

## REGULAR MEETING MINUTES

Monday, August 21, 2023

### CALL TO ORDER AND DETERMINATION OF A QUORUM

The Regular Meeting of the City Council of the City of Olivia, Minnesota, was called to order by Mayor Hawkinson at 5:30 P.M.

Council Members Present: Jon Hawkinson, Matt Baumgartner, Blanca Ferguson, George Ebbers and Landon Padrnos.

Others present: Elizabeth Torkelson, City Administrator; Shawn Hanson, Finance Director, Aaron Walton, City Attorney; Jason Krumheuer, Police Chief; Pamela Whitmore, Kennedy & Graven; Ross Okins, Renville County Register; Todd Howard, resident; Dan Keltgen, LightBeam Internet; Sarah Vasquez, resident; Jasmine Miller, Deputy Clerk.

### PUBLIC FORUM

Mayor Hawkinson temporarily suspended the regular meeting and opened the public forum at 5:30 P.M.

Todd Howard, resident, stepped forward to welcome Elizabeth, the new City Administrator. Howard shared that September is Suicide Awareness and Prostate Cancer Awareness month. Howard also questioned what the City has in place for emergencies as he reflected on the recent Maui fire. The Council did recognize the Code Red system available to residents. Howard also expressed concerns with the conversation around pickleball courts and the opinion of Council.

No other public comments were offered so Mayor Hawkinson reopened the regular meeting at 5:35 P.M.

### AGENDA

**Motion by Ferguson, second by Ebbers:** to approve the agenda as presented. Motion passed unanimously.

### CONSENT AGENDA

**Motion by Padrnos, second by Baumgartner:** to approve the Consent Agenda. Motion passed unanimously.

- Regular Meeting Minutes of August 7, 2023
- Special Meeting Minutes of August 14, 2023
- Resolution 2023-78, Authorization of Employment for Marcus Jakes as Part-Time Police Officer
- Resolution 2023-79, Authorization of Employment for Morgan Rein as Police Department Intern
- Resolution 2023-80, Adopting the Minnesota General Records Retention Schedule for Cities

### DISCUSSION / BUSINESS ITEMS

Resolution 2023-81, Approval of Donation to City of Olivia

**Motion by Padrnos, second by Baumgartner** to: approve Resolution 2023-81, Approval of Donation to City of Olivia. Roll call vote taken with Baumgartner and Padrnos voting in favor; and Ferguson, Hawkinson and Ebbers voting against. Motion does not pass. Hawkinson recognized the generous donation, and asked the Council to not approve the donation as it would be bad practice.

#### LightBeam Internet Discussion – Dan Keltgen

Keltgen introduced himself and his background with internet. Keltgen asked Council to keep an open dialog with him as his goal is to provide high quality broadband internet to the residents of Olivia. Keltgen received a contract, but has not signed the contract because he has concerns with his ability to meet the aesthetic guidelines. Keltgen also expressed concern with the cost change presented in the new contract. There was consensus among the Council that Keltgen did not have to sign the contract until he was able to work through the details. Council directed Keltgen to work with the Public Utilities Commission on the contract and Keltgen's concerns.

#### ARPA/CIP Discussion

Hanson continued the conversation from the previous meeting regarding ARPA funds. Hanson provided the Council with information regarding the ARPA funds received, what has been allocated, CIP funds and two different recommendations.

Council directed staff to move forward with the following allocation recommendation: City Hall Improvements, \$67,000; Fire Truck Replacement, \$66,000; Airport Tractor, \$46,000.

No additional items or new business items were presented.

#### **REPORTS**

##### Other Reports of Council / Staff

Baumgartner welcomed Torkelson, and Torkelson reported a great first day.

No additional reports were presented.

#### **PERFORMANCE EVALUATION**

**Motion by Padrnos, second by Ebbers** to: terminate the agreement between the City and Mr. Walton effective August 21, 2023. Motion passed unanimously.

Hawkinson shared that the next agenda item was a performance review of City Attorney, Aaron Walton. Hawkinson stated pursuant to Minn. Stat. § 13D.05, subd. 3(a) Mr. Walton received written notice of the meeting. Before Hawkinson entertained a motion to close the meeting he stated that Mr. Walton has the right to have the discussion conducted in an open public meeting. Hawkinson shared with Council that Walton was informed and did not provide a response that he wished to exercise that right. Hawkinson asked Walton if it was still his intention. Walton stated he would exercise the right and have the meeting be open. Hawkinson stated, that Council received correspondence related to the agenda item. And they will be evaluating the performance of Aaron Walton as an individual subject to the Council's Authority. The evaluation includes a recommendation from the Personnel Review Committee to the City Council to terminate the contract with Mr. Walton from employment with the City, an action that only the City Council can act upon. Walton stated for the record an objection to Councilors Ferguson and Baumgartner participating in the discussion and any voting that might occur as a result. Hawkinson asked Councilors to recuse themselves if they felt it was appropriate. Councilor Ferguson recused herself. Councilor Baumgartner asked for guidance to which Whitmore asked if he had a personal financial interest in the discussion and if he feels he can be fair and reasonable in his analysis. Baumgartner stated that he didn't have a personal financial interest and felt he could be fair and reasonable. Whitmore stated that there was a quorum even after Ferguson recused herself. Hawkinson called for a motion to recuse Councilor

Baumgartner from the process. No motion was made. Whitmore presented that an independent contractor is treated as an employee for purposes of the data practices law, and personnel data is not public, however, there is an exception in open meeting law for that data that is necessary to have the discussion be public. Whitmore reiterated that Council be cautious and mindful when talking about data regarding the performance evaluation. The Council reviewed documents that were provided to them by Whitmore in confidential envelopes. Whitmore clarified that the letter presented was in addition to the fact finding that the third-party investigator was working on. Whitmore shared that the official report is still not prepared by the private investigator. Whitmore discussed the following performance concerns from the letter: questionable representation in regards to a building permit request for a garage on a legal nonconforming piece of property, an ethical violation brought to light by a criminal complaint investigated by the City of Arlington and Brown County involving City Attorney Walton as a potential victim and staff concerns with performance and communication. Hawkinson asked Walton if he had any response to the correspondence. Walton notified the Council of an error in the letter he received from Mayor Hawkinson stating concerns about his absences and clarifying that there is no concern of absence. Hawkinson did clarify that absences have not been an issue with Walton. Walton stated that he did not initially deliver an application for the building permit, the property owner did and the planning and zoning administrator directed the property owner to consult with Attorney Walton to which Walton suggested the City seek independent review. Walton also stated he did not have a comment on his personnel life, but pointed out that he didn't resign as he was invited to as that would have put the City in a bind. Walton clarified that no court case was dismissed at any point based on miscommunication. Walton shared that he didn't get to see a copy of any complaint against him and he found that to be a little frustrating. Walton also informed the Council that he had a positive performance evaluation with Susie Land a couple of years ago. Hawkinson stated that the Council must now reach conclusions regarding the evaluation of Mr. Walton's performance. He proposed the following be considered; whether Mr. Walton is able to perform his job without continued conflicts, lack of responsiveness and in a professional manner, so that he can diligently represent the City Attorney. Hawkinson asked the Council based on those idea what actions should the council consider taking related to our determination of his ability to perform. Whitmore instructed Council to make a finding of the performance.

#### ADJOURNMENT

**Motion by Ebberts, second by Baumgartner:** to adjourn the meeting at 7:41 P.M. Motion passed unanimously.

Attest:



Jon Hawkinson, Mayor



Elizabeth Torkelson, City Administrator