

December 21, 2020

West Des Moines City Council Proceedings
Monday, December 21, 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, December 21, 2020 at 5:30 PM. Council members present were: R. Hardman, G. Hudson, M. McKinney, and K. Trevillyan. Council member R. Trimble participated via teleconference.

City Clerk Ryan Jacobson stated staff is recommending the agenda be amended to relocate the following items to Section 10 of the agenda to be considered immediately following the Executive Session:

- Item 4(k)1 Order Construction - Digital Enterprise Network Segment 2 - Arterial Conduit Deployment
- Item 4(k)2 Order Construction - Digital Enterprise Last Mile Conduit Deployment Segment 2, Phase 1
- Item 5(c) Issuance of \$16,240,000 General Obligation Urban Renewal Bonds, Taxable Series 2021A

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

Vote 20-551: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 2. Public Forum:

Martin Demoret, Attorney with Faegre Drinker, representing Mediacom, read a written statement regarding the lawsuit recently filed by Mediacom against the City of West Des Moines, and he urged the City to refrain from any further spending on the citywide fiber conduit project until the pending litigation is resolved.

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

Council member Hudson stated his first year on the City Council has been an eventful one, and he expressed appreciation to the Mayor, his fellow council members, and the staff for their efforts in maintaining the City's strong position.

Council member Hardman reported the Martin Luther King Jr. Day event hosted by the City and the West Des Moines Chamber of Commerce will be held virtually on Friday, January 15th. She also reported she attended a meeting of the Library Board, where the decision was made for the library to remain closed until January 11th with curbside service only.

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Mayor Gaer reported he swore in three new police officers at the Law Enforcement Center on Friday, December 18th, and he expressed appreciation to the Police Department for their efforts in recruiting great and diverse individuals to join the department.

On Item 4. Consent Agenda.

Council members pulled Item 4(o)1 for discussion. It was moved by McKinney, second by Hudson to approve the consent agenda as amended.

- a. Approval of Minutes of December 7, 2020 Meeting
- b. Approval of Bill Lists
- c. Approval of Liquor Licenses:
 - 1. Kwik Trip, Inc. d/b/a Tobacco Outlet Plus #565, 1220 Grand Avenue, Suite 101 Class BC Beer Permit with Sunday Sales - Renewal
 - 2. 3781 EP True, LLC d/b/a Valley Pub, 3781 EP True Parkway - Class LC Liquor License with Sunday Sales and Outdoor Service - Renewal
- d. Approval of Cigarette/Tobacco Permit
- e. Approval of Appointments:
 - 1. Human Rights Commission
 - 2. Revised 2020-21 Committee and Other Assignments
- f. Approval of Microsoft Enterprise Agreement
- g. Approval to Purchase Fire Department Ladder Truck
- h. Approval of Professional Services Agreement - Lincoln Street Levee Recharge Well Testing Report
- i. Change in Employee Complement - Diversity, Equity and Inclusion Director
- j. Approval of Change Orders:
 - 1. 2019 PCC Patching and Medians Program, #4
 - 2. MidAmerican Energy RecPlex - General Construction, #10
- k. Order Construction:
 - 3. Grand Avenue Reconstruction, 1st Street to 6th Street
 - 4. Gas Detection System Upgrades
- l. Award Contract - MidAmerican Energy RecPlex Basketball Backstops and Divider Curtains
- m. Approval of Professional Services Agreement - 318 5th Street Remodel
- n. Establish Just Compensation and Approve Acquisition of Property:
 - 1. 2020 Channel Repair Program
 - 2. Holiday Park Access Road, 9th Street to 11th Street
- o. Establish Public Hearings Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property:
 - 2. West Grand Business Park
 - 3. SE County Line Road, Veterans Parkway to SE Soteria Avenue
 - 4. SE Salix Drive, Veterans Parkway to SE 1st Street

- p. Approval of Amendment to IEDA Economic Development Assistance Contract – Microsoft Corporation

Vote 20-552: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 4(o)1 Establish Public Hearing Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property - Ginger West

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

It was moved by Trevillyan, second by Hudson to approve Item 4(o)1 Establish Public Hearing Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property - Ginger West.

Vote 20-553: Hardman, Hudson, Trevillyan, Trimble ... 4 yes
McKinney ... 1 abstain due to potential conflict of interest
Motion carried.

On Item 5(a) Cascade Apartments, southwest corner of Cascade Avenue and South 81st Street - Rezone the Property from Residential Medium Density to Residential High Density Consistent with the Comprehensive Plan, initiated by SM Cascades, LLC and SM Heritage Hills, LLC

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

Vote 20-554: 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 Hudson to approve the second reading of the ordinance.

Vote 20-555: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

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

Vote 20-556: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

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On Item 5(b) Amendment to City Code - Title 9 (Zoning), Chapter 3 (General Zoning Provisions) - Define Exceptions to Building Height Regulations for Portions of the Building Not Intended for Occupancy, initiated by the City of West Des Moines

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

Vote 20-557: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

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

Vote 20-558: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

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

Vote 20-559: 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 Conveyance of Property to Store Master Funding III, LLC - A Portion of Lot H, Linnwill, and a Portion of Fourth Street Right of Way, 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 December 10, 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 20-560: 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 Ashworth Road Reconstruction, Phase 4, 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

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December 11, 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 McKinney, second by Hardman to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to Jensen Construction Company Subject to Concurrence by the Iowa Department of Transportation.

Council member McKinney stated this project was discussed at a meeting of the Public Services Subcommittee, and he thanked staff for ensuring the bridge over I-35 will remain open for the duration of the construction.

Vote 20-561: 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 MidAmerican Energy RecPlex - Exterior Signage, 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 December 11, 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 Trevillyan to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to LRI Graphics & Signs.

Council member McKinney inquired if there could have been a bulk discount if this signage project had been combined with the interior signage project.

James Moore, Shive-Hattery, stated his firm has been contracted by the City to serve as the owner's representative for the MidAmerican Energy RecPlex project. He noted the exterior and interior signage projects were not combined because there are typically different vendors for the two types of projects which utilize different construction materials; therefore, he does not believe there would have been any costs savings by combining these two projects.

Vote 20-562: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

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On Item 6(d) Mayor Gaer indicated this was the time and place for a public hearing to consider MidAmerican Energy RecPlex - Interior Signage, 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 December 11, 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 McKinney, second by Hudson to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Motion - Defer Award of Contract.

Council member Trevillyan inquired about the purpose of deferring the award of contract for two weeks.

James Moore, Shive-Hattery, responded the two weeks will allow time to identify the reasons for the discrepancy between the estimated cost and the one bid received. He noted the contractor has indicated one of the reasons was the short timeline given to prepare the signs, and rebidding would only compress that short timeline further. He intends to provide more detailed information on the discrepancies when the item comes back to the Council in two weeks.

Vote 20-563: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(a) Midtown Redevelopment, 1221, 1245 and 1261 8th Street - Subdivide Property into Three Lots for Commercial Development and One Street Lot, initiated by JGC Holdings, LLC

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

Vote 20-564: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(b) 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 McKinney, second by Hudson to adopt Resolution - Approval of Site Improvement Plan, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

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Vote 20-565: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(c) Union 315 Mixed-Use, 309, 313 and 315 5th Street - Approval of a Site Plan to Allow Construction of a Three-Story Mixed-Use Building, initiated by Taxium, LLC

It was moved by McKinney, second by Hudson 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 20-566: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(d) Hatten Storage Building, 1725 All-State Court - Approval of Major Modification for the Construction of a Storage Building, initiated by Hatten Co., LLC

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

Vote 20-567: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(e) Microsoft DSM11, 5855 SW Kerry Street - Approval of a Major Modification for Construction of One Additional 241,000 sq. ft. Data Center Building, initiated by Microsoft Corporation

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

Vote 20-568: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(f) Corell Contractor, 1300 Lincoln Street - Approval of a Minor Modification to Allow Installation of Fuel Tanks, initiated by Corell Dixieland, LC

It was moved by Hardman, second by Hudson 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.

Council member Trevillyan inquired why a 10,000-gallon fuel tank is being allowed at this time, when the limit was 1,100 gallons in 1998.

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Mike Whitsell, Fire Marshal, responded technological advancements, such as leak detection, breakaway hoses, and double-walled tanks, now make it safer to store fuel in large quantities like this.

Vote 20-569: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(g) Fox Ridge, south of Veterans Parkway and west of Fox Valley - Plat of Survey for Transfer of Ownership, initiated by Charles I. and Ruth Colby Investment Trust

It was moved by McKinney, second by Hardman 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 20-570: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(h) Amendment to City Code - Title 4 (Health and Safety Regulations), Chapter 3 (Fire Code) - Adopt the International Fire Code, 2018 Edition with Local Amendments and Repeal the International Fire Code, 2015 Edition, with Local Amendments, initiated by the City of West Des Moines

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

Vote 20-571: 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 20-572: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

On Item 8(a) West Des Moines Water Works - 2021 Budget - Received and Filed

On Item 9 - Other Matters: none

The regular meeting was temporarily adjourned at 5:58 p.m.

It was moved by Trevillyan, second by Hudson to go into Executive Session per Chapter 21 of the Iowa Code, to discuss pending/threatened litigation.

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Council member McKinney indicated he will recuse himself from the first portion of the Executive Session due to a potential conflict of interest.

Vote 20-573: Hardman, Hudson, Trevillyan...3 yes
Motion carried.

Entered Executive Session at 6:00 p.m. with the following persons present in the Council Chambers of City Hall: Mayor Gaer, Council members Hardman, Hudson, and Trevillyan; City Manager, Deputy City Manager, City Attorney, City Clerk, and retained legal counsel Nathan Overberg, Eric Boehlert, and Jason Craig.

Council member Trimble began participating in the executive session via teleconference at 6:11 p.m.

City Manager, Deputy City Manager, City Attorney, and retained legal counsel Nathan Overberg, Eric Boehlert, and Jason Craig left the executive session at 7:18 p.m.

Council member McKinney and retained legal counsel Michelle Brott joined the executive session at 7:21 p.m.

It was moved by Trevillyan, second by Hudson to adjourn from Executive Session.

Vote 20-574: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

Executive Session was adjourned at 8:04 p.m. and the regular meeting was reconvened at 8:06 p.m.

On Item 4(k)1 Order Construction - Digital Enterprise Network Segment 2 - Arterial Conduit Deployment

It was moved by Trevillyan, second by Hudson to approve Item 4(k)1 Order Construction - Digital Enterprise Network Segment 2 - Arterial Conduit Deployment.

Council member McKinney stated he will abstain on this item because it relates to the portion of the executive session which he recused himself from due to a potential conflict of interest.

Vote 20-575: Hardman, Hudson, Trevillyan, Trimble ... 4 yes
McKinney ... 1 abstain due to potential conflict of interest
Motion carried.

On Item 4(k)2 Order Construction - Digital Enterprise Last Mile Conduit Deployment Segment 2, Phase 1

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It was moved by Trevillyan, second by Hudson to approve Item 4(k)2 Order Construction - Digital Enterprise Last Mile Conduit Deployment Segment 2, Phase 1.

Council member McKinney stated he will abstain on this item because it relates to the portion of the executive session which he recused himself from due to a potential conflict of interest.

Vote 20-576: Hardman, Hudson, Trevillyan, Trimble ... 4 yes
McKinney ... 1 abstain due to potential conflict of interest

Motion carried.

On Item 5(c) Issuance of \$16,240,000 General Obligation Urban Renewal Bonds, Taxable Series 2021A, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Hudson to adopt Resolution - Appoint Paying Agent, Registrar, and Transfer Agent, and Resolution - Approval and Authorization of a Loan Agreement, Authorizing the Issuance, Levying a Tax to Pay Said Bonds, and Approval of Continuing Disclosure Certificate.

Council member McKinney inquired if this bond issuance is related in any way to the fiber conduit project.

Mayor Gaer responded it is not related to the fiber conduit project.

Vote 20-577: Hardman, Hudson, McKinney, Trevillyan, Trimble...5 yes
Motion carried.

The meeting was adjourned at 8:09 p.m.

Respectfully submitted,

Ryan T. Jacobson, CMC
City Clerk

ATTEST:

Steven K. Gaer, Mayor