

# COUNCIL PROCEEDINGS

## BEMIDJI, MINNESOTA

### Regular Meeting – November 20, 2023

Pursuant to due call and notice, a regular meeting of the City Council of the City of Bemidji, Beltrami County, Minnesota, was held on Monday, November 20, 2023 at 6:00 p.m. in the Council Chambers of City Hall, Mayor Prince presiding.

Upon roll call, the following Councilmembers were declared present: Prince, Fiskevold Gould, Peterson, Johnson, Rivera, Eaton, Thayer.

Staff Present: City Attorney Katie Nolting, City Engineer Sam Anderson, Assistant City Engineer Jenna Roberts, City Clerk/acting City Manager Michelle Miller

#### **AMENDMENTS TO AGENDA**

Mayor Prince called for any amendments to the agenda. Motion by Rivera, seconded by Thayer to add Consent Agenda #3 to Approve Special Event Permit for BSU Football Pre-Game Tailgate Event and Resolution Approving the Site and Alcohol for 2023 BSU Home Playoff Football Game. Motion carried by the following roll call vote: Yeas: Johnson, Prince, Eaton, Peterson, Thayer, Rivera. Abstain: Fiskevold Gould due to her employment with BSU Alumni and Foundation. **Motion by Peterson, seconded by Johnson, approving the agenda as amended. Motion carried by the following roll call vote: Yeas: Thayer, Johnson, Eaton, Rivera, Fiskevold Gould, Peterson, Prince.**

#### **MINUTES**

The following minutes were presented for approval:

Sp Work Session: August 29, 2023  
BEDA Meeting: September 5, 2023  
Council Meeting: September 5, 2023

**Motion by Eaton, seconded by Fiskevold Gould, approving minutes as presented. Motion carried by the following roll call vote: Yeas: Rivera, Johnson, Fiskevold Gould, Thayer, Prince, Eaton. Abstain: Peterson.**

#### **CONSENT AGENDA #1**

Mayor Prince called for any amendments to be made to Consent Agenda. Rivera requested that the Claims Submitted by ASM Global for the Sanford Center be pulled for discussion. The following Consent Agenda items were presented for approval. **Motion by Peterson, seconded by Eaton, to approve Consent Agenda items as follows:**

1. Claims Submitted by Finance Officer in the Amount of \$855,504.62
2. 2024 Business License Renewals
3. 2024 Liquor, Sunday Liquor and Wine License Renewals
4. Final Reading of On and Off Sale Beer License Renewals for 2024
5. **RESOLUTION NO. 6520:** Approving State of Minnesota JPA with the City of Bemidji on Behalf of its City Attorney and Police Department
6. Approve Change Order #2 for the 1<sup>st</sup> Street Tower Repair – City Project 23-06
7. Authorize Closure of City Hall and Public Works for Employee Recognition Luncheon

**Motion carried by unanimous voice vote.**

#### **CONSENT AGENDA #2**

Mayor Prince called for any items to be pulled from consent agenda #2. The following Consent Agenda item was presented for approval. **Motion by Fiskevold Gould, seconded by Thayer, approving Consent Agenda #2 as follows:**

8. Approve Special Event Permit - Reindeer Run (November 24 & 25)

**Motion carried by the following roll call vote: Yeas: Thayer, Fiskevold Gould, Prince, Rivera, Eaton, Johnson. Abstain: Peterson due to his role as the Executive Director of Visit Bemidji.**

#### **CONSENT AGENDA #3**

Mayor Prince called for any items to be pulled from consent agenda #2. The following Consent Agenda item was presented for approval. **Motion by Johnson, seconded by Thayer, approving Consent Agenda #3 as follows:**

9. Approve Special Event Permit – BSU Football Pre-Game Tailgate Event (November 25)
10. **RESOLUTION NO. 6521:** Approving the Site and Alcohol for 2023 BSU Home Playoff Football Game

**Motion carried by the following roll call vote: Yeas: Prince, Rivera, Thayer, Johnson, Eaton, Peterson. Abstain: Fiskevold Gould due to her employment with BSU Alumni & Foundation.**

**CITIZENS WITH BUSINESS NOT ON AGENDA**

Rita Albrecht, 1910 Norton Avenue, provided comments regarding the 2023 Norton Avenue Reconstruction Project.

**ORDINANCES****First Reading of an Ordinance Annexing Property Contiguous to Gregg Court NW**

**AN ORDINANCE** Annexing Property Contiguous to Gregg Court NW to the Corporate Limits of the City of Bemidji (Nelson) was given a first reading.

**Final Reading of an Ordinance Amending Fee Schedule (2024)**

**ORDINANCE NO. 202, 3<sup>RD</sup> SERIES**, AN ORDINANCE Amending Fee Schedule (2024) was given a final reading and passed by the following roll call vote: Yeas: Fiskevold Gould, Eaton, Rivera, Peterson, Prince, Johnson, Thayer

**Motion by Johnson, seconded by Thayer, approving publication of a summary of Ordinance No. 202, 3<sup>rd</sup> Series. Motion carried by unanimous voice vote.**

**NEW BUSINESS****Consider Process for City of Bemidji City Manager Performance Evaluation**

Christina Petsoulis of Flaherty & Hood presented a proposed process for City of Bemidji City Manager Performance Evaluation since there is no process outlined in the employment agreement.

Council provided the following:

- Johnson and Eaton were good with the proposed process
- Rivera, Peterson, Fiskevold Gould and Prince support a “360 Review” to include employees
- Rivera suggests changing the rating of unsatisfactory performance
- Thayer suggests providing definitions, i.e., “ability to work with public” and discussion regarding mutual goals
- Fiskevold Gould suggests that Rating #4 and 5 are redundant
- Prince suggests a question regarding ethics

Flaherty & Hood will bring a draft back to the December 18 council meeting.

**Consider Request from BSU to Access City Property – Bemidji Deer Study**

Since 2021, Dr. Jacob Haus, Wildlife Biologist and Assistant Professor with Bemidji State University, working with the City of Bemidji Deer Management Committee and approval from the City Council on March 15, 2021, applied for and received a \$393,000 grant from the Minnesota Environmental and Natural Resource Trust Fund to perform a city-wide deer research project. This research will help to better understand the behavioral response and mortality data of deer during the city’s archery hunt. Dr. Haus will start by live-capturing a total of 40-50 adult female deer within city limits and affixing them with global position system (GPS) collars.

Staff met with Dr. Haus and Graduate Research Assistant Raena Kemna to discuss the city owned properties and address concerns related to the live-capture process. From that discussion, staff identified the city properties for access to conduct the live capture as shown on the maps in the attached memo provided by Dr. Haus. Additionally, Dr. Haus and Ms. Kemna will be at the council meeting Monday night to present and answer any questions related to this request.

**Motion by Peterson, seconded by Johnson authorizing access to approved City Properties by BSU Employees to Conduct Live-Capture of Adult Female Deer during the months of January, February, and March of 2024. Motion carried by unanimous voice vote.**

**Discussion Regarding Airport Planning Area #3 – BDPI Grant**

Anderson reported that back in July 2022, Council was approached by the airport about a proposal for additional infrastructure expansion in the NW corner of the airport referred to as Planning Area #3 (PA #3). This area is partially served by a “dead end” water & sanitary sewer main that was installed back in 2009, with currently no users. Refer to Exhibit A in your packet for an overview of these existing conditions. The concern by staff was no plans of looping the watermain serving this area and could pose future maintenance costs to keep water fresh for eventual users.

In April 2023, after a few months of coordination between city staff, airport staff, and Greater Bemidji, a plan was proposed to Council for a water main looping project that would be cost shared between the City and Airport Authority in a 4–5-year timeframe after the completion of the proposed Phase 1a infrastructure shown on Exhibit B in your packet. The Airport Authority also requested that the City be the sponsor of a DEED BDPI grant in which would cover 50% of the project costs up to \$2 million, with the airport planning to use other federally funded projects, occurring on the airport, to cover the local

match. There was no financial ask of the City for this first phase of development, only the eventual water main looping anticipated in 2028.

In August 2023, the City was notified that the DEED BDPI grant was awarded for the project. Over the next couple months, city staff, airport staff, and Greater Bemidji worked with DEED to review and finalize the grant agreement. The grant agreement hasn't been signed but is ready to be. Recently, it was brought to staff's attention that one of the developers planning to construct a new hangar in Planning Area #3, upon completion of the Phase 1a infrastructure, decided to withdraw their proposal. City staff and Greater Bemidji felt this change warranted further discussion with Council.

Dave Hengel, with Greater Bemidji, provided a memo outlining his discussions with DEED and a recommendation of a deadline to be imposed for a new developer committing to Planning Area #3 before the City begins spending these grant funds. The grant agreement would need to be signed now to allow the Airport to award a federally funded project, which is being used as a local match to the DEED funds. The Airport Authority met at their regular meeting on November 15 and is supportive of the proposed recommendation being presented.

**Motion by Eaton, seconded by Fiskevold Gould authorizing the signing of the final grant agreement for the DEED BDPI grant, but that no grant funds are spent until a commitment from a developer in Planning Area #3 has been obtained prior to July 1, 2024. If no proposal is received, staff would notify DEED they will not be proceeding with the project and release the funds back to DEED. Motion carried with the following roll call vote: Yeas: Johnson, Fiskevold Gould, Prince, Eaton, Peterson, Thayer, Rivera.**

Consider Professional Services Agreement for Heat Pump System & Makeup Air Unit (MAU) Replacement Project – City Project 24-03

Anderson reported that the Facility Process and Administration Buildings at the Wastewater Treatment Facility currently are using a heat pump system that extracts heat from the wastewater coming into the plant to then heat the air space in these buildings. The technology was cutting edge when it was installed with the original plant construction in the 1980's, but maintenance costs are getting higher and more frequent repairs have led staff to explore other efficient heating options.

Back in 2014, EAPC completed a feasibility report to review our current heating system and recommend alternatives. Staff were able to limp the existing system by for almost another decade but have reached a point where the entire system needs to be replaced. As an example, currently one of the two compressors on the existing heat pump system that has failed and needs to be replaced. The estimated replacement cost of this repair is \$13,800 which can be avoided by getting a new system designed and installed in 2024. The proposed system to be designed would be a natural gas boiler system using the existing natural gas service available currently in the plant.

The Makeup Air Unit (MAU), responsible for supplying outside air to the adjacent Chemical Feed Room, is in the same room as the heat pump system and hasn't been functioning correctly since the original install date of the treatment facility. Staff plan to replace this unit at the same time, as the new MAU unit will tie into the new natural gas boiler system to assist with temperature control.

Staff received a professional services proposal from EAPC for \$34,500 to assist city staff with design, bidding, and construction services for this project. EAPC has been very involved in the preliminary review of the project, have local representatives, and familiar with our current wastewater plant. There is \$350,000 in the 2024 CIP to cover the design fees and eventual construction costs. Upon approval, design would begin immediately with the intent to have the new system installed by Fall 2024.

**Motion by Thayer, seconded by Peterson authorizing staff to enter into a professional services agreement with EAPC in the amount of \$34,500 for the Heat Pump System & MAU Replacement Project – City Project 24-03. Motion carried by unanimous voice vote.**

Consider Quotes for Investigation Regarding the Process of 2022 Redistricting

Nolting provided information from the November 6, 2023 Council meeting seeking quotes from outside investigators regarding a possible investigation of the 2022 redistricting process. Multiple investigators from a variety of locations were contacted about the possibility of conducting this investigation. Some of the common information received from the investigators was that all are handling multiple investigations at this time, therefore this investigation would not be completed in a matter of a week or two but may take longer. The investigators also indicated the estimated cost would most likely be closer to the \$20,000 or more, but there is no way to predict the amount of hours an investigation may take due to the unpredictable nature of investigations.

**Tom Jacobson** – Swenson, Lervick, Syverson, Trosvig, Jacobson, Cass, PA Law Firm in Alexandria, Minnesota · **Estimated Cost:** \$10,000-\$20,000 (\$195/hour)

Mr. Jacobson is willing and able to be the outside investigator for the Council on this issue. In explaining the scope of work as passed in the motion, Mr. Jacobson would ask for even more clear definitions. Specifically:

1. What the Council would consider timely?
2. How does the Council define accurate?
3. What is the Council's definition of complete?

Mr. Jacobson is willing to work with the Council if the Council sets a specific cap on the amount spent on this investigation, so long as the Council understands he may not be able to a thorough and complete investigation with a cap. Mr. Jacobson was clear he does not believe this investigation can be completed for under \$10,000, and it would be closer to \$20,000.

**Kristy Hastings – Pemberton Law Fergus Falls, MN · Estimated Cost: mid to low \$20,000 (\$250/hour)**

In speaking to Ms. Hastings about this investigation, she is willing to assist in the investigation, however, needs to determine if she would have a conflict. If there are conflict concerns, she would be unable to work on this investigation.

**Bill Everett – Everett Law – Buffalo, MN · Estimated Cost: N/A**

Mr. Everett unfortunately stated that he would be unable to conduct this investigation due to his current workload.

**Jessica Schwie – Kennedy & Graven, Minneapolis, MN · Estimated Cost: \$20,000 to \$25,000 (\$220/hour)**

Ms. Schwie has stated she is willing to conduct this investigation but would not be able to start until after December 2, 2023. Ms. Schwie stated she would be willing to conduct as many interviews as possible virtually, but this is not always feasible for every interview.

**Timothy Sullivan – Ratwik, Roszak & Maloney, PA · Estimated Cost: \$10,000-\$20,000 (\$175/hr)**

Mr. Sullivan stated he is willing to do the investigation for the Council, however he wanted to make it clear the estimate of the costs may go higher. He indicated he would have associates assist him at the rate of \$165/hr. Mr. Sullivan stated that he is working multiple investigations at this time, but he would do his best to work on the Council's investigation while still handling the others.

**Motion by Peterson, seconded by Johnson, to contract with Pemberton Law as the first choice, and Kennedy & Graven as the second choice, to investigate the 2022 City of Bemidji redistricting process to confirm that the redistricting fully complied with state requirements and that all information received by the council was done in a timely, complete and accurate fashion, in amount not to exceed \$25,000 to paid from liquor store funds; with the point of contact for the investigator being City Manager Richard Spiczka effective December 5, 2023. Motion carried by the following roll call vote: Yeas: Thayer, Johnson, Peterson, Prince. Nays: Eaton, Rivera, Fiskevold Gould.**

Consider Claims Submitted by ASM Global for the Sanford Center in the Amount of \$78,234.33

Rivera inquired about Carbonhouse for website hosting at \$700 per month. Rivera expressed concern that council is not receiving monthly financial reports in a timely manner and has not received an annual report for the Sanford Center pursuant to the contract.

**Motion by Peterson, seconded by Johnson approving Claims Submitted by ASM Global for the Sanford Center in the Amount of \$78,234.33. Motion carried with the following roll call vote: Yeas: Peterson, Johnson, Fiskevold Gould, Thayer, Prince, Eaton. Nays: Rivera.**

#### **CLOSE MEETING**

Discuss with Legal Counsel Threatened or Pending Litigation with Regards to PFAS Contamination at Airport

**Motion by Peterson, seconded by Eaton, to close the meeting in accordance with Minnesota Statute Section 13D.05, Subd. 3(b) for the purpose of discussing with the City's Attorney regarding threatened or pending litigation with regards to PFAS Contamination Airport. Motion carried with the following roll call vote: Yeas: Peterson, Thayer, Fiskevold Gould, Prince, Rivera, Eaton, Johnson. Meeting closed at 7:59 p.m.**

Council discussed pending or threatened litigation with regards to PFAS Contamination at the Airport in closed session with the following present: City Attorney Katie Nolting, City Engineer Sam Anderson, Assistant City Engineer Jenna Roberts, City Clerk/acting City Manager Michelle Miller, Nancy Burke, Attorney with Saul Ewing.

Prince reopened the meeting at 8:20 p.m.

**Motion by Fiskevold Gould, seconded by Thayer to Authorizing the City to File a Claim to Recover from the Dupont Settlement Fund and Directing City Attorney Katie Nolting and City Engineer Sam Anderson to File the Claim. Motion carried with the following roll call vote: Yeas: Eaton, Prince, Peterson, Thayer, Johnson, Rivera, Fiskevold Gould.**

**COUNCIL COMMITTEE REPORTS**

Councilmembers provided reports on various boards, committees, and commissions.


**UPCOMING COUNCIL MEETINGS**

- Monday, November 27 5:30 p.m. Work Session (2024 FMP)
- Monday, December 4 6:00 p.m. Council Meeting
- Monday, December 11 5:30 p.m. Work Session (Planning & Zoning Training)
- Monday, December 18 6:00 p.m. Council Meeting

**ADJOURN**

There being no further business, motion by Peterson, seconded by Fiskevold Gould, to adjourn the meeting. Motion carried by unanimous voice vote. Meeting adjourned at 8:47 p.m.

Respectfully submitted,

  
Michelle R. Miller  
City Clerk