Mike Carlson, Finance Officer, reported that the 2013 Audited Comprehensive Financial Report is included in the packet. The firm of Williams & Company completed the audit. Also included in the packet is a letter to the Mayor and Council from Williams & Company. The Department of Legislative Audit has reviewed and accepted the audit report with their letter included in the packet. Mike noted that the City Council will need to accept the report. Discussion followed.

295-14

Alderman Collier-Wise moved approval of the acceptance of the 2013 Audited Comprehensive Financial Report. Alderman Ward seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

B. Resolution for Comprehensive Funding Agreement for the West Main Street Mill and Overlay Project

Jose Dominguez, City Engineer reported that West Main Street from High Street to Stanford Street is scheduled to be milled and overlaid during the 2015 construction season. Jose reported that prior to the work taking place the DOT requires that the City sign a funding agreement. Jose stated that the funding agreement stipulates how the funding of the project will be made and also sets the criteria that need to be followed during the construction and future maintenance of the street that is similar to agreements with the DOT for the Cherry Street Project, Crawford Road Project and Stanford Street Projects. Jose stated that the project is to be funded with \$300,000 STEP funds through the State and \$140,000 from the City second penny sales tax fund. Jose recommended approval of the resolution for funding. Discussion followed.

296-14

After reading the same once, Alderman Willson moved adoption of the following:

Resolution

Accepting the Funding Agreement between the Department of Transportation and the City of Vermillion for Letting and Construction of Project P 5708(05), PCN 04AF

Whereas, the City of Vermillion wishes to mill and overlay West Main Street from High Street to Stanford Street utilizing a combination of Local, State and Federal funds; and

Whereas, the Governing Body of the City of Vermillion is asked by the South Dakota Department of Transportation to approve the above mentioned funding agreement by resolution.

Now, therefore, be it resolved, that the Governing Body of the City of Vermillion accepts the Funding Agreement between the Department of Transportation and the City of Vermillion for Letting and Construction of Project P 5708(05), PCN 04AF.

Dated at Vermillion, South Dakota this 18th day of August, 2014.

FOR THE GOVERNING BODY OF THE
CITY OF VERMILLION, SOUTH DAKOTA

By _____
John E. (Jack) Powell, Mayor

ATTEST:

By _____
Michael D. Carlson, Finance Officer

The motion was seconded by Alderman Ward. Discussion followed and the question of the adoption of the Resolution was presented for a vote of the Governing Body. 9 members voted in favor of and 0 members voted in opposition to the Resolution. Mayor Powell declared that the Resolution was adopted.

C. Request to remove parking on both sides of N. Dakota Street from W. Duke Street to Highway 50 during events at the USD Dakota Dome

David Herbster, Athletic Director, stated that the construction south of the Dakota Dome will have this area fenced off and the student entrance is going to be moved to the northwest entrance. Dave stated that with the construction area going to the east side of Dakota Street in the area he requested that parking be removed from both sides of Dakota Street from Duke Street to Highway 50 during events at the dome. Dave stated that this request is for pedestrian safety in this area. He said that the Foundation has approved using the field north of the foundation for parking thus pedestrians will be crossing the street and others will be walking from the south without any sidewalk. James Bandy, Sr., Associate Director of Athletics and Internal Operations, reviewed a map of the area noting that removing the parking will allow the University to install barricades during the events so that vehicles do not park and allow this area for pedestrian traffic to the dome. James stated that the USD Department of Athletics request is to block off all street parking on both sides of Dakota Street from Duke Street to Highway 50 for all events held in the Dakota Dome to ensure safety of individuals attending the events. He stated that this will be coordinated with USD and Vermillion Police Departments. Discussion followed with James noting that visitor bus parking will be allowed on Dakota Street south of the northwest entrance as was approved at last meeting.

Amanda Whittecar, Manager of the Holiday Inn Express, stated that she was concerned about the removal of on street parking as they have 56 rooms and off street parking for 56 cars but for large events there are more than one car per room and that motel staff also needs parking.

Discussion followed on the parking request of USD. David Herbster stated that they are willing to work with the area businesses to resolve this parking issue. Amanda stated that for large events they may need up to 20 extra parking spaces.

297-14

Alderman Holland moved approval of the request of the USD Athletic Department to remove parking on both sides of Dakota Street from Duke Street to Highway 50 during events at the Dakota Dome to be communicated with the USD and Vermillion Police Departments and the Athletic department will need to accommodate the parking needs of the adjoining businesses. Alderman Erickson seconded the motion. Discussion followed on the other business parking needs. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

D. Tree Board appointments

Mayor Powell reported that there are currently two openings on the Tree Board. Mayor Powell stated that an expression of interest form was received from Clarence Pederson and he recommended his appointment to the Tree Board.

298-14

Alderman Willson moved approval of the appointment of Clarence Pederson to the Tree Board. Alderman Collier-Wise seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

9. Bid Openings

A. Annual supply of propane for Solid Waste Department

Jason Anderson, Assistant City Engineer, reported that bids were opened August 13th for the annual supply of propane for the Landfill and Recycling Center. The low bid was from Tri County Oil & Propane for \$1.349 per gallon. Jason stated that the bid was for up to 17,000 gallons to be delivered as needed to the Landfill and Recycling Center and if the usage exceeds that amount the City will need to purchase at the market rate.

Bids: Butch's Propane \$1.359, Ferrrellgas \$1.499, Long's Propane \$1.49, Tri County Oil & Propane \$1.349

299-14

Alderman Willson moved approval of the low bid of Tri County Oil & Propane of \$1.349 per gallon for up to 17,000 gallons of propane to be delivered to the Landfill and Recycling Center as needed. Alderman Ward seconded the motion. Motion carried 9 to 0.

10. City Manager's Report

A. John reported on the receipt of a raffle notice from the Vermillion After Prom Committee. They will be selling tickets at \$2.00 each or 3 for \$5.00 from August 22nd to October 17th. The prize is the opportunity to sit on a couch and recliner at field level during a home football game. One individual and 4 friends will enjoy pizza and soft drinks while watching the game at field level. The prize is valued at \$40. Proceeds go to the After Prom Committee for their annual event.

B. John reported that there are a number of street closings:

1. Pine Street from Cedar Street to National Street from 4:00 p.m. to 10:00 p.m. on Thursday, August 21st for an event at Alpha Phi sorority.
2. Market Street for Thursdays on the Platz from Main Street south ½ block on Thursday, August 21st from 5:00 p.m. to 8:00 p.m.
3. N. Plum Street from Cherry Street to Highway 50 & Rose Street from Coyote Village from 5:00 a.m. to 3:00 p.m. on Friday, August 22nd for USD Move-in Day.
4. Kidder Street from Court Street to alley ½ block west from 2:00 a.m. on Saturday, August 23rd to 4:00 a.m. on Sunday, August 24th for a fundraising event at the Old Lumber Company.

C. John reported that City offices are closed on Monday, September 1st for Labor Day and the next City Council meeting is on Tuesday, September 2nd.

PAYROLL ADDITIONS AND CHANGES

Library: Susan Heggstad \$10.99/hr; Golf Clubhouse: Mike Mettler \$7.75/hr, Kasie Olson \$8.00/hr; Wastewater: Nick Anglin \$9.00/hr

11. Invoices Payable

300-14

Alderman Collier-Wise moved approval of the following invoices:

RICH HOLLAND	MILEAGE REIMBURSEMENT	201.28
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Alderman Clarene Meins seconded the motion. Alderman Holland requested to abstain. Motion carried 8 to 0. Mayor Powell declared the motion adopted.

301-14

Alderman Willson moved approval of the following invoices:

BLUETARP FINANCIAL, INC	OIL TRANSFER KIT	799.99
BROADCASTER PRESS	ADVERTISING	1,044.69
BUREAU OF ADMINISTRATION	TELEPHONE	230.18
CANON FINANCIAL SERVICES	COPIER LEASE	196.27
CENTURYLINK	TELEPHONE	1,491.71
CITY OF VERMILLION	LANDFILL VOUCHERS	732.00
CLAY-UNION ELECTRIC CORP	ELECTRICITY	386.93
DAKOTA BEVERAGE	MERCHANDISE	700.20
DEPT. ENVIRONMENT NATL RES	LANDFILL OPERATIONS FEE	3,562.54
GREGG PETERS	MANAGERS FEE	5,375.00
HY VEE FOOD STORE	SUPPLIES	50.00
KARSTEN MFG CORP	MERCHANDISE	1.17
LOREN FISCHER DISPOSAL	HAUL CARDBOARD	140.00
LSC ENVIRONMENTAL PRODUCTS	DAILY COVER APPLICATOR	11,850.91
MATHESON TRI-GAS, INC	SUPPLIES	277.59
MIDAMERICAN	GAS USAGE	2,655.79
MIDCONTINENT COMMUNICATIONS	CABLE/INTERNET SERVICE	118.68
REPUBLIC NATIONAL DIST.	MERCHANDISE	5,197.28
RESERVE ACCOUNT	POSTAGE FOR METER	950.00
SD PARKS & RECREATION ASSOC	REGISTRATION	450.00
SDWWA	REGISTRATION	240.00
SHERRY JUNEAU	REFUND ELEC/WA SERVICE FEES	20.60
STERN OIL CO.	FUEL	22,043.13
TEOSCIA LOVE	REFUND METER DEPOSIT & FEES	40.60
US POSTMASTER	POSTAGE FOR UTILITY BILLS	1,000.00
VERMILLION CHAMBER OF COMMERCE	BLISS POINTE GRANT	595,788.88
VISA/FIRST BANK & TRUST	FREIGHT CHARGES	59.85
DAVE STAMMER	BRIGHT ENERGY REBATE	35.00
OMPRAKASH THANGAVELU	BRIGHT ENERGY REBATE	1,100.00

Alderman Ward seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

12. Consensus Agenda

A. Set a bid opening date of September 10, 2014 for the purchase of transformers for the Light & Power Department

302-14

Alderman Willson moved approval of the consensus agenda. Alderman Clarene Meins seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

13. Adjourn

303-14

Alderman Clarene Meins moved to adjourn the Council Meeting at 8:14 p.m. Alderman Collier-Wise seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

Dated at Vermillion, South Dakota this 18th day of August, 2014.

THE GOVERNING BODY OF THE CITY
OF VERMILLION, SOUTH DAKOTA

BY _____
John E. (Jack) Powell, Mayor

ATTEST:

BY _____
Michael D. Carlson, Finance Officer

Published once at the approximate cost of _____.