October 19, 2020

West Des Moines City Council Proceedings
Monday, October 19, 2020

Mayor Steven K. Gaer opened the regularly scheduled meeting of the City Council of West Des Moines, Iowa, in the Council Chambers of the West Des Moines City Hall on Monday, October 19, 2020 at 5:30 PM. Council members present were: R. Hardman, G. Hudson, M. McKinney, K. Trevillyan and R. Trimble.

City Clerk Ryan Jacobson stated there is one amendment to the agenda, as the applicant for Item 7(c) M&W Mini Storage Site Improvement Plan has requested the item be continued two weeks. He also noted there have been amendments to the drawings associated with Item 7(e) Parcel 2020-158 Plat of Survey.

On Item 1. Agenda. It was moved by Trimble, second by Hardman approve the agenda as amended.

Vote 20-448: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 2. Public Forum

Jan Fleming, 1800 Grand Avenue, #259, addressed the council regarding her concerns about the ongoing COVID-19 pandemic and how some people are not wearing face coverings or practicing social distancing in public places, such as grocery stores and in the common areas of her apartment complex. She requested the City take further steps to mitigate the spread of the virus, such as issuing a mask mandate.

Mayor Gaer stated the City has adopted a Resolution encouraging COVID-19 public health practices, but that is the extent of the City's authority on this issue, as the Iowa Attorney General has written a legal opinion that only the Governor can legally issue a mask mandate. He encouraged Ms. Fleming to share her concerns with the Governor's office, and the specific concerns about her apartment complex should be shared with her landlord.

On Item 3. Council/Manager/Other Entities Reports:

Council member McKinney reported he attended a meeting of the Bravo Greater Des Moines Board, where discussion was held on budgetary concerns amidst the effects of the COVID-19 pandemic and potential changes to how the organization allocates funding. The changes could decrease or eliminate funding allocations for some organizations that don't have arts and culture as part of their primary mission, such as the Historic Valley Junction Foundation. He also reported the Development and Planning Subcommittee met and discussed increased flexibility within the City Code. He also attended a meeting of the Metropolitan Advisory Council, where an update was given by the Polk County Housing Trust Fund.

Council member Hudson reported he attended the annual meeting for the Greater Dallas County Development Alliance.

Council member Trimble reported he attended a meeting of the Polk County Disaster Recovery Committee, which seeks to provide assistance to the public and businesses during the ongoing COVID-19 pandemic. He also attended a meeting of the Finance and Administration Subcommittee, where discussion was held on the upcoming budget process and potential adjustments to the allocation of hotel/motel tax funding and local option sales tax revenue.

Council member Hardman reported she attended a meeting of the Human Rights Commission, where discussion was held on planning the commission's Martin Luther King Jr. Day celebration. She also reported there will be a ribbon cutting ceremony for the West Des Moines Public Library's new kiosk in Valley Junction.

Mayor Gaer reported he received a letter notifying him that the City of West Des Moines was again awarded the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association.

Council member Trimble he reported a meeting of the Parks and Recreation Advisory Board, where discussion was held on alcohol usage policies and the proposed single track trail in Southwoods Park.

On Item 4. Consent Agenda.

It was moved by McKinney, second by Hardman to approve the consent agenda as presented.

a. Approval of Minutes of October 5, 2020 Meeting
b. Approval of Bill Lists
c. Approval of Liquor Licenses:
    1. Two Tees, LLC d/b/a Anna Dolce, 5585 Mills Civic Parkway, Suite 110 – Class LC Liquor License with Sunday Sales and Outdoor Service - New
    2. Revenge is a Dish, LLC d/b/a Moon at West Glen, 5485 Mills Civic Parkway – 5 Day Class LC Liquor License with Sunday Sales - Effective October 29, 2020 through November 2, 2020
    3. Firebirds of West Des Moines, LLC d/b/a Firebirds Wood Fired Grill, 440 South 68th Street, Suite 101 - Class LC Liquor License with Sunday Sales - Renewal
    4. Monterrey III, LLC, d/b/a Monterrey III, 6630 Mills Civic Parkway, Unit 3116 – Class LC Liquor License with Sunday Sales - Renewal
    5. Pho Shobu, LLC d/b/a Pho Shobu, 8950 University Avenue, Suite 103 - Class LC Liquor License with Sunday Sales - Renewal
    6. SA Petro Mart, Inc., d/b/a SA Petro Mart, 136 1st Street - Class LE Liquor License with Carryout Wine, Carryout Beer, and Sunday Sales - Renewal

7. Shri Hari, LLC d/b/a West D Liquors, 5014 EP True Parkway - Class LE Liquor License with Carryout Beer, Carryout Wine, and Sunday Sales - Renewal

d. Approval of Professional Services Agreement - Request for Proposals for EMS Billing and Collection Services

e. Approval to Purchase OmniDeck Temporary Flooring and Field Cover - MidAmerican Energy RecPlex

f. Approval of Amendment No. 1 to Professional Services Agreement - 2020 Street Reconstruction Program

g. Approval of Change Orders:
   1. MidAmerican Energy RecPlex - General Construction, #6
   2. MidAmerican Energy RecPlex - Pre-Engineered Metal Building, #8

h. Approval of Interfund Transfers

i. Establish Public Hearing - Issuance of Not to Exceed $17,000,000 General Obligation Urban Renewal Bonds

j. Authorize Temporary Transfer of Surplus Funds from the Sewer Enterprise Fund to the MidAmerican Energy RecPlex Enterprise Fund

k. Approval of 28E Agreements:
   1. Mutual Assistance - Dallas County Area Fire/Rescue Services
   2. Iowa Pledge Tobacco Compliance Program - Iowa Alcoholic Beverages Division

l. Order Construction:
   1. 2020 Pavement Markings and On-Street Bike Markings Program
   2. 2020 Stormwater Intake Repair Program

m. Accept Work:
   1. Cedar Ridge Sewer Extension
   2. MidAmerican Energy RecPlex - Foundations
   3. Veterans Parkway, SE 50th Street to SW 60th Street

n. Establish Consultation Meeting and Public Hearing - Amendment #10 to the Amended and Restated Mills Parkway Urban Renewal Area

o. Approval and/or Ratification of Specific Fees and Charges - Development Services Department

p. Approval of Donation Agreement - South 8th Street Improvements

q. Approval of Reservation of Storm Sewer Easement - Intersection of 4th Street and Grand Avenue

r. Approval and Acceptance of Purchase Agreements and Property Interests:
   1. 2019 Channel Repair Program
   2. Ashworth Road Reconstruction, Phase 4
   3. Sugar Creek Conveyance Improvements, Phase 2

s. Approval of Proclamations:
   1. Lung Cancer Awareness Month - November 2020
   2. Extra Mile Day - November 1, 2020

Vote 20-449: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 5(a) Village on Jordan Creek, southwest corner of Jordan Creek Parkway and Ashworth Road - Establish the Village on Jordan Creek Planned Unit Development (PUD), initiated by Czech Mate, LLC

It was moved by McKinney, second by Trevillyan to consider the third reading of the ordinance.

Council member Hudson stated he had voted no on the previous reading of this ordinance, due to the concerns of the surrounding residents. However, he will support the third reading and final adoption tonight, because the PUD requires a minimum of ten feet be retained of the existing 60-foot wide swath of trees along the edge of the property, whereas there would be no such requirement without a PUD. He noted the residents still have concerns regarding the future development of this site, so he encouraged staff to use any future PUD amendments for this site as an opportunity to increase the amount of trees retained along the edge of the property.

Vote 20-450: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by McKinney, second by Trevillyan to approve the third reading of the ordinance and adopt the ordinance in final form.

Vote 20-451: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 5(b) Des Moines University, 8025 Grand Avenue - Amend the West Grand Business Park Planned Unit Development (PUD) Parcel 8 to Allow Installation of Private Utilities with Approval of a Phased Site Plan and Establish Regulations for Signage During Construction, initiated by Des Moines University Osteopathic Medical Center

It was moved by Trimble, second by McKinney to consider the second reading of the ordinance.

Council member Hardman stated she will abstain on this item due to a potential conflict of interest.

Vote 20-452: Hudson, McKinney, Trevillyan, Trimble … 4 yes
Hardman … 1 abstain due to potential conflict of interest
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by McKinney to approve the second reading of the ordinance.

Vote 20-453: Hudson, McKinney, Trevillyan, Trimble … 4 yes
Hardman … 1 abstain due to potential conflict of interest
Motion carried.

It was moved by Trimble, second by McKinney to waive the third reading and adopt the ordinance in final form.

Vote 20-454: Hudson, McKinney, Trevillyan, Trimble … 4 yes
Hardman … 1 abstain due to potential conflict of interest
Motion carried.

On Item 5(c) Amendment to City Code - Title 2 (Board and Commissions), Chapter 2 (Board of Adjustment) - Repeal and Replace Section 4 "Jurisdiction; Powers" to Add Provisions to Allow for Zoning Exceptions and to Clarify the Requirements for a Variance Request, initiated by the City of West Des Moines

It was moved by Trimble, second by Hudson to consider the second reading of the ordinance.

Vote 20-455: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Hudson to approve the second reading of the ordinance.

Vote 20-456: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

It was moved by Trimble, second by Hudson to waive the third reading and adopt the ordinance in final form.

Vote 20-457: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(a) Mayor Gaer indicated this was the time and place for a public hearing to consider Bridgewood, northeast and southeast corners of 81st Street and Bridgewood Boulevard - Amend Planned Unit Development (PUD) Setback Requirements, initiated by Bridgewood Association, Inc. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 2, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated on a vote of 6-0, with one member absent, the Plan and Zoning Commission recommended City Council approval of the PUD amendment.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Hardman to consider the first reading of the ordinance.

Vote 20-458: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Hardman to approve the first reading of the ordinance.

Vote 20-459: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(b) Mayor Gaer indicated this was the time and place for a public hearing to consider Amendment to City Code - Title 9 (Zoning), Chapter 7 (Setback and Bulk Density Regulations) - Modify When the Average Front Yard Setback Requirement is Applied, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 3, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated on a vote of 6-0, with one member absent, the Plan and Zoning Commission recommended City Council approval of the ordinance amendment.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by McKinney to consider the first reading of the ordinance.

Council member Trimble requested clarification on this ordinance amendment.

Lynne Twedt, Development Services Director, explained the current ordinance requires additions on existing homes to always stay behind a front yard setback that is determined by the average of the three homes, including itself and the two homes on either side. This proposed ordinance would remove the average front yard setback requirement in cases where the home addition is 75 feet or more away from the closest neighboring home.

Vote 20-460: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by McKinney to approve the first reading of the ordinance.

Vote 20-461: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(c) Mayor Gaer indicated this was the time and place for a public hearing to consider Amendment #4 to the Ashworth Corridor Urban Renewal Area, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 9, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trevillyan, second by Trimble to adopt Resolution - Approval of Urban Renewal Plan Amendment.

Vote 20-462: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(d) Mayor Gaer indicated this was the time and place for a public hearing to consider Agreement for Private Development (Upper Story Housing Program), initiated by Taxium, LLC. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 9, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Hudson to adopt Resolution - Approval of Agreement.

Vote 20-463: Hardman, Hudson, McKinney, Trimble … 4 yes
Trevillyan … 1 no
Motion carried.

On Item 6(e) Mayor Gaer indicated this was the time and place for a public hearing to consider 2019-2020 FY Community Development Block Grant Program - Consolidated Annual Performance Evaluation Report (CAPER), initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 9, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Hudson to adopt Resolution - Approval of CAPER.

Council member Trevillyan requested an update on the Valley Junction wi-fi pilot program.

Christine Gordon, Housing Planner, responded the project is not fully built out yet; however, there are 80 customers that have signed up, and there are still slots available.

Vote 20-464: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(f) Mayor Gaer indicated this was the time and place for a public hearing to consider Conveyance of Underground Electric Easement to MidAmerican Energy Company - Raccoon River Lift Station, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 14, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Hudson to adopt Resolution - Approval of Conveyance of Property.

Vote 20-465: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(g) Mayor Gaer indicated this was the time and place for a public hearing to consider 2020-21 FY Operating and Capital Budget - Amendment #1, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 2, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

It was moved by Trimble, second by Hudson to adopt Resolution - Approval of Budget Amendment #1.

Vote 20-466: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(h) Mayor Gaer indicated this was the time and place for a public hearing to consider Raccoon River Basin Segment 5 Gravity Sewer, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 9, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Hudson, second by McKinney to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to J&K Contracting, LLC.

Vote 20-467: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(i) Mayor Gaer indicated this was the time and place for a public hearing to consider Valley View Aquatic Center Three Meter Diving Platform, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 9, 2020 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

Council member Trimble inquired about the rationale for this diving platform project.

Sally Ortgies, Parks and Recreation Director, responded similar diving platforms at other metro area aquatic centers are popular. Staff considered this to be a relatively affordable project that would enhance the Valley View Aquatic Center experience without having to expand the footprint. She noted the cost for this project is already covered in the budget, and the project has been vetted with the Parks and Recreation Advisory Board.

Council member McKinney inquired about what work is included in this project.

Ms. Ortgies responded the project also includes the relocation of the existing diving board.

Council member Trimble suggested the Council defer this item to allow time for further research.

It was moved by Trimble, second by Trevillyan to continue Item 6(i) to November 2, 2020.

Vote 20-468: Hudson, McKinney, Trevillyan, Trimble … 4 yes
Hardman … 1 no
Motion carried.

On Item 7(a) Erik's Bike Shop, 950 1st Street - Construction of a 7,500 sq. ft. Retail Bike Store, initiated by EBS Property Iowa, LLC.

It was moved by Trimble, second by McKinney to adopt Resolution - Approval of Site Plan, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

Vote 20-469: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 7(b) Des Moines University, 8025 Grand Avenue - Phased Site Plan Approval to Allow for Private Utility Installation, initiated by Des Moines University Osteopathic Medical Center.

It was moved by Trevillyan, second by Trimble to adopt Resolution - Approval of Site Plan, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

Council member Hardman stated she will abstain on this item due to a potential conflict of interest.

Vote 20-470: Hudson, McKinney, Trevillyan, Trimble … 4 yes
Hardman … 1 abstain due to potential conflict of interest
Motion carried.

On Item 7(c) M&W Mini Storage, 2001 Grand Avenue - Approval of Site Improvement Plan Compliant with Planned Unit Development (PUD) Requirements, initiated by MHC 80 (Des Moines, IA), LLC

It was moved by Trimble, second by McKinney to continue Item 7(c) to November 2, 2020.

Vote 20-471: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 7(d) Panera Bread, 6740 University Avenue - Approval of Modifications to Site and Building to Accommodate Implementation of a Drive-Thru, initiated by SLB Real Estate Investors, L.C.

It was moved by Trimble, second by Hardman to adopt Resolution - Approval of Minor Modification, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

Vote 20-472: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 7(e) Parcel 2020-158, 3330 Westown Parkway - Create One Parcel for Transfer of Ownership and One Parcel for Right-of-Way, initiated by Shoppes at Valley West, LLC

Mayor Gaer noted the Council has received a memo from staff regarding this item, as the applicant has reconfigured the lot lines for this plat of survey.

City Attorney Scieszinski noted another amendment is the additional right-of-way needed could be acquired through an easement, as opposed to fee title only, as permitted by the City's exaction policy for right-of-way acquisition in established areas.

Council member Trimble expressed concerns about the City having less control over utilities that are placed in the right-of-way, if the City only controls it through an easement. He stated he would prefer to have the property owner sign an irrevocable offer of right-way-dedication, as opposed to the easement.

Mayor Gaer expressed concerns that Council member Trimble's suggestion would be inconsistent with the City's policy.

Council member Trimble requested that staff write the easement so that the City has as much authority as possible over utilities placed in the right-of-way and will not be responsible for the cost of relocating private utilities if necessary in the future.

It was moved by Hudson, second by Trevillyan to adopt Resolution - Approval and Release of Plat of Survey, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

Vote 20-473: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 7(f) Amendment to City Code - Title 3 (Business and Licensing), Chapter 6 (Massage Establishments and Technicians) - Update Application Requirements for a Massage Therapy Business License, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Trimble to consider the first reading of the ordinance.

Vote 20-474: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Hudson to approve the first reading of the ordinance.

Vote 20-475: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 7(g) Xcaret Club and Lounge, LLC d/b/a Xcaret Club and Lounge, 2700 University Avenue, Suite 200 - Class LC Liquor License - Renewal

City Attorney Dick Scieszinski provided a report on the background history of this liquor license. He stated, in 2018, Jorge Sanchez initially applied for the license as the sole owner, but the City denied his application due to multiple criminal violations that were not disclosed on his application. Maria Mendoza, the wife of Jorge Sanchez later applied as the sole owner and provided a written statement that her husband would have no further involvement in the ownership of the establishment. Her application was approved with the understanding that if Mr. Sanchez is found to have more involvement than indicated by her written statement, that would be grounds for denial of any renewal application in the future. It has become evident that Mr. Sanchez has been intimately involved with the banking and financial activities for the establishment. Additional reasons for the staff recommendation to deny this renewal application include: the establishment denied entry to a West Des Moines Police Officer, the establishment has been cited by the Iowa Alcoholic Beverages Division for violating the Governor's proclamation requirements for social distancing, and since the liquor license was issued in 2018, no sales tax payments have been made on behalf of Xcaret. Both Jorge and Maria have been charged with five counts each of tax evasion, with Jorge also charged with fraudulent practice in the first degree. Although the charges are pending, probable cause exists to believe these crimes were committed.

Billy Mallory, 6701 Westown Parkway, Suite 100, representing the applicant, stated the LLC has been owned solely by Ms. Mendoza since 2018, which can be verified through Iowa Secretary of State filing records. He stated Xcaret Club and Lounge has a policy allowing the Police Department to enter at any time, and they have been inside the establishment. He acknowledged the establishment did receive a citation for violating social distancing requirements, but he noted many other establishments have also received such citations. He stated the failure to pay sales tax was due to the learning curve of Ms. Mendoza as a first-time business owner who is also learning English as a second language, and he noted those issues are being addressed. He stated the allegation that Mr. Sanchez is writing all the checks for the business is not true, as the checks written by Mr. Sanchez were for his businesses in Marshalltown, which shared a bank account with Xcaret Club and Lounge. He noted that Ms. Mendoza has since established a separate bank account for Xcaret Club and Lounge with only her name on the account. He noted he believes Xcaret Club and Lounge and Ms. Mendoza both meet the Iowa Administrative Code criteria for holding a liquor license, and he requested that the City Council approve this liquor license renewal application.

Mr. Scieszinski inquired when the separate bank account for Xcaret Club and Lounge was established.

Mr. Mallory responded it was established on October 15, 2020.

Mr. Scieszinski noted the written statement submitted by Ms. Mendoza with her 2018 application stated: "I will have a bank account for all profits or revenues derived from Xcaret Club and Lounge, LLC under my name and I will be the only one person under the bank account."

Mr. Mallory stated all the profits have been going to Ms. Mendoza since the beginning. He acknowledged the separate bank account should have been established sooner, but he stated Ms. Mendoza was not well-versed on the rule of law and the operation of business.

Mr. Scieszinski stated ignorance of the law is no excuse, and since Ms. Mendoza is in business, she is held to a certain standard. He noted Ms. Mendoza has also failed to pay sales tax since 2018, and he inquired when she started making sales tax submissions.

Mr. Mallory responded they started making sales tax submissions a couple weeks ago, as soon as they became aware of what needed to happen.

Mr. Scieszinski inquired if Mr. Mallory is denying that Xcaret Club and Lounge refused the West Des Moines Police Department permission to enter the establishment.

Mr. Mallory responded yes, he is denying that the establishment ever denied access to anyone from the West Des Moines Police Department. He noted there was one occasion where someone working front door security inquired as to the rationale why the police were there at that point in time, but that individual is no longer with the business. He stated there is no policy that says the police can't come in the business.

Jessica Spoden, Assistant City Attorney, stated she has been in contact with the Iowa Alcoholic Beverages Division, who had been conducting the investigation regarding Mr. Sanchez's involvement with the business, and they had provided the City with the copies of the checks written by Mr. Sanchez. She also noted the bank account for those checks is associated with a Square account that is solely under the name of Jorge Sanchez. She also stated she has confirmed the sales tax permit for Xcaret Club and Lounge was established on October 8, 2020. She responded to questions, stating the incident when the West Des Moines Police Department was denied access to the establishment occurred on June 11, 2020.

Council member McKinney stated Ms. Mendoza should have known that the alcohol sales business is highly regulated. He also referenced the Iowa Administrative Code criteria for holding a liquor license requires prompt payment of local and state taxes, which has not occurred in this case, as well as a good reputation, which he believes is questionable, because Ms. Mendoza has contradicted her sworn statement, denied a police officer access to the establishment, and violated the Governor's proclamation on social distancing.

Mayor Gaer noted the license was reluctantly granted in 2018, so he feels Ms. Mendoza should have received the message that she needed to ensure her establishment was in full compliance with all the applicable laws and requirements.

Council member Hardman inquired if staff conducts an exhaustive search on sales tax compliance when reviewing these applications.

Mr. Scieszinski responded staff conducts a thorough review on applications, but it does not include an exhaustive search on sales tax compliance. In cases like these, the City is notified by the Iowa Alcoholic Beverages Division if there is an issue.

Mr. Mallory stated the City had approved a renewal of this liquor license in 2019, yet some of the issues being pointed out at this time pre-date that renewal.

Police Chief Chris Scott explained that the review for a renewal application does not include research on sales tax compliance. They do research arrest records, trip loads, and any history of violations at the establishment. The 2019 renewal for Xcaret Club and Lounge was recommended for approval because the City had no knowledge of the sales tax issues at the time and the research on the other matters did not uncover any disqualifiers. He stated the tax issues were recently uncovered by the Iowa ABD investigation and then brought to the attention of the City. The Iowa ABD does not have law enforcement powers, so they collaborated with the West Des Moines Police Department so they could press charges against the business.

It was moved by Trevillyan, second by McKinney to adopt Motion - Denial of Liquor License Application.

Vote 20-476: Hardman, Hudson, McKinney, Trevillyan, Trimble…5 yes
Motion carried.

On Item 8 - Receive, File and/or Refer: no items

On Item 9 - Other Matters: none

The meeting was adjourned at 7:45 p.m.

Respectfully submitted,

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Ryan T. Jacobson, CMC
City Clerk

October 19, 2020

ATTEST:

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Steven K. Gaer, Mayor