

LEGAL AND FINANCE COMMITTEE MINUTES
Rapid City, South Dakota

February 1, 2017

A Legal and Finance Committee meeting was held at the City/School Administration Center in Rapid City, South Dakota, on Wednesday, February 1, 2017, at 12:30 p.m.

A quorum was determined with the following members answering the roll call: John Roberts, Jerry Wright, Lisa Modirck, and Amanda Scott. Absent: Steve Laurenti

(NOTE: For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Agenda.)

ADOPTION OF AGENDA

Motion was made by Wright, second by Modrick and carried to adopt the agenda.

GENERAL PUBLIC COMMENT

None.

CONSENT ITEMS

Motion was made by Modrick, second by Wright and carried to approve Items 1-13 as they appear on the Consent Items.

- 1) Approve Minutes for January 11, 2017

MAYOR'S ITEMS

- 2) LF020117-04 – Confirm the Appointment of Daniel Kline to the Civic Center Board of Directors
- 3) LF020117-05 – Confirm the Appointment of Casey Martin to the Rapid City Library Board of Trustees
- 4) LF020117-08 – Confirm the Appointments of Steve Massopust, Heather Schopp, Melanie Barclay, Marti Nesland, Laura Hovey Neubert, Malik Dixon, Chad Ratigan, Kyle Kircher and Sammi Jo Kenzy to the Mayor's Committee for People with Disabilities

FIRE DEPARTMENT

- 5) LF020117-02 - Authorize Mayor and Finance Officer to Sign 48 month Agreement between Dakota Business Center and the Rapid City Fire Department for print/copy/scan/fax machine for Fire Stations 1, 3, 4, 5, 6, and 7

FINANCE DEPARTMENT

- 6) Acknowledge the Following Volunteers for Worker's Compensation Purposes: Amy Carlson, Jack Dalle, Leslie Lysenko, Sally Anderson, Dan Kneip, Elnora Delirl
- 7) LF020117-01 – Acknowledge November 2016 Sales Tax Report
- 8) LF020117-03 – Acknowledge December 2016 General Fund Cash Balance Report
- 9) LF020117-06 – Authorize Mayor and Chief of Police to sign the 2017 Federal Equitable Sharing Agreement

CITY ATTORNEY'S OFFICE

- 10) LF020117-09 – Authorize Mayor and Finance Officer to Sign Memorandum of Understanding between the City of Rapid City and the FOP Retroactively Providing Holiday Pay for New Employees
- 11) LF020117-10 – Authorize Mayor and Finance Officer to Sign Memorandum of Understanding between the City of Rapid City and the FOP Providing Holiday Pay for New Employees
- 12) LF020117-11 – Authorize Mayor and Finance Officer to Sign Memorandum of Understanding between the City of Rapid City and AFSCME Providing Holiday Pay for New Employees
- 13) LF020117-13 – Authorize Mayor and Finance Officer to Sign Covenant Agreement with Merlin Stromer and Gloria Stromer Joint Living Trust

END OF CONSENT CALENDAR

NON-CONSENT ITEMS – **Item 14 – 20**

Public Comment opened – **Item 14 – 20**
Public Comment closed

Ron Weifenbach appeared in support of Item No. 14, the Appearance of Fairness Doctrine. He asks the committee to look at this doctrine with an open mind and look at it with a clear, unbiased position. Don't look at the messengers, Mr. Freytag or myself, look at what the doctrine stands for and why we are bringing it forward. The purpose of this doctrine is to improve the quasi-judicial process that takes place so often. He asks the committee to study the doctrine and take the time to study the ramifications of continuing to do proceed the way we do now. By continuing to look at things from a biased position whether we recognize it or not what transpires is a disparate treatment to your constituents. The public looks to you for leadership, they look to you for a process that is fair. This doctrine does not limit your conversations with your constituents. He believes this doctrine will make your constituents more confident to come and talk to you with the understanding that you understand the position you are in in a quasi-judicial process. This will even the playing field between citizens and council members. There has to be rules and there has to be an understanding of an unbiased opinion. This ordinance will bring all information available to all parties involved.

Bill Freytag appeared in support of Item No. 14, the Appearance of Fairness Doctrine. He would like to be clear that this is his request, not Joel Landeen's. The ordinance he submitted is word for word the same as Landeen's ordinance with the exception of six additional words. Those six words are what you have to make your motion on. Landeen's version is available as a courtesy for a side by side comparison only. In his version of the ordinance, if there is a conflict of interest, if there is bias, you would recuse yourself from the vote. In Landeen's version, you would notify every one of any ex-parte communications, your conflict of interest or bias and you would still be allowed to vote. He does not believe that is fair. Referring back to the recently passed conflict of interest policy, it states if it is money, family, etc. you will acknowledge it and you will recuse yourself from the vote. He does not understand how his right of a fair and unbiased hearing carries less weight than someone's financial interests or family interests. He feels the number one interest should be the person's right to have a fair hearing. He does not want to limit your conversations with your constituents. This ordinance does not do that. You have to understand there are two different groups, there is the City and its agents of the City and there is the public. The agents are supposed to give you information they are not supposed to tell you how to vote. You should take the information from the agent and when you get to the hearing you have the discussion. You don't short circuit the hearing by making decisions prior to. Agenda review is an issue, when they meet

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to discuss the items without the person present. The public does not get to participate and respond to the discussion. Ex-parte communications should not be allowed. Anything between the council member and the staff must be put into a memo and made public so everyone is aware. This ordinance tries to ensure that the hearing is being conducted fairly and without bias. When it comes to you speaking to your constituents, there would be a five day time period prior to the hearing to discuss. Any communication between you and the staff has to be put into a memo and made public for the applicant to understand and for the public to understand. In fairness and due process, he has the right as a participant in this hearing, he has the right to respond to any comments you make. If you say something that he believes that is not accurate or unbiased or unfair, he has the right to respond. He has reserved the right to address any comments from the public or from you that he gets to respond.

Dale Tech appeared to share some information pertaining to Item No. 14. This information is brought forward to preempt Mr. Freytag's presentation where he intends to show a video claiming that he was untruthful and misled the City Council based upon the memo that he has attached to this item. The information presented was RCMC Chapter 12.08, ordinance number 5793 adopted in early 2012 regarding sidewalk construction. Specifically he presented 12.08.060 which clearly states that for new and existing developments, the construction of a permanent sidewalk fronting or butting all streets, highways and avenues shall be accomplished by the builder, owner or developer of all new or existing residential or commercial buildings within the city except in the following circumstances. Tech highlighted circumstance number four as it pertains to today, "when the Common Council in its sole discretion approves a variance from sidewalk improvements or requirements." Tech showed the minutes from the June 18, 2012, which showed the approval of a variance requirement of Item No. 16, which was a request from the City of Rapid City for an exception to waive the requirement to install sidewalk per City Ordinance 12.08.060 for the property located at 2441 North Elk Vale Road. Tech believes that the items that he has presented to you, shows clearly that he was accurate in his comments regarding the City's installing sidewalks on this City project per the code.

Susan Fedell, CEO of Youth and Family Services appeared to discuss Item No. 16. YFS expressed their deep gratitude for the benefits of the Vision Funds and the many benefits that have been provided to the community over the years. These funds really do enable us to envision possible solutions for community problems. They embolden us to pursue ways to come together and to meet the needs of the City and to raise the quality of life for everyone. Even though YFS did not receive funding during last year's request cycle, they deeply appreciated the opportunity to apply and submit their proposal. The question she has today has two parts: 1) will the Council and Mayor be offering Vision Funds in 2017 and if so, 2) will it be possible to make these decisions and allocations sooner rather than later. YFS has an important reason for making this request. They have a strong start to their campus expansion project, having already acquired the needed land and secured approximately \$4 million dollars for the project. The next phase of the overall funding plan includes acquisition of new market tax credits. They are hoping to apply for \$2-3 million dollars in these tax credits. Vision Funds are essential not only for YFS to qualify for a larger amount of tax credits, they are essential to acquire them at all. They have reworked their plan and reduce the initial costs of under \$2 million dollars. If the Vision Funds will be available this year, they will be requesting \$2 million instead of \$4 million dollars that they previously requested. This year they have three entities that are highly interested in funding YFS through new market tax credits but it will still require a commitment from the City or a miraculous contribution of \$2 million dollars. The three entities will need to know sooner rather than later if they will be eligible for Vision Funds because they need to put their plans into place. When the City helped YFS to build their campus in North Rapid in 2003, they were serving about 8,500 children and their families in Western South Dakota. Today they are serving more than 14,000 and mostly in the Rapid City community.

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ITEMS FROM THE PUBLIC

14) LF020117-12 – Scott questioned Freytag to help her understand the difference between quasi-judicial items and non-quasi-judicial items. Specifically she asked Freytag to identify roughly how many quasi-judicial items are on any given City council agenda. Freytag explained that City Attorney Joel Landeen inserted the word quasi-judicial and that he only referred to them as hearings. He stated Landeen quasi-judicial covers everything all hearings that have appointed members, he said that was the legal term that included all of those people. Freytag explained that not all items will fall under this ordinance. Legislative items such as an ordinance or resolution will not fall under this ordinance. The only item that will fall under this ordinance is a hearing that is initiated by a citizen, in that instance you would be obligated to give them an unbiased hearing. Scott then asked Landeen, how they will identify what falls under this ordinance and what does not. She feels she will need some guidance if there will be a five day window, she will need to know specifically which items it applies to. Landeen stated we do not currently identify what is legislative and what is quasi-judicial on the agendas. As a practical matter at the staff level, we will probably have to make that decision and make it clear. The difficult part will be when someone files an application, you will not know that until it came out on the agenda. However, if they contacted you between filing and the publication of the agenda, you may not know. There will have to be some sort of practical consideration about how to address that. A simple way to explain it is you are entitled to due process when a decision of the governing body is going to affect your property rights. He was never very comfortable with the five day rule. It is not a free for all up to five days, if you talk to an applicant ten days before the hearing and did not disclose that, that is an ex-parte communication. If someone found out about that they could challenge that and say that violated my due process rights. The dilemma is when you have a hearing and you have things continually coming in right up until the hearing, it makes it difficult to respond to all of that. Staff and the applicant should be able to get things submitted within a certain period of time. But a lot of times when you have a project that involves a neighborhood, the neighbors are sending in emails the day before a hearing, it's better to provide it as soon as possible than to bring it to the hearing. The way it is written, everything should be in five days before, to the extent that items are received less than five days before, it will be provided and linked as soon as possible. But if you're staff or the applicant and someone sends something to the council the day before the hearing, they should be given a reasonable opportunity to respond to it. Scott asked for clarification on something listed in their Council handbook, she was under the impression that the Council was already under obligation to recuse themselves if there was any undue bias on any decision or if they had a pre-made decision before they come to the meeting, is that not our current policy or State law? Landeen would agree with that, he believes that is part of the confusion in the language. In Mr. Freytag's additional language it states, if you engage in any ex-parte communication, you are required to disqualify yourself, whether or not it there is any risk of any undue bias or prejudice. The very act itself is essentially assumed to create undue risk of bias or prejudice. Whereas, if you look at the ordinance that has been drafted, it talks about ex-parte communications and if you disclose them you are not automatically disqualified. But if you fail to disclose them and someone else is aware of them and brings it up and it is discovered you engaged in it and you chose not to disclose that then you would be disqualified. The only difference between the two ordinances is there does not have to be any showing of actual bias or prejudice, in Freytag's ordinance all that has to be shown is that you engaged in ex-parte communication. You cannot cure a conflict of interest. Same as with this ordinance, if you have bias or prejudice, you cannot cure that. So you are required to disqualify yourself. However, just because you had ex-parte communication does not necessarily mean you have bias or prejudice therefore, it does not necessarily require that you disqualify yourself. Scott thought they were already covered by what is covered in State law from the language listed in the Council handbook. She feels with both of these ordinances presented today, that they are not covered. Landeen stated yes, there are State laws that covers quasi-judicial proceedings and due process and his ordinance is consistent with that. The State statute does not require disqualification it requires disclosure and you are all bound by that. Wright states this whole proposal bothers him. The examples that were given and comments about judicial process. This committee and Public

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Works committee are non-binding, non-judicial we are only a recommending body. The only decisions that are binding are the ones made by City Council. In his opinion, the way he does business, he wants to be able to ask questions to who he needs to and he needs to be able to speak to his constituents. To put a limit on this is not feasible because he could have a question an hour before the meeting. He has a right to seek an answer to his question as a member of the Council. Freytag responded to Scott regarding which items are legislative or quasi-judicial. He referred her to the attachments of the item. He feels those attachments should be made available quicker. He feels the application should be published the moment it is submitted. The memo and attachments are there so the public knows what is going on and so does the council member. Freytag wants the staff to include information related to the item, not to give a recommendation on how to vote. State and Federal law already regulates this. He feels the Council needs training on ex-parte communications. Weifenbach defined quasi-judicial from a Supreme Court case out of California, A) a hearing is held to apply a rule or a standard; B) to an individual person, project or circumstance; C) it involves the taking of evidence; D) it results in the rendering of a written decision issued by a hearing officer or tribunal, the written decision is based on the facts and arguments submitted at the hearing. Weifenbach stressed you are not functioning under the correct law and you don't even know it. People need to come in and receive due process. Discussing items at the Monday morning meeting without everyone there, you have to disclose it. You have to share this information with the people involved. Modrick called the question. Scott moved to take Request from Bill Freytag and Ron Weifenbach to Adopt the Appearance of Fairness Doctrine for Quasi-Judicial Proceedings by Adding Section 2.04.130 to the Rapid City Municipal Code to Council without Recommendation. Second by Wright. Motion carried.

ALDERMAN ITEMS AND COMMITTEE REPORTS

- 15) LF020117-07 – Human Relations Commission Chairman Andy Ainslie presented their semi-annual report. In the past six month the Commission has received eight calls, three were referred to the State, four resulted in appointments and one came before the Commission and was resolved amicably. They are charged by the ordinance to get the word out. The Commission has previously reached out to the community via a public service announcement and most recently commissioners have been presenting at various organizations in the community. He feels the commission is very productive, diverse group right now. Currently, they operate with a \$1,000 budget and in the future if they may be asking for money in order to expand and get the word out. Scott thanked Ainslie for his report and for the Commission's efforts. Scott moved to acknowledge Human Relations Commission – Semi-Annual Update. Second by Wright. Motion carried.

- 16) Scott explained the Vision Committee is made up of the entire Council and the Vision Funds released last year were for projects in 2017. She personally has not heard of anything coming forward at this time addressing any future vision funds at this time. Roberts brought this forward after speaking to the Youth and Family Services Board and hearing their plans. He wanted to discuss this early in hopes that they can use these matching funds in the new market tax credits. Wright added that the Civic Center project is still ongoing and the sole source of revenue to retire that bond is the Vision Funds. He feels until that issue has been resolved they need to be very careful with what we do with Vision Funds going forward. Scott appreciates YFS coming forward to let us know of their project plan. She explained the long process of opening up a project plan. If this item is time sensitive, she is unsure if we would be able to get that accomplished in a short time frame. Roberts reiterated YFS is not asking for money right now. He asked YFS Director Brown if they have an idea of when they need to know. Brown stated they would need to know within six months to now if this is even an option. Wright moved to take John Roberts – Discussion on Vision Funds to council without recommendation. Second by Modrick. Motion carried.

COMMUNITY PLANNING & DEVELOPMENT SERVICES

- 17) No. 16TI005 – Scott asked Patsy Horton if this TID will be finished after this reallocation. Horton stated this only reallocates the dollars for phase 2 so the rest of the expenses can be paid off. The

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expected payoff will be 2021 depending on the existing revenues and any potential future ones. Modrick moved to approve Resolution No. 2016-104 - Resolution approving Revision #2 Project Plan Reallocating Project Costs for Tax Increment District No. 38 a request by Doyle Estes and Kathy Johnson to consider an application for a for property generally described as being located in the southeast quadrant of Elk Vale Road and Interstate 90. Second by Wright. Motion carried.

- 18) No. 16TI006 – Scott again asked Patsy Horton if this TID will be finished or if this will take a few more years. Horton stated this will take a few more years. This TID was established after TID 44 which was Mall Drive, so all of the revenues generated from TID 64 were used for the first seven years to pay off TID 44. With this reallocation and the costs that have actually been incurred will be approximately \$1 million dollars less than anticipated so we will have quite a bit of savings. This TID will be paid off in four or five years. Modrick moved to approve Resolution No. 2016-105 - Resolution approving Revision #1 Project Plan Reallocating Project Costs for Tax Increment District No. 64 a request by City of Rapid City to consider an application for property generally described as being located northeast of the intersection of Interstate 90 and Dyess Avenue. Second by Wright. Motion carried.

PARKS AND RECREATION

19) LF011117-02 – Wright suggested a change to the ordinance which will effect this item as well. Wright asked to amend the special event definitions under chapter 12.20.010, where it reads “special events should include the following” he would like to insert item E, “events sponsored or managed by Main Street Square.” Wright requests this change because Main Street Square is not a special event, it is a long term lease with the City. Landeen clarified that this permit will not require a permit for events inside Main Street Square but it will require a permit if they wish to have an event on a public street or a park. Parks and Recreation Director Jeff Biegler gave further details on this subject. He stated they have met with people from Main Street Square and Summer Nights to try to clarify the details of this permitting process. There was never an intention to charge or require a permit within Main Street Square. A permit will be required anytime an event moves outside of the Square onto public right of way, streets or parks. Wright asks if the language can be cleaned up to state the events from Main Street Square be handled in their lease. Landeen suggested to specify that public space does not include leased area of Main Street Square. Every event is different. But if it incorporates the park or shutting down the streets, that should go through an event permit. Megan Whitman from Main Street Square feels the working relationship they have with the City has been fantastic. The permitting process has been top notch and the new packet is going to streamline a lot of things and has been desperately needed. Their major concern was the open space section because they would be considered public open space, she feels that adding the leased property disclosure would be great. They are more than happy to contribute to the fee anytime that they would close the street or anything above and beyond the Plaza. Biegler asked to continue this item to for two weeks to allow time to change the language as discussed and to fix the discrepancy between the fees listed in this version and the previously approved special event fees listed in the fee resolution. The fee resolution will be on the next Legal and Finance Committee meeting so both of these items could be wrapped up all in the same meeting. Scott moved to continue Special Event Permitting Process for Activities in the City of Rapid City Including those using Public Park Land and/or Open Space (*continued from the January 17, 2017, City Council Meeting*) to the February 15, 2017 Legal and Finance Committee meeting. Second by Modrick. Motion carried.

CITY ATTORNEY’S OFFICE

- 20) LF011117-12 – Scott asked if this item should also be continued until the next meeting so it will accompany the permitting process and fee resolution on the same agenda. Landeen stated that would be fine. Scott moved to continue Second Reading and Recommendation of Ordinance No. 6153 an Ordinance to Amend Provisions Concerning Permitting for Parades and Special Events

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by Amending Chapter 12.20 of the Rapid City Municipal Code to the February 15, 2017 Legal and Finance Committee meeting. Second by Wright. Motion carried.

ADJOURN

There being no further business to come before the Council at this time, motion was made by Scott, second by Modrick and carried to adjourn the meeting at 2:04 p.m.