

12 Vermillion Plain Talk

2010 Legal and Public Notices

action on the election date until the evening meeting. Alderman Price seconded the motion. Motion carried 8 to 0. Mayor Powell declared the motion adopted.

3. Educational Session – COPS Grant - Matt Betzen

Matt Betzen, Police Chief, stated that applications are now being accepted for 2015 COPS grant funding. Matt noted that the City applied in 2013 and did not receive a grant. Matt stated that the last COPS grant position funded was in 2009. Matt reviewed the current staffing levels of the Police Department noting that the Department has been at full staff. Matt stated that the COPS grant position will see that the School Resource Officer position is filled and will provide additional time in the detective investigation position. Matt stated that the COPS grant funds 75% of the entry level position for 36 months and requires the City to maintain the position for at least 12 months after the grant period ends. Matt stated that the City Council determines the staffing level of the Police Department and with the grant the officers would increase from 19 to 20. Matt answered questions of the City Council on the Police Department and staffing levels. Matt stated that the request is for authorization to make the grant application noting that the City will not be notified of approval until later this year. The consensus of the City Council was to authorize the Police Chief to make the grant application.

4. Briefing on the May 18, 2015 City Council Regular Meeting Agenda

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

5. Adjourn

151-15 Alderman Ward moved to adjourn the Council special session at 12:49 p.m. Alderman Price seconded the motion. Motion carried 8 to 0. Mayor Powell declared the motion adopted.

Dated at Vermillion, South Dakota this 18th day of May, 2015.

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
May 18, 2015
Monday 7:00 p.m.

The regular session of the City Council, City of Vermillion, South Dakota was called to order on May 18, 2015 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

2. Pledge of Allegiance

3. Minutes

A. Minutes of May 4, 2015 Special Session; May 4, 2015 Regular Session

152-15 Alderman Willson moved approval of the May 4, 2015 Special Session and May 4, 2015 Regular Session minutes. Alderman Collier-Wise seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

4. Adoption of Agenda

153-15 Alderman Willson moved approval of the agenda with the addition to 5. Visitors to be Heard A. Proclamation Declaring May 21, 2015 as Poppy Day in Vermillion and correction to the years in New Business Items E & F from 2014 to 2015. Alderman Price seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

5. Visitors to be Heard

A. Proclamation Declaring May 21, 2015 as Poppy Day in Vermillion

Alderman Clarene Meins read the proclamation declaring May 21, 2015 as Poppy Day in Vermillion and encourage all citizens to wear the Memorial Poppy on that day.

6. Public Hearings

A. Retail on-off sale wine license for Bonnie K. Rowland for Raziels at 13 W Main Street

Mike Carlson, Finance Officer, reported that an application for a retail on-off sale wine license was received from Bonnie K. Rowland for Raziels at 13 W Main Street. Mike noted that there is currently an on-off sale malt beverage license for this location and that there was a wine license until December 31, 2014. Mike stated that the Police Chief's report and the notice of hearing are included in the packet. Mike stated that Bonnie Rowland is present to answer questions.

154-14 Alderman Collier-Wise moved approval of the retail on-off sale wine license for Bonnie K. Rowland for Raziels at 13 W Main Street. Alderman Price seconded the motion. Motion carried 9 to 0. Mayor Powell

2010 Legal and Public Notices

declared the motion adopted.

B. Subdivision ordinance variance request for Duane and Jeanne Mehlhaf at 1322 E. Clark

Jose Dominguez, City Engineer, reported that on May 1, 2015 the City received a Petition for Variance from Duane and Jeanne Mehlhaf with regard to a driveway access to Norbeck Street at 1322 E. Clark Street. Jose stated that the applicant presented his concerns at a noon meeting on October 6, 2014. Jose stated that at that meeting the Council asked Staff to work with the owners on the issue. Jose stated that it was determined that a variance from the City Council would be the only way to obtain the access as the City Engineer had denied the request. Jose stated that the applicant was informed that they would be required to petition for a variance to vary from the subdivision ordinance.

Jose noted that during the review of the petition for variance it was discovered that the documents submitted follow two distinct procedures. One is for the Subdivision Ordinance Variance and the other is for Zoning Ordinance Variance. Jose stated that due to the fact that the Subdivision Ordinance, as per SDCL 11-6-27, was created, amongst other things, to provide for the distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity' we feel that the procedures that shall be followed are those within the Subdivision Ordinance (154.15.1 (D)) and not those required for a Zoning Ordinance variance request. Jose noted that all of the regulations within the Zoning Ordinance have been met.

Jose reported that the Subdivision Ordinance allows the applicant to file a petition requesting a variance. Jose stated that the variance petition is presented to the City Council for their deliberation. Jose noted that the Council may deny, approve or place conditions on the variance. Jose noted that any Council motion that may vary from the Subdivision Ordinance requires ¾ votes from the entire membership of the Council in favor of the motion (7 out of 9 must vote in favor).

Jose reported that the City Council may grant a variance as long as the applicant demonstrates that the variance meets certain requirements as set in the ordinance. Jose stated that these requirements are: there are unusual surroundings, topography, or shape; may only be applicable to this property; may not be exclusively based on financial gains; may not be detrimental to the public's health, safety and welfare; may be applied to a large scale development; or may be a design innovation. Jose stated that from his review the applicant does not meet any of these requirements for a variance to be granted and listed each.

Jose stated that it should be noted that the access point in question was never approved. Jose stated that the drawing submitted by the applicant as Exhibit A is a document created by City Staff for review purposes and is meant to depict the applicant's desires with respect to the lot. Jose stated that the City uses this drawing explicitly to make sure that the proposed construction will be within the setbacks and that the parking requirements are met. Jose stated that the drawings are not approved; otherwise, the applicants may have issues constructing the proposed facility due to changes. Jose stated that a number of items were changed at the applicants request without the drawing being updated. Jose stated that the variance request to have one access point would be a safety hazard with regard to fire protection and safety of the occupants. Jose reported that, in discussion, the Fire Chief stated that one access point does not make the apartment unsafe. Jose stated that the Fire Chief reported that the apartment complex is equipped with a sprinkler system for fire suppression.

Jose stated that this property has functioned since the construction was completed with only one driveway. Jose noted that all of the apartments that the Mehlhaf's own at this point only have one access point. Jose stated that, due to the reasons stated, Staff believes that the issuance of the variance is not warranted and that if granted would set a bad precedence.

Duane Mehlhaf, property owner, stated that the size of the parking lot has not changed while the number of parking spaces may have changed due to size, the building size remains the same, the set back has not changed and a garage was substituted for one unit, but this property is zoned R-3. Mr. Mehlhaf stated that the site plan was approved as part of the building permit that showed a future driveway to Norbeck Street. Mr. Mehlhaf stated that with one access point it requires large vehicles to back the length of the parking lot. He stated his concern that fire trucks would not be able to access the building as there is only one driveway for the fire safety of the tenants. Mr. Mehlhaf provided a list of properties on corner lots that have two access points, many of which have driveways closer to the intersection than would be the location of his proposed driveway. Mr. Mehlhaf stated that there is no parking along this section of Norbeck and Clark Streets so there is no obstructions for a driveway. Mr. Mehlhaf stated that his other properties are smaller

2010 Legal and Public Notices

and do not compare to the property in question and that tenants as well as delivery drivers have complained about needing to back out of the parking lot.

Jeanne Mehlhaf, property owner, explained the steps they have taken to resolve this issue that included hiring an attorney. She stated that the City requested a variance but the future driveway was included in the original site plan. She explained that after a heavy snow a tenant got their car stuck in the driveway and no one could enter or exit. She stated that they submitted the variance request but wanted to know why the future driveway listed on the site plan was not denied until they were ready to install. She stated her concern for the safety of the tenants if there is an emergency at the property with 45 tenants trying to exit and the emergency services trying to enter the same driveway.

Darrell Jesse, Attorney representing the Mehlhaf's, thanked the City Council for hearing the variance. Mr. Jesse stated that the driveway complies with City ordinance and, as such, a variance should not be needed. He stated that City ordinance requires that all access permits must be obtained prior to the building permit being issued so in 2011 when the building permit was issued the two access points were included on the site plan, just that one was a future driveway as Norbeck Street was not completed. He stated that the building permit was approved for the property based upon the site plan that showed the future driveway which was not denied until 2014. He stated that there would be no precedence with allowing the driveway as it was included on the original site plan.

Farrel Christensen, Building Official, stated that he issued the building permit but he prepared the drawing being referred to as the site plan as a City staff planning document. Farrel stated that the site plan being referred to as Exhibit A was not prepared by Mr. Mehlhaf. Farrel stated that he prepared the site plan to determine if the proposed project complied with all the building set back and parking requirements. Discussion followed on the site plan.

Farrel Christensen, Building Official, stated that he issued the building permit as a site plan is a requirement of a building permit.

Jose and Farrel answered questions of the City Council on the internally prepared site plan. Mr. Mehlhaf answered questions of the City Council on the site plan.

John Prescott, City Manager, reported that, when this was discussed in October as an alternative to a full driveway to Norbeck Street, there was an option presented of a right turn only driveway onto Norbeck Street. Jose Dominguez, City Engineer, reported on the option of the right turn only exit onto Norbeck that reduces crossing traffic and the conflict points. Discussion followed including a right turn only entrance from the north and a right turn only exit from the south.

155-15 Alderman Erickson moved approval of the variance requested for a full driveway onto Norbeck Street for the property at 1322 East Clark. Alderman Holly Meins seconded the motion. Discussion followed on the variance request and if the motion failed could the City Council consider the right in/right out option. Jim McCulloch, City Attorney, stated that the City Council can place conditions on the variance request and suggested asking the Mehlhaf's if they would be acceptable to the right in/right out option. Duane Mehlhaf stated that he would prefer the full driveway but would accept right in/right out access to Norbeck Street.

Mayor Powell called for a roll call vote of the Governing Body with members voting as follows: Collier-Wise-N, Erickson-Y, Holland-N, Clarene Meins-Y, Holly Meins-Y, Price-N, Ward-N, Willson-N, Mayor Powell-N. Motion failed 3 to 6. Mayor Powell declared the motion failed.

156-15 Alderman Holland moved approval of the variance requesting access to Norbeck Street for the property located at 1322 E. Clark with the condition that it be designed to restrict access to right turn entrance from Norbeck and right turn exit onto Norbeck Street. Alderman Willson seconded the motion.

Mayor Powell called for a roll call vote of the Governing Body with members voting as follows: Collier-Wise-Y, Erickson-Y, Holland-Y, Clarene Meins-Y, Holly Meins-Y, Price-Y, Ward-Y, Willson-Y, Mayor Powell-Y. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

7. Old Business

A. Second Reading of Ordinance 1329 amending Chapter 90 Health and Safety, Section 90.16 Specific Nuisances adding Subsection 90.16(5) declaring snow and ice and all its subsections a specific nuisance

Farrel Christensen, Building Official, reported that there has been a problem with a small number of properties that have numerous violations. Farrel stated that neighbors to these properties raised the concern about the need

2010 Legal and Public Notices

to encourage the property owner to keep their properties cleaned up. Farrel stated that in April, 2006 the City Council passed an ordinance that set new guidelines for grass and weed violations including a progressive resolution for fees. Farrel stated that the resolution included a new approach that utilized a progressive rate with the first offense fee of \$10.00 that increased an additional twenty dollars for each subsequent offense during the year. Farrel noted that since implementing the new progressive fees tagging for grass and weeds has greatly diminished. Farrel reported that the City Council at noon on April 20th discussed adding snow and ice violations and junk and debris to the progressive fee during a calendar year and recommended that the changes needed be brought to the City Council for consideration. Farrel stated that first reading of the ordinance was approved May 4th and following second reading the rate resolution is under new business. Discussion followed.

158-15 Second reading of title to Ordinance No. 1329 entitled An Ordinance Amending Chapter 90, Health And Safety; Nuisances, Section 90.16 Specific Nuisances, Adding Subsection 90.16(B)(5) to the 2008 Revised Ordinances, Declaring Section 96.12(A) Snow And Ice and all its Subsections A Specific Nuisance of the City of Vermillion, South Dakota.

Mayor Powell read the title to the above named Ordinance, and Alderman Collier-Wise moved adoption of the following:

BE IT RESOLVED that the minutes of this meeting shall show that the title to the proposed Ordinance No. 1329 entitled An Ordinance Amending Chapter 90, Health And Safety; Nuisances, Section 90.16 Specific Nuisances, Adding Subsection 90.16(B)(5) to the 2008 Revised Ordinances, Declaring Section 96.12(A) Snow And Ice and all its Subsections A Specific Nuisance was first read and the Ordinance considered substantially in its present form and content at a regularly called meeting of the Governing Body on the 4th day of May, 2015 and that the title was again read at this meeting, being a regularly called meeting of the Governing Body on this 18th day of May, 2015 at the City Hall Council Chambers in the manner prescribed by SDCL 9-19-7 as amended.

BE IT RESOLVED and ordained that said Ordinance be adopted to read as follows:

ORDINANCE NO. 1329

AN ORDINANCE AMENDING CHAPTER 90, HEALTH AND SAFETY; NUISANCES OF THE REVISED ORDINANCES OF THE CITY OF VERMILLION, SOUTH DAKOTA, SECTION 90.16 SPECIFIC NUISANCES, ADDING SUBSECTION 90.16 (B)(5) TO THE 2008 REVISED ORDINANCES OF THE CITY OF VERMILLION, SOUTH DAKOTA, DECLARING SECTION 96.12(A) SNOW AND ICE AND ALL ITS SUBSECTIONS A SPECIFIC NUISANCE.

BE IT ORDAINED BY THE GOVERNING BODY OF VERMILLION, SOUTH DAKOTA that Section 90.16(B), Specific Nuisances, is hereby amended as follows:

(5) The presence of prohibited snow and ice conditions described and specified in Chapter 96, Section 96.12(A) beyond 24 hours after any fall of snow or freezing rain is hereby declared to be dangerous to the health, repose, and comfort of the city and hereby declared to be a nuisance.

Dated at Vermillion, South Dakota this 18th day of May, 2015.

THE GOVERNING BODY OF THE CITY OF VERMILLION, SOUTH DAKOTA

By: _____
John E. (Jack) Powell, Mayor
ATTEST:
By: _____
Michael D. Carlson, Finance Officer

Adoption of the Ordinance was seconded by Alderman Willson. Thereafter the question of the adoption of the Ordinance was put to a roll call vote of the Governing Body, and the members voted as follows: Collier-Wise-Y, Erickson-Y, Holland-Y, Clarene Meins-Y, Holly Meins-Y, Price-Y, Ward-Y, Willson-Y, Mayor Powell-Y

Motion carried 9 to 0. Mayor Powell declared that the Ordinance has been adopted and directed publication thereof as required by law.

8. New Business

A. Resolution adding and amending administrative fees for City abatement of nuisances

Farrel Christensen, Building Official, stated that, with second reading of Ordinance No. 1329 adding Subsection 90.16(B)(5) declaring snow and ice and all its subsections a specific nuisance, the rate resolution needs to be amended. Farrel stated that this resolution addresses the three most common types of Code Violations: Duty to Cut (Grass & Weed Mowing), Snow and Ice (Sidewalk Snow Removal) and Specific Nuisances (primarily Junk & Debris and Garbage). Farrel stated that the proposed resolution would charge \$10.00 for the first offense and increase by \$20.00 per offense for any one

2010 Legal and Public Notices

or combination of any of the three Code violations in any given calendar year. Farrel noted that the violation fee invoices will be sent to the property owners and, if not paid, assessed against the property. Farrel recommended approval of the resolution. Discussion followed.

159-15

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

RESOLUTION ADDING AND AMENDING ADMINISTRATIVE FEES FOR CITY ABATEMENT OF NUISANCES

WHEREAS Section 90.18 (B) of the Vermillion, South Dakota Code of Ordinances allows the City Council to establish and change the administrative fees for the abatement of nuisances by the City; and,

WHEREAS Section 90.51 (C) allows the City Council to establish and change the administrative fees of each violation of the Duty to Cut City Ordinance.

BE IT HEREBY RESOLVED by the Governing Body of the City of Vermillion, South Dakota at a regular meeting thereof at 7:00 p.m. on the 18th day of May, 2015, that fees be established or changed as follows:

The fee for violations of 90.16 (Specific Nuisances) as provided for in Section 90.18 (B) and Section 90.51 (C) (Duty to Cut) of the Ordinances of the City of Vermillion shall be ten dollars (\$10.00) for the first offense with the fee increasing an additional twenty dollars (\$20.00) for each subsequent offense, per lot, for any violation or combination of the above violations occurring within a given calendar year, regardless of occupancy. All administrative fees and/or abatement fees shall be the responsibility of the property owner and subject to special assessment against the property if not paid.

The administrative fee for nuisance abatement by the City as provided for in Section 90.18 (B) and 90.51(C) of the Ordinances of the City of Vermillion shall be twenty-five dollars (\$25.00).

The administrative fee for all other violations of the revised Ordinances of the City of Vermillion shall be ten dollars (\$10.00.) unless a more specific amount is set by resolution.

Dated at Vermillion, South Dakota this 18th day of May, 2015.

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 Holland. Discussion followed and the question of the adoption of the Resolution was presented for a vote of the Governing Body. 8 members voted in favor of and 1 member voted in opposition to the Resolution. Mayor Powell declared that the Resolution was adopted.

B. Receipt of referendum petition and set an election date for Ordinance 1326 - daycare registration and safety requirements

Mike Carlson, Finance Officer, reported that the City Council approved second reading of Ordinance No. 1326 requiring daycare businesses to register with the City on April 6, 2015. Mike stated that on May 6th a referendum petition was delivered. Mike stated that a copy was taken to Jim McCulloch, City Attorney, who reported that the content of the petition complies with state statute. Mike reported that the signatures were compared to the voter registration list received from the County to determine that the required 5% was met. Mike stated that SDCL 9-20-11 is the section for setting an election for a referendum. Mike noted that the statute allows the City Council to set the election at the next municipal election which would be June 2016 or can order a special election not less than thirty days from the date of the order. Mike stated that the earliest date for a special election would be June 30th to allow for publications of notices. Discussion followed on the election date.

160-15 Alderman Holland moved approval of setting a special election for the referendum petition for Ordinance No. 1326 requiring daycare businesses to register. Alderman Erickson seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

C. Set an election date for Initiative Petition repealing sections 112.24 through 112.31 imposing a charge upon malt beverage purchases pursuant to SDCL 35-4-60.2.

Mike Carlson, Finance Officer, reported that at the noon meeting the City Council acknowledged receipt of the initiative petition to repeal sections 112.24 through 112.31 imposing a charge upon malt beverage purchases pursuant to SDCL 35-4-60.2 and deferred action on setting the election date. Mike stated that SDCL 9-20-11 is the section for setting an election for an initiative which is the same as for a referendum. Mike noted that the statute allows the City Council to set the election at the next municipal election which would be June 2016 or can order

2010 Legal and Public Notices

a special election not less than thirty days from the date of the order. Mike stated that the earliest date for a special election would be June 30th to allow for publications of notices. Discussion followed.

Mayor Powell stated that having the election as soon as possible will have the results of the initiative petition to determine if the revenue stream will be available to repay the general obligation bond for the Prentis Park improvements or if other adjustments will be needed if the funding is not available from the malt beverage markup.

161-15 Alderman Erickson moved approval of setting a special election for the initiative petition repealing sections 112.24 through 112.31 imposing a charge upon malt beverage purchases pursuant to SDCL 35-4-60.2. Alderman Holland seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

D. Selection of design alternative for Main/Center/Court Street intersection

Jose Dominguez, City Engineer, reviewed the background of the study for the design alternatives for the Main/Center/Court Street intersection that is part of a larger project for the upgrading of all the Main Street traffic signals. Jose stated that a number of options for the intersection were presented to the public and City Council. Jose noted that the option selected by the City Council for further review was to remove the signal and have the north/south streets (Center and Court) be stop controlled at Main Street. Jose noted that to determine the impact of removing a traffic signal, the City conducted a study by shutting off the traffic signals to see what effects the removal may have. Jose reported that the results from the study concluded that traffic on Main Street increased while traffic on the side streets decreased. Jose noted that traffic speed and accidents did not increase due to the signal removal. Jose reported that the City Council reviewed the traffic study results at the May 4, 2015 Noon meeting. Jose stated that the entire project will be funded by a combination of City and STP (State and Federal) funds. Jose noted that the City has anticipated contributing approximately \$200,000 from the 2nd Penny fund for the overall project to upgrade the three Main Street traffic signals with the remainder of the project cost would come from STP funds allocated for Vermillion projects.

Jose stated that, at this point, it appears there are two remaining options for the Main/Center/Court Street intersection. Jose noted that both of the options include salvaging the existing traffic signals for use at the Main Street and University Street intersection and having larger bump-outs at the Main/Center/Court intersection. Jose stated that one option also includes redoing the pavement through the Main/Center/Court intersection, while the other option does not. Jose reported that the option with the new pavement is estimated to cost approximately \$300,000 while the other option would be approximately \$210,000. Jose noted that the City contribution to the overall project will be \$200,000. Jose stated that the City Council will make the determination on the amount of local funding to spend on the project with the 2016 budget process. Jose recommended selecting the option which would salvage the traffic signal and reconstruct the entire intersection including the pavement. Jose stated that this option would considerably improve the traffic flow at this intersection while providing a great aesthetic improvement. Discussion followed on the options and the intersection. John Prescott, City Manager, noted that if the traffic signal is removed we most likely will not be able to get one back in the future unless the traffic increases considerably. The traffic signals would remain covered until the contract is awarded in 2016. Discussion followed on the options.

162-15 Alderman Erickson moved approval of the option to remove the traffic signal that will be salvaged for University Street and to reconstruct the entire intersection including the pavement. Alderman Holland seconded the motion. Discussion followed. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

E. Request from USD to close North Dakota Street from Alumni Drive to East Duke Street from May 19, 2015 to May 27, 2015 for construction

Jose Dominguez, City Engineer, reported that USD's contractor would like to close North Dakota Street from Alumni Drive to East Duke Street to tie to the City's water main located on the west side of North Dakota Street. Jose stated that the street will have to be closed due to the location of the water main and the type of construction that is required. Jose reported that the contractor estimates that the closure will take approximately one week from May 19th to May 27th. Jose reported that the street closing request and map of the area is included in the packet. Discussion followed.

163-15 Alderman Willson moved approval of the closing of North