

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, OCTOBER 26, 2020 - 7:00 P.M. - 8150 BARBARA AVENUE**

In Person Meeting and via Zoom (Hybrid Meeting)

1. CALL TO ORDER:

The City Council of Inver Grove Heights met in regular session on Monday, October 26, 2020, both in person and via Zoom Video Conferencing (Hybrid Meeting). Mayor Tourville called the meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

2. ROLL CALL:

Present in Person: Mayor Tourville, Council Members: Piekarski Krech, Bartholomew, Perry, and Dietrich; City Administrator Lynch, City Attorney McCauley Nason, and City Clerk Kiernan.

Present Via Zoom Video Conferencing: Technology Manager Gade and Finance Director Hove.

3. PRESENTATIONS:

There were no presentations.

4. CONSENT AGENDA:

A. Minutes from the July 27, 2020 City Council Meeting.

B. Disbursements for Period Ending October 20, 2020. **Resolution 2020-224**

C. Consider Approval of Rental Licenses.

D. Consider Approval of Personnel Actions.

E. Set a Performance Review for the City Administrator for November 30, 2020 at 6:00 p.m.

F. Consider Pay Request #3 (Final) for the Salem Hills Athletic Court Project.

G. Consider Approval of NW Area Park Planning Request for Proposal (RFP).

H. Consider Approval of Plans and Specifications for Heritage Village Park Phase III Improvements Utilizing MN DEED Grant Funds.

I. Consider Acceptance of \$1,000 donation to the Inver Grove Heights Police Department from residents of Dakota County, and direct allocation to the Police Department's K-9 Fund. **Resolution 2020-225**

J. Approve a **Resolution 2020-226** relating to a Conditional Use Permit Amendment to add an addition to the existing building for a contractor's yard located at 9601 Jefferson Trail. (Marsden Properties - Case No. 20-34CUP).

K. Consider Change Order No. 2 and Pay Voucher No. 3 for City Project No. 2016-09G - 60th Street, 62nd Street and Bacon Avenue Improvements.

L. Consider Pay Voucher No. 4 for City Project No. 2019-09D - 64th Street Area Improvements.

M. Approve Encroachment Agreement for Landowner Improvements within City Easement for 1702 71st St. (Lot 1, Block 2, Blackstone Vista).

N. Approve Encroachment Agreement for Landowner Improvements within City Drainage and Utility Easement for 6512 Arctic Way (Lot 4, Block 1, Blackstone Ridge).

O. Approve Encroachment Agreement for Landowner Improvements within City Drainage and Utility Easement for 7074 Blake Path (Lot 3, Block 2, Michael D. Dupont 4th Addition Country Meadows).

P. Consider **Resolution 2020-227** Establishing Parking Restrictions within the Settlers Ridge North and Settler's Ridge North 2nd Addition Subdivisions.

Q. **Resolution 2020-228** Supporting Dakota County's 2021-2025 Transportation Capital Improvement Program.

R. Consider **Resolution 2020-229** Amending Assessment Roll for 2020 Pavement Management Program, City Project No. 2019-09D - 64th Street Area Improvements for the Residential Driveway Restoration Program Participation.

S. Consider **Resolution 2020-230** Amending Assessment Roll for 2020 Pavement Management Program, City Project No. 2016-09G - 60th St., 62nd St. and Bacon Ave. Street Improvements for the Residential Driveway Restoration Program Participation.

T. Consider **Resolution 2020-231** Accepting Quotes and Awarding Televising Contract for City Project Nos. 2022-09D and 2023-09D - Dawn Way North and South Neighborhood Street Improvements.

U. **Resolution 2020-232** Accepting Field Services Proposal from EOR for Phase II of the Settler's Ridge North Development.

V. Resolution 2020-233 Accepting Water Modeling Services from Stantec for Work Force Housing at 5590 Babcock Trail (Ron Clark Development).

W. Resolution 2020-234 Accepting Water Modeling Services from Stantec for Condor, Riley/Falcon Properties at 70th and TH 3.

X. Resolution 2020-235 Accepting Water Modeling Services from Stantec for 7120 Allen Way (Builder Jones).

Y. Consider **Resolution 2020-236** Approving Application to Dakota County for 2021 Dakota County Community Waste Abatement Grant Program Funds.

Z. Consider approving the purchase and installation of carpeting for the main level of Fire Station #1 from St. Paul Linoleum and Carpet for \$6,414.

AA. Consider request of the Inver Grove Heights Fire (IGHF) Relief Association to Raise the retirement benefit level.

BB. Consider approval to purchase a Fire Extinguisher Training prop and accessories for \$7,695.82.

Mayor Tourville stated he received notice to pull Agenda Items 4E. and 4P.

Motion by Bartholomew second by Perry to approve the Consent Agenda with the exception of Agenda Items 4E. and 4P.

Ayes: 5

Nays: 0 Motion carried.

Agenda Item 4E. Set a Performance Review for the City Administrator for November 30, 2020 at 6:00 p.m.

Kelly Kayser, 1953 59th Court East, stated she had the following questions regarding the City Administrators Performance Review:

- Asked if the goals and objectives for satisfactory performance by the City Administrator is in written form and available to the public. She asked about a rating scale. She asked how she would go about getting this information. She wanted to know the requirements/standards.
Mayor Tourville responded there is a rating schedule/job performance review, a 360 that is involved with other Department Heads and the City Administrator.
- Asked how pertinent information related to the City Administrator’s job performance is collected and maintained. She asked if written reviews were available for the Council’s review next time.
Mayor Tourville responded there is a summary of the meeting. The meeting can be open or closed, it’s up to the employee. This will be a closed meeting. He stated a summary is put together after and becomes part of a public document and available forever.
- She commented she heard the City Administrator keeps/maintains his own Personnel File. She asked how that worked, who keeps it.
Mayor Tourville responded all Managers and Administrators in the State of Minnesota are “At Will” employees. A review happens in the last quarter of every year. Councilmember Dietrich asked Ms. Kayser if she was asking where information could be found to complete the City Administrator’s review. Ms. Kayser responded no.
- She commented if someone wants to see a document about an employee, they go to HR. She asked if there was a file for the City Administrator.
Mayor Tourville responded HR documents have privacy aspects. There are parts of the file that are not available to the public.
- Ms. Kayser asked if the City Administrator had a file and where it is located.
City Administrator Joe Lynch responded the City Administrator’s file is handled just like other employee files, in a locked cabinet. The HR Manager is the only one that has access. He stated he does not keep his own files. When he completes his performance review that information goes into his performance review file.
Councilmember Dietrich stated this topic is of interest to her because when she went to do the City Administrator’s review, she had the same questions as a new Councilmember. She contacted City Attorney Kuntz at that time, who responded that was a delicate question because HR would not have the file because she was a subordinate and that she would have to contact Mr. Lynch to get the file. She commented the procedure may have changed without her knowledge, but that was not how she obtained it at the time.

Ms. Kayser stated she was getting conflicting stories.

Mayor Tourville stated Mr. Lynch is not keeping his own personnel file. No City Administrator ever has. If Council wants information out of any personnel file, it needs to be a simple majority, need to know why the information is requested, and requires three votes in order to purge any file by Council.

- Ms. Kayser asked where that information was located. She did not read it in the City Code. Councilmember Dietrich responded that is a recommendation by the League of Minnesota Cities. She commented when retaining an Attorney for a previous matter she researched this and found it is a guideline, not a Code or Law.
- She asked how an employee can voice a concern about the City Administrator’s behavior or job performance as it relates to the overall management of paid City Staff. She commented under Grievances, it states the City Administrator is the final authority that a grievance may be appealed to. A grievance may not be appealed to the City Council. She asked what happens if someone has a grievance against the City Administrator.

Mayor Tourville responded he did not believe that was true. If the grievance is about the City Administrator, its handled differently. For an employee, it would go through the proper procedure. He stated no employee is told they cannot contact the City Council or a Supervisor.

Ms. Kayser commented there doesn’t seem to be a process in place for accountability, or a path for employees.

- She asked if there was an Assistant City Administrator. In the Code under Respectful Workplace Policy, it says in the event a complaint is lodged against the Assistant City Administrator, complaints should be brought to the attention of the City Administrator and vice versa.

Mayor Tourville responded there is not an Assistant City Administrator.

- Ms. Kayser asked what an employee would do. Mayor Tourville asked Ms. Kayser to give her questions to the City Clerk and they would get back to her. Ms. Kayser responded no; she gets the runaround when she does that. She stated the City Administrator’s review is next month and is the highest paid position in the City. She held up the City Organization Chart stating there is a box missing at the top that is Residents, everyone under it rolls down including the Council.

She stated she has a lot of questions about the City Administrator’s performance of his duties. Such as:

- After his review in 2019, City Attorney Kuntz publicly stated that leadership goals were given to the City Administrator surrounding communication, trust, positive interactions, and professional relationship building. She asked how those would be quantified and documented.
- She asked if it would ever be known if someone is following up on those performance goals.
- She read there was an employee survey conducted in spring 2019. The headline in the newspaper article said “Inver Grove Heights wants to fix toxic City Hall environment.” The article speaks of creating an Inver Grove Heights University. She asked if that model has been implemented with documented success.
- She stated there was a seven-month improvement plan drafted by Consultants to help fix the toxic work environment. She questioned if those have been followed.
- She asked if there were ongoing measures for assessing employee morale and satisfaction with managements performance.
- The statement from the email author in the data breach investigation doesn’t instill confidence that any positive change has been achieved.
- Strong communication, relationship building, and modeling a Code of Conduct are mandatory skills for a CEO or a City Administrator.
- She stated the supposed email was read during an Executive Session. All heard it. She questioned why nobody asked where it came from. She commented it has been learned that the City Administrator passed it out. She stated it looks like the City Administrator didn’t like something negative being read at his performance appraisal. After, it was said there must have been a data breach. The Attorney stated that both the City Administrator and the Human Resources Manager should know what a data breach looks like.

Councilmember Dietrich stated at the time the City Administrator was also the acting City Clerk, who would be the expert in data.

- The City Administrator has been in his position for 14 years, and in similar jobs in at least five other Cities.

- She asked why they are paying Consultants to help him do his job. \$27,000 for an employee survey and consulting services to figure out there is a toxic work environment. She stated culture is top down. Accountability and responsibility are his for-employee morale.
- She stated in the City Code under Discipline, it says "Cause: Adequate cause for disciplinary action that may result in dismissal may include but is not limited to the following kinds of conduct or similar type. Conduct or performance on the job which causes poor morale, disloyalty towards the employer, or disregard by employees for their assigned duties and responsibilities." She commented she believes in second chances, but this is the highest paid person working for the City.
- She stated extra costs directly related to his job performance or workplace behavior from late 2018 to present: Misconduct investigation: \$45,000. Separation Agreement resulting from that \$89,600 (legal costs were not listed), employee survey \$27,000. Total of \$161,600.
- This year there hasn't been information about consulting services for Inver Grove Heights University.
- There is an on-going data breach investigation at \$130.00 per hour.

She asked the Council to think about this and how we function like a Corporation. When preparing his review, it may be time to look at how this may not be a good fit. She commented she is not saying anything about his character or job performance elsewhere. She stated she is talking about the people that work here and have to come here every day with this going on for a couple of years.

Councilmember Dietrich asked who would give the requested information to Ms. Kayser. City Clerk Kiernan responded she would get her the information.

Agenda Item 4P. Consider Resolution Establishing Parking Restrictions within the Settlers Ridge North and Settler's Ridge North 2nd Addition Subdivisions. Resolution 220-227

Kelly Kayser, 1953 59th Court East, stated in Fall 2016, the road reconstruction project was completed and no parking signs were placed in their cul de sac, without notice, when it was done. This item was brought before the Council and the Council directed both Engineering and Public Safety to have a neighborhood meeting. She stated they did that, and it came back at the November 7th Work Session. She stated one of the last comments in the minutes to that meeting was that Staff was directed to come up with guidelines about parking, no parking, and fire lanes in cul de sacs. She stated nothing happened. One year later, Police Sergeant Sean Folmar came back to the Work Session and presented the same presentation done one year earlier with a summary on Staff's review of no parking in cul de sacs. She stated Staff asked for direction and the Mayor suggested Staff write something up and bring it back to Council. She commented that nothing has happened.

She stated that at the December 2018 regular City Council meeting, the Atwater Path feasibility schedule states it was one of the street reconstructions projects. Consistent with City policy cul de sacs in the reconstruction area will be assigned no parking at the conclusion of construction. She stated she came back to the meeting and asked about it, and was told by the Public Works Director Scott Thureen that he would talk with Public Safety and get back to her. It has been two years and she has not heard a thing.

Ms. Kayser stated she is here two years later with Agenda Item 4P. and a new development with residents. This says parking is restricted in cul de sacs on one side of 28-foot-wide streets for public safety access. She stated for the record, she doesn't have a problem with doing that on new streets when people are buying a home and know it's no parking, and streets are narrower. She stated there is no policy. She has been watching for four years for this to come before Council and it has not.

Mayor Tourville responded Staff looked into this and if the cul de sac changes in size, there would be a neighborhood meeting, and a decision would be made about whether there would be restrictions or not. He said it would not be the case to say there would or would not be parking going forward. Each one would need to be looked at to determine several things such as how long the cul de sac is and how long the street is prior to the cul de sac. He stated if she wanted Staff to look at it again, they could. Ms. Kayser responded the last direction from Staff was to bring it back before the Council to determine what should happen in each case. She asked what the policy was and where it was located. Mayor Tourville responded this would go back to Public Works. Ms. Kayser asked when she would expect an answer. City Administrator Lynch stated this was brought to the City Council several times. The direction given was existing cul de sacs were not going to be signed no parking because of the number of signs and high cost.

Ms. Kayser stated Mayor Tourville commented it would be a case by case basis for new construction. She asked that the fact that a cul de sac has been no parking for 30 years and there have been no signs, if that has any bearing. Mayor Tourville responded they allowed parking, but now would be no parking. He stated the criteria was from the Fire Marshal and Public Works was if the size of the cul de sac stays the same, they probably won't ban parking on reconstruction. For safety reasons, that could change.

Ms. Kayser stated she was confused as to when this was brought back. City Administrator Lynch responded it was in a Work Session meeting. The direction was unless the parameters in the cul de sac change, the no-signage if it currently exists, will not change. If length, width, or other parameters change, Staff would look at putting no parking signs there. Ms. Kayser asked if that was the 2017 Work Session. She commented she was at the November 2016 Work Session and at the one in 2017. She has been watching and has not noticed anything regarding this. Mayor Tourville responded that dates will be provided to her. Ms. Kayser asked what the timeframe would be and requested it not be two more years.

Councilmember Dietrich apologized and stated she was not on Council at that time and agreed that Ms. Kayser was right, residents are the boss. She stated Ms. Kayser needs to be answered when asking a question. Ms. Kayser stated she brought forward a presentation after speaking to nine other Cities and was concerned every project coming before Council would get no parking signs in cul de sacs. She stated it says things like it did in 2018 "per City policy". She requested more information.

Councilmember Dietrich asked who would be following up with Ms. Kayser and the timeframe. Mayor Tourville responded that Public Works Director Thureen or one of the Engineers would get back to her this week. Ms. Kayser commented she would leave information with the City Clerk.

Motion by Dietrich second by Perry to approve Agenda Item 4E. Set a Performance Review for the City Administrator for November 30, 2020 at 6:00 p.m. and Agenda Item 4P. Consider Resolution 2020-227 Establishing Parking Restrictions within the Settlers Ridge North and Settler's Ridge North 2nd Addition Subdivisions, from the Consent Agenda, including direction and follow up.

Ayes: 5

Nays: 0 Motion carried.

Mayor Tourville stated some people may be in attendance for Agenda Item 7B. regarding the Continued meeting pursuant to Minnesota Statutes Section 13D.05, subdivision 2(b) for preliminary consideration of allegations or charges against an individual subject to Council authority.

1. Consider Acceptance of Investigative Report.
2. Consider discipline against employee.

He stated Council sent information to IPAD and a response has not been received yet. They are looking to table this item to a future meeting in November.

5. PUBLIC HEARING:

A. Public Hearing to Consider Adopting Resolution Granting Host Approval to the City of Deephaven, Minnesota of its taxable and/or tax-exempt revenue bonds issued on the behalf of State Housing Holdings of Minnesota. LLC. Resolution 2020-237

Finance Director Amy Hove stated this is for consideration of granting Host approval to the City of Deephaven for Revenue Bonds. She stated she has Jenny Boulton, Bond Counsel from Kennedy & Graven and Tim Eppler who represents State Holdings of Minnesota available for questions. She thanked City Attorney Tim Kuntz for his involvement and assistance. There are four parties to this transaction:

1. Hampton Senior Care of Inver Grove Heights. Developer who put in the 32-unit senior housing facility at 7900 Austin Way.
2. State Housing Holdings of Minnesota, LLC. This is the borrower. Purchasing 100% membership interest in Hanson Senior Care of Inver Grove Heights. This includes five facilities: Inver Grove Heights, Little Canada, North St. Paul, Roseville, and Vadnais Heights. They are the entity responsible for the interest and principle payments on the Bond.

3. City of Deephaven. Issuer of the Bond. For a maximum of \$58.5 million in principle. The type of debt they are issuing is considered Conduit Debt. That is a debt instrument that is issued on behalf of a Government (City of Deephaven) for the benefit of a third party. The third party is granted access to lower interest rates, used to fund large scale projects benefitting the general public (senior housing facilities). This is not backed by the full faith of their entity, not pledging tax revenues, backed by revenues from the actual project.
4. Host Cities. Inver Grove Heights and the other four Cities previously listed. IRS regulations require Host approval of this Bond issuance since one of the facilities is listed in Inver Grove Heights. Other Cities will also issue host approval. Inver Grove Heights is the last City to do this. This requires a Public Hearing. She stated the City originally improved tax increments, so there is public benefit and support documents on the project in the City. This project is still underway. Engineering has been an active party to the conversation to ensure City interests. Section 3 in the Resolution has additional terms and conditions that need to be met.

Finance Director Hove stated this debt is not financed with City credit or backed by Inver Grove Heights. It does not impact the Bond rating or debt limit. There is no financial liability for the debt issuance. This provides granting authority so the City of Deephaven can move forward.

Jenny Boulton, Bond Counsel from Kennedy & Graven, stated the Finance Director did a great job of explaining the concept of Conduit Bonds.

Councilmember Bartholomew asked about the principle amount of \$58,500,000 and if that is the amount considered in the term sheet that was looked at when approving financing for the project. He wanted to make sure that was reconcilable. Tim Eppler, representative from State Holdings of Minnesota, LLC., responded the final committed amount is \$57,750,000.

Mayor Tourville stated this allows for borrowing to take place so a project can happen. Tim Eppler responded they are purchasing five Communities from Hampton who are the original Developer. They have a strategic agreement with Hampton to develop five new Communities every year for the next five years. They would be using the same financing for each of those transactions. The Bonds are being used because they are tax exempt. There is no risk to the City of Inver Grove Heights. He stated Suite Living Senior Care will continue to manage the Communities. Nothing will change for residents or the general public.

Motion by Piekarski Krech second by Perry to close the Public Hearing at 7:40PM.

Ayes: 5
Nays: 0 Motion carried.

Motion by Piekarski Krech second by Bartholomew to approve Public Hearing to Consider Adopting Resolution 2020-237 Granting Host Approval to the City of Deephaven, Minnesota of its taxable and/or tax-exempt revenue bonds issued on the behalf of State Housing Holdings of Minnesota. LLC.

Ayes: 5
Nays: 0 Motion carried.

6. PUBLIC COMMENT:

Kelly Kayser, 1953 59th Court East, stated last time she was present she was told they were working on her email from October 2nd regarding the meeting in September. She asked for a progress update. Mayor Tourville responded a portion of it was turned over to the City Attorney’s office. Ms. Kayser asked why. City Clerk Rebecca Kiernan responded the email has been received and clarification was needed. Ms. Kayser commented she mentioned people were unable to speak at the meeting and questioned how that would be prevented. Mayor Tourville responded one of the questions was if the TV would be made available in the lobby to watch the meeting. Ms. Kayser stated her question about the TV was what its purpose was if it didn’t have that capability. She commented that people should get an opportunity to speak. She stated the City Clerk was very efficient in sending her a copy of the data practice policy.

Ms. Kayser asked about something she noticed at the July 27th meeting where Mr. Lepak stated the Mayor was the next higher up and is the individual when the City Administrator cannot take action. She stated her request to the City Clerk was for information about the overall chain of authority for decision making at the City. She wanted the response to include the circumstances in which the Mayor can act independently on behalf of the City Administrator. She stated the City Clerk did get back to her but the response didn't make sense to her. It stated by direction of City Attorney a request is for analytical memo or legal opinion not so much as a request for data. She commented it says the information cannot be provided to her it is a service only available to the Council and City Administrator. She asked the Council to find out the answer to the question. She stated she copied Mr. Lynch on it, who responded with the following quote from the City Attorney: "a question has been raised regarding the appropriateness of the Mayor and City Councilmembers ability to speak directly with the City Attorney regarding matters related to the City." She stated she had never made such a claim. When she received a response from Mr. Lynch, she found it to be curt. It said "asked and answered, the Mayor was not acting independently and was not acting on behalf of the City Administrator."

She stated she was unsure how that related to Mr. Lepak's comments from July. She asked who ordered the investigation into the alleged data breach. She commented she received a memo from September from Mr. Kuntz stating there may be a data breach and felt that Mr. Lepak was better suited for the investigation. Technically Mr. Kuntz ordered the investigation but didn't answer her question about who here ordered the investigation. She asked the Mayor how he got involved with the conversation with Mr. Kuntz but not the rest of the Council. They were all in the meeting where the alleged breach occurred. Mayor Tourville responded it is privileged. He stated Janet Shefchik requested this be a public meeting. Because it is discussed in a public meeting doesn't mean the investigative report becomes public information. He asked about the memo she has, and who it says the email from Mr. Kuntz is written to. Ms. Kayser responded it says the Mayor and Councilmembers, she stated everyone didn't know what it was about, just the Mayor did. She stated she wants to know who called Mr. Kuntz and asked to look into this. She asked if it was private information.

City Attorney Bridget McCauley Nason stated she was confused about how Public Comment works. Her understanding is if a question is posed by a resident that would be direction to Staff to provide follow up. She stated it is the Council's decision on how to handle it. This is straying from what she is used to seeing in Public Comment.

Ms. Kayser stated she has had eight email exchanges and her question is still not answered and that is why she was here. Councilmember Dietrich commented she understood the frustration as she has noticed several different protocols during Public Comment section. It is difficult to know what to expect. Ms. Kayser stated she didn't know when else to come. She has tried calling and emailing. Mayor Tourville stated there is an Agenda Item about what she is discussing. Ms. Kayser stated her question is about a comment made publicly, it's not about anything in the report. She asked if she could speak further when the Agenda Item is up.

City Attorney McCauley Nason stated regarding Agenda Item 7B, there is not a public comment portion built into it. The Council decides how to deal with that item tonight. In reading the City Code, public comments are allowed at the Public Comment period, or at the discretion of the Mayor. Section 1.5.7 of the City Code provides that any person desiring to address the Council first shall secure the permission of the presiding Officer, which is the Mayor. Unless there is a Public Hearing or Public Comment, it is at the discretion of the Mayor unless the Council votes otherwise.

Councilmember Dietrich stated the problem here is about communication and not getting answers. Residents deserve answers in a timely manner. Mayor Tourville agreed. He stated a part of it was that some of the emails were sent to the City Attorney's office because there were other items involved. He stated if an item is being asked to be discussed publicly, but still in the investigative part, it does not make it a public statement, it's still a part of the investigative report which is not done.

Councilmember Bartholomew asked if there was answer to the question about the authority of the Mayor and if the City Administrator cannot act, if it is the Mayor's authority. City Attorney McCauley Nason responded they can provide further clarification about what the Mayor's authority and powers are. If Council or Staff directs her, her office will respond as directed to the client (the City). Staff or Council can direct the office to provide information, which goes to the City. Councilmember Bartholomew asked if by direction that information can be provided.

City Attorney McCauley Nason stated 13D.05 is part of the Open Meeting Law, it states data discussed at an open meeting retain the data's original classification, however, a record of the meeting regardless of the form shall be public. She stated the data practices classification of data does not change, as it's held with the City, there is a video record.

7. REGULAR AGENDA:

Administration:

A. Consider Resolution Adopting the 2021 Fee Schedule. Resolution 2020-238

City Clerk Rebecca Kiernan stated this is an annual review of fees that go out to residents. Increases were depicted in yellow and decreases were in orange. The suggestion was to keep everything status quo due to COVID. Requesting approval of the proposed fee schedule.

Mayor Tourville and Councilmember Piekarski Krech liked the format of the fee schedule.

Motion by Piekarski Krech second by Perry to approve Consider Resolution 2020-238 Adopting the 2021 Fee Schedule.

Ayes: 5

Nays: 0 Motion carried.

Legal:

B. Continued meeting pursuant to Minnesota Statutes Section 13D.05, subdivision 2(b) for preliminary consideration of allegations or charges against an individual subject to Council authority.

1. Consider Acceptance of Investigative Report.

2. Consider discipline against employee.

(Note: Council will be asked to continue this item to a November Council meeting to provide sufficient time for receipt of response from Data Practices Office to request for Advisory Opinion.)

City Attorney McCauley Nason stated this item was on the Agenda at the September 28th City Council meeting. At that meeting Council voted to continue the item in its entirety to this meeting, October 26, 2020. Several follow up items were assigned to the Barna, Guzy, & Steffen Law Firm and the City Attorney's office. She stated with respect to the item assigned to the City Attorney's office, it was to contact the Department of Administration to request an Advisory opinion related to three specific distributions of an email. The City Attorney's office was directed to draft the request and was authorized by full Council to submit the request to the Department of Administration. There was some delay, as there are differing opinions about whether or not the opinion was supposed to include a request as it relates to all three distributions of the email, or just one. She stated they worked with the employees Attorney to craft the language of that. She stated the request was submitted to the Department of Administration. Under Statute they have five business days from date of receipt, to advise the City if they are not going to issue an opinion, if issuing an opinion, they have 20 days. Based on timing, the item could be tabled to the November 9th or November 23rd meeting. She stated there should be a response from the Department of Administration for the November 9th meeting, but would not be within the 20-day timeframe. November 23rd would be beyond the 20-day period. She stated the following items for Council consideration:

1. Consider acceptance of investigative report
2. Consider taking any disciplinary action regarding Employee in that report.

Options include continuing it to a date certain, November 9 or November 23rd, or Council could choose to take different action regarding the report this evening. Communication from the Employee's Attorney was forwarded to the Council.

Councilmember Bartholomew stated in his opinion, it is mandatory to have the report before taking any action. Mayor Tourville stated regarding dates it is safer to have it for November 23rd instead of the 9th in the event it isn't back. Councilmember Bartholomew agreed.

Motion by Bartholomew second by Piekarski Krech to table this for date certain of November 23, 2020.

Mayor Tourville stated IPAD may say they are not going to comment, there wasn't a breach, or there was a breach. City Attorney McCauley Nason responded three things could happen:

1. The Department says they are not going to issue an opinion in the case. They do not have to issue an opinion because it is requested.
2. They could ask for additional supplemental/follow up information.
3. They could issue an opinion. There were specific questions that related to each of the specific distributions of the email. An opinion could be provided on one, or all of those questions.

Councilmember Dietrich stated it seems like this investigation has been flawed from the very start. She will vote nay because Ms. Shefchik needs to get back to work, the Council and the Mayor need to get back to doing the work of the Government, not these types of things. That is the reason for her Nay. Mayor Tourville stated this could have been solved in November 2019. All information was there. Questions were asked, one refused to give answers, the other one did. He stated in Councilmember Dietrich's opinion it's a waste of time.

Councilmember Dietrich stated she did not need for the Mayor to patronize her comment. Mayor Tourville responded he was not patronizing he was explaining his opinion. Information is needed in order to make a final decision. Councilmember Bartholomew stated there was a lengthy discussion regarding this. Four points needed clarification this is one of the four. He stated it is fair to all parties and residents to get that information and understand what they are doing.

Ayes: 4

Nays: 1 (Dietrich) Motion carried.

Janet Shefchik asked that giving opinions, speculations, and conjecture ends, and to wait for the information. She stated her Attorney and herself received the report on Saturday. The request for the Advisory opinion went in on Friday. She agreed there is a communication issue. She commented she has a lot to say but will wait until November. She asked to please refrain from making judgements.

Kelly Kayser, 1953 59th Court East, applauded Councilmember Bartholomew for pushing for the IPAD Investigation. She stated Ms. Shefchik asked for that back in July. She asked if Council looks back at the videos to see what was said. She asked who contacted Mr. Kuntz so that Mr. Kuntz could hire Mr. Lepak. She commented she has heard publicly that the Mayor and the City Administrator were involved. She read the following:

- Believes Attorney Scott Lepak is better suited to proceed with the investigation. He (City Attorney Kuntz) requested Mr. Lepak to proceed with the investigation rather than have his office do so.
- She stated she has asked how Ms. Quade got involved in presenting the investigation. She said Mayor Tourville told her it was public information and was a part of the investigation. She stated she was curious and went to Barna, Guzy, & Steffen's website and on the page for Government Law Services, it talks about data practices, and lists three Attorney's, Mr. Lepak is one of them. Then going Employment Law Services, that is where Ms. Quade and Ms. Moreau's names were as an Employment Attorneys. She stated the page states to "protect your legal rights at all stages of employment relationship. We defend Employers regarding discrimination, sexual harassment, non-compete convenience, and other employment disputes."
- She asked when Mr. Lepak came in July, he was talking about data practices. Then in September, the whole tone shifts and there are two Employment Attorney's speaking.
- She stated according to the memo, Mr. Lepak was the one hired. She asked why he was out of the loop. She commented from a resident perspective, if there was a data breach hasn't been answered.
- She wished opinions would have been solicited before voting to table it again because it's getting really long. She agreed with Councilmember Dietrich that there is other business to attend to.

She stated nothing sits right. From the very beginning it seems to have gotten off on the wrong foot with it turning into something else. She commented she wished that one of the Councilmembers had the courage to reject this and say it was time to move on. Councilmember Bartholomew responded two people did say it didn't seem there was anything there, but it takes three to move it on.

She stated the communication needs to improve. Mayor Tourville responded there are two people, with a possible breach they don't know if they did or did not. Two that have been publicly spoken about are the HR Director Janet Shefchik and Councilmember Dietrich. Ms. Kayser suggested not forgetting about the City Administrator. Mayor Tourville responded they are investigating that part.

Councilmember Dietrich stated that was not true. She stated she read a statement and Ms. Quade confirmed that Councilmember Dietrich did not have a part of a data breach. Mayor Tourville responded he did not say she had a data breach he said there was a possible data breach.

Ms. Kayser stated all Councilmembers were in that confidential room. She asked why this was not addressed then. She stated people have contacted her who have seen her speak about these issues. Mayor Tourville responded he has been contacted by several people that have said to receive the investigation and let the people decide. Ms. Kayser stated she did not want to do this, but this is very ugly for the City. Mayor Tourville agreed.

9. MAYOR AND COUNCIL COMMENTS:

City Administrator Lynch stated Wednesday is the Vitals Program at the Community Center. The Police Department is working on this program for adults and children with special needs. He encouraged people to come and listen to a presentation. He stated they have received 50 medallions for the first fifty people who attend. This helps the Police Department and those with special needs. He stated when Police are in the area or run into situations dealing with individuals with special challenges, they can be made aware of what those are immediately. The information comes up on mobile devices and makes the Officer's aware of triggers or a way to communicate in a special or different way. It helps the Police Department de-escalate situations and also helps contact dependency providers to be notified of a situation.

Mayor Tourville stated Dakota County has already had some success stories with it. He stated the Police Department is already involved in the program but want to take it to the next level.

Mayor Tourville stated the Work Session takes place on Monday, November 2nd at 6:00 p.m.
Voting takes place Tuesday, November 3rd.

City Clerk Kiernan stated in-person voting casting a Ballot into a tabulator begins tomorrow. Office hours are open from 8:00 to 4:30 Monday through Friday, and Saturday from 10:00 a.m. to 3:00 p.m. There are plenty of Staff available to help. She stated there is direct balloting this coming Monday from 8:00 to 5:00. Otherwise people can vote at the Polls on Election Day from 7:00 a.m. to 8:00 p.m.

Mayor Tourville stated there are many alternatives to Trick or Treating, numerous places are doing this. The City does not determine whether or not there would be door to door trick or treating.

8. EXECUTIVE SESSION:

A. Closed meeting pursuant to Minnesota Stat. Sec. 13D.05, Subd. 2B to consider allegations or charges against individual subject to Council authority in the Police Department (non-disciplinary). Note: No public report or Council memo associated with this item prior to Council consideration. Data is private Pursuant to Minnesota Statutes Section 13.43. Resolution 2020-239 Separation Agreement of Police Officer Shane Rambaum.

City Attorney McCauley Nason stated the closed meeting will involve the Cities Labor and Employment Counsel. Once the closed meeting is concluded any subsequent action would have to occur in open session. The Council is being asked to go into a closed session Pursuant to Minnesota Stat. Sec. 13D.05, Subd. 2B for preliminary consideration of allegations or charges against an individual subject to its authority. This closed session must also be open at the request of the individual who is the subject of the meeting, if that subject makes that request. The meeting must be recorded. The closed meeting will be held in Council Chambers and commence immediately. She stated once the closed meeting is completed, the City Council will reconvene the open meeting portion of tonight's City Council meeting where action may be taken by the Council regarding this item. She stated Council is moving into closed session, if the subject does not want a closed session, the Council would have to open it.

Return to Open meeting for action, if any associated with closed meetings.

Motion by Piekarski Krech second by Perry to adjourn the meeting and meet in closed session at the request of the Officer.

Ayes: 5
Nays: 0 Motion carried.

10. ADJOURN:

Council adjourned into Executive Session at 8:37 p.m.

Council reconvened to approve the following:

Motion by Piekarski Krech second by Bartholomew to approve Closed meeting pursuant to Minnesota Stat. Sec. 13D.05, Subd. 2B to consider allegations or charges against individual subject to Council authority in the Police Department (non-disciplinary). Note: No public report or Council memo associated with this item prior to Council consideration. Data is private Pursuant to Minnesota Statutes Section 13.43. Resolution 2020-239 Separation Agreement of Police Officer Shane Rambaum.

Ayes: 5
Nays: 0 Motion carried.

Motion by Piekarski Krech second by Dietrich to adjourn the Executive Session at 9:27 p.m.

Ayes: 5
Nays: 0 Motion carried.

Minutes prepared by Recording Clerk Sheri Yourczek