

JUNE 28, 2021

T HE CITY COUNCIL OF THE CITY OF LEWISTON, IDAHO, met in a Regular meeting on Monday, June 28, 2021, at the Lewiston City Library, 411 D Street. Mayor Collins called the meeting to order at 6:00 p.m.

I. ROLL CALL

Councilors Present: Collins; Schroeder; Blakey; Bradbury; Kelly; Miller; Pernsteiner.

II. PLEDGE OF ALLEGIANCE

Mayor Collins led the Pledge of Allegiance.

III. CITIZEN COMMENTS: *Provides an opportunity for citizens to address the council on agenda items or other items they wish to bring to the attention of the council. Citizens are encouraged to discuss operational issues in advance with the city manager. In consideration of others wishing to speak, please limit your remarks to three minutes.*

Dan Tippett addressed 23rd Street between Powers and Grelle. He said he received a registered letter from Nez Perce County telling him to remove any personal items he has on city property. He expressed concern about not knowing the future plans for the roadway, as well as drainage/runoff issues. Mr. Tippett noted that City Manager Nygaard was asked to contact the property owners, but after 8 days he has not yet heard from him. Finally, Mr. Tippett said he put in a fence several years ago based on a survey from 1997. According to the new survey information, his fence is now 1.5 feet over the line and is out of compliance.

Randy Moore reported there are several very concerned citizens with regard to 23rd and Powers. He said he heard that Nez Perce County has already spent \$600,000 and the city \$300,000. All the property owners want is the truth as to the future plans of the roadway. He suggested a public hearing be scheduled in order to allow the citizens to be heard.

Lynn Ann Richie noted that Mr. Nygaard stated that residents are getting their information from Facebook and may be just rumors. She expressed concern for constructing a road to help Mr. Greco's personal development and asked why it would be placed 395 feet from the edge of the garage in question when there is an existing paved road right in front of the garage that is only 41 feet away from it. Ms. Richie said she believes this is an unnecessary and unwanted roadway and a total waste of taxpayer money. She encouraged the Council to put the money into already deteriorating roads.

Public Works Director Johnson reported that 23rd Street is split down the middle, with half lying within the County and half within the City. This property

was dedicated and the public right-of-way platted in 1910. As growth and development move in that direction, the Commissioners reached out to the city to see if it would be willing to open that up. Mr. Johnson said he has spoken with Mr. Tippett several times, and noted that Mr. Tippett has been using the right-of-way for personal use. Mr. Johnson said he has had conversations with county staff, who have since sent letters to the residents in this area. He noted that he too sent a letter to Mr. Tippett who has requested 30 days to remove his personal items. City surveyors marked the right-of-way last week, which was 50 feet from edge to edge. The immediate concern is making the road accessible to emergency vehicles and drainage, and there are no plans for road construction at this time or even in the near future.

Councilor Blakey asked if there are any large parcels of land along 23rd that could be subdivided in the future for development purposes. Mr. Johnson responded that most of it could be, noting that the pattern of growth is moving towards this area.

Clarifying a question raised by Councilor Kelly, Public Works Director Johnson confirmed that there are no plans by either the city or county to construct a roadway at this time. The only thing that has been completed is a survey to mark the right-of-way. As the city grows, there will most likely be a roadway constructed, but again, there is no plan for this in the near future.

County Commissioner Havens reported that the city and county absolutely have a right to develop a road that was platted over 100 years ago. This was triggered by an access permit from a person who wanted to build a shop within the county. That permit means the county is now responsible for this access with regard to culvert placement, drainage, etc. He assured everyone that it has nothing to do with paying for a driveway as a personal favor. There is no design, no engineering consultant, nothing at this time for road construction and the area has merely been surveyed to establish boundaries. Mr. Havens mentioned an unwarranted no trespassing sign within the right-of-way and noted that every citizen has the right to expect this platted road to be open to the public.

Gabe Iocoboni addressed Ordinance Ord. 4819, and questioned the reason for requiring the mayor to be elected by a majority of the votes cast if the city were to revert to a mayor-council form of government. He noted that the cost of the election in 2019 was approximately \$60,000 and if a run-off election were required, the city would have pay for this. Further, Mr. Iocoboni asked if a longer campaign season is really worth it, adding that this process stacks the deck against the candidate on the lower tier. There are currently two cities within Idaho that utilize runoffs to elect their mayors; Boise and Twin Falls, and they both see fewer people turn out for the second round. Mr. Iocoboni noted that all of those currently on the Lewiston City Council, other than Councilor Bradbury, were elected with 25

percent or less of the votes. Approving Ordinance 4819 will probably cause more acrimony than it will benefit.

Richard Eldredge stated the Council has yet to distribute the Covid-19 relief funding that was designated for small businesses. He expressed concern for comments made by Councilor Miller at a previous meeting and said that under a strong mayor form of government, the city will be managed better and money will get to the people.

Ada Eldredge said she believes that communication has been poor from the city and county with regard to the property owners on 23rd. If Mr. Tippett needs to remove his fencing, then he should be told. She added that those living in this area have been under the impression that a road was going to be constructed and it is frustrating when the property owners cannot get answers. Further, Mrs. Eldredge encouraged the Council to vote against requiring a majority vote for mayor as this is just another form of trickery.

IV. PRESENTATIONS AND PUBLIC HEARINGS

A. FINANCIAL REPORT - MAY 31, 2021: *Provided by Administrative Services Director Marsh in accordance with Idaho Code 50-208 - No oral report*

Councilor Bradbury asked if either the golf course or the Cemetery pay for the water they get from the water utility. Mr. Marsh explained the golf course pays a flat fee of approximately \$36,000 to the Water Department annually and the cemetery pays for electricity and meter fees, not water itself, as it utilizes water from Well #3 and not municipal water.

With regard to the Economic Development Fund, Councilor Bradbury asked specifically what these monies have been spent on in the past. Administrative Services Director Marsh replied that this fund includes Cares Act money and American Rescue Act monies which have never before been received by the city. CDBG funds are also within the Economic Development Fund and are used for such things as home improvement loans and assistance to the YWCA and Salvation Army.

Regarding the Property Improvement Fund, Councilor Bradbury asked if the \$1.9 million has been allocated. Mr. Marsh noted this is a combination of URA closure money that has not been spent, other than a bit for building infrastructure. Additionally, the Council has committed to a new fire station and park improvements and this money is within the Fund.

B. CITY ACHIEVEMENT AWARD: *Presentation on the City of Lewiston's Achievement Award from the Association of Idaho Cities for the Education and Community Park Campus (Nygaard)*

City Manager Nygaard reported that the City was recently a recipient of a City Achievement Award from the Association of Idaho Cities. Parks and Recreation and Public Works worked closely with the Lewiston School District and Lewis Clark State College to move forward with the Community Park Campus and those efforts were recognized by AIC at its recent conference.

V. CONSENT AGENDA

Mayor Collins explained that all items on the Consent Agenda are considered routine by the Council and will be enacted by one motion. There will be no separate discussion on these issues unless a Councilor so requests, in which case the item will be removed from the Consent Agenda and considered on the Active Agenda under "Items Moved from the Consent Agenda".

Councilor Blakey asked that the Vouchers Payable be moved to the Active Agenda for discussion.

A motion was offered by Councilor Blakey and seconded by Mayor Pro Tem Schroeder to approve the Consent Agenda as amended. *ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Blakey; Bradbury; Kelly; Miller; Pernsteiner. VOTING NAY: None.*

- A. **CITY COUNCIL MEETING MINUTES:** 06/07/21 Work Session – Action Item
- B. **ADVISORY BOARD AND COMMISSION MEETING MINUTES:** 05/19/21 Library Board; 06/16/21 Parks & Recreation Commission – Action Item
- C. **COMMUNITY PARK PARKING LOT PROJECT AMENDMENT:** Considering an amendment to the agreement between the City of Lewiston and JUB Engineering – Action Item
- D. **VOUCHERS PAYABLE:** 05/28/21 through 06/10/21 - \$1,530,122.56 - Action Item – Moved to the Active Agenda Item VI.C.a

VI. ACTIVE AGENDA

- A. **WATER TREATMENT PLANT RETROFIT:** Considering approval of the First Amendment to the Progressive Design Build Agreement with IMCO General Construction, Inc. – Action Item (Bailey)

Engineering Project Supervisor Bailey stated that in December 2020, the City Council awarded IMCO General Construction, Inc., the Water Treatment Plant Progressive Design Build contract for Phase I Design Service in the amount of \$2,621,095. The agreement was prepared with contract language from design

through construction and final acceptance and is intended to be amended for Phase 2 construction and services.

Continuing, Ms. Bailey explained that the first amendment to the PDB Agreement is the Phase 2 Early Works package. This includes procurement and contracting for critical new treatment facilities and equipment with long lead time. The Early Works package is not inclusive of all labor, equipment and materials to complete the project. Additional contract requirements of particular interest are definition of responsibilities associated with the City use and operation of mobile treatment trailers furnished by IMCO, and the liquidated damages and allowance for possible unanticipated use of mobile treatment trailers resultant of late project delivery. Mr. Johnson noted the equipment, material and subcontracts included within the package.

Ms. Bailey indicated that the PDB Agreement budget is \$27.5 million. Future amendment(s) for Phase 2 construction of the Main Works package is currently scheduled to be presented to the Council for consideration in September 2021.

Responding to a question raised by Councilor Blakey, Ms. Bailey explained that the \$27.5 million does not include construction of a new intake. Councilor Blakey expressed concern, stating that if the water intake is located below the mill, the city's water supply could be in danger if there was ever a disaster. Public Works Director Johnson explained that the intake is a separate project from what is being presented this evening. When the levees were built, a "new intake" was constructed by the Corps of Engineers in the preferred location, upstream from the mill, but it never worked as it should. Therefore, a temporary intake was built below the mill and that is what the City has been using for the past 40 years. As part of the evaluation of the water system, the proposed analysis is being requested to determine what it would take to move to the intake located upstream.

Councilor Kelly asked if staff is anticipating a need to rebuild or repair the roads upon project completion. Ms. Bailey replied that considerable damage to those roads is not anticipated.

A motion and second were offered by Mayor Pro Tem Schroeder and Councilor Kelly, respectively, to approve the First Amendment to the Progressive Design-Build Agreement between the City of Lewiston and IMCO General Construction, Inc. *ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Blakey; Bradbury; Kelly; Miller; Pernsteiner. VOTING NAY: None.*

B. LOCAL PROFESSIONAL SERVICES AGREEMENT: *Considering approval of the TR048 Snake River Avenue Demolay Trail Project Local Professional Services Agreement for construction contract administration between the City of Lewiston, Idaho Transportation Department and Horrocks Engineers, Inc. (Bailey)*

Engineering Project Supervisor Bailey explained this Local Professional Services Agreement is for construction contract administration services for the Snake River Avenue Demolay Trail project. An oversight contract is a requirement of federal funding. The local PSA for these services was prepared by the Idaho Transportation Department and is for a not-to-exceed amount of \$27,392.

A motion and second were offered by Mayor Pro Tem Schroeder and Councilor Pernsteiner to approve the Local Professional Services Agreement between the City of Lewiston, Idaho Transportation Department and Horrocks Engineers. *ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Blakey; Bradbury; Kelly; Miller; Pernsteiner. VOTING NAY: None.*

C. ORDINANCES

1. First Reading

- a. Ordinance 4821: *Amending Section 2-34 of the Lewiston City Code to fix the compensation of the Mayor in the event the city reverts to a Mayor-Council Form of Government – Action Item (Gómez)*

City Attorney Gómez reported that at the June 7th work session, the Council discussed the compensation for the mayor in the event the city reverts to a mayor-council form of government. The Council gave direction to draft an ordinance setting the annual salary at \$80,000 and allowing the mayor, at his or her option, to receive the same employee benefits as any full-time city employee, except for accrual of vacation and sick leave. Continuing, Ms. Gómez said this Ordinance would increase the annual compensation for the position of Mayor from \$12,000, under the council-manager form of government, to \$80,000 plus benefits, under the mayor-council form of government.

Councilor Bradbury asked if an \$80,000 salary were established and the city were to revert to a mayor council form of government, could that amount be amended by a new Council. Ms. Gómez replied that a change to the salary could only take place at a general election which is held every two years.

Mr. Bradbury stated that \$80,000 is about \$50,000 less than what the City Attorney makes and about half of what the current City Manager makes. He expressed concern for the Mayor being one of the lowest paid individuals with the City. Though he expressed approval at a previous meeting, Councilor Bradbury said he believes that \$80,000 is grossly inadequate.

Councilor Blakey offered an amended motion to reduce the Mayor's salary to \$36,000 per year with no benefits. The motion failed for lack of a second.

Councilor Bradbury then offered an amended motion to set the salary at \$120,000 plus full benefits. This motion also failed when no second was provided.

Councilor Pernsteiner said he understands the desire to attract qualified applicants for the position of Mayor. He said it would be his desire to see as much flexibility as possible for the next Council. Should they decide a City Administrator is needed to compliment a Mayor, the \$80,000 salary would leave funding for that purpose. Mr. Pernsteiner explained that an elected official, in and of itself, is a position of authority and is unlike a hired individual. Mayors have reduced salaries all over the world. The very nature of this is a campaign wherein the winner who runs the best campaign is selected. Mr. Pernsteiner stated he believes \$80,000 is a fair wage.

Councilor Bradbury said the City has about \$10 million in unallocated funds. Setting the potential Mayor's salary at \$80,000 discourages people from applying and supports proposing the city maintain a city manager form of government. This is unfair to the voters who want a strong mayor.

Upon learning that the County Commissioners make approximately \$72,000 per year, Councilor Miller noted that the Mayor's position is comparable to those elected positions. She expressed her belief that \$80,000 is sufficient. Miller: How much do the county commissioners make? \$72,000.

Mayor Pro Tem Schroeder offered an amended motion to set the Mayor's salary at \$100,000 with full benefits. Councilor Bradbury provided the second.

Ms. Schroeder said she is completely against a strong mayor form of government, but by setting the potential mayor's salary at \$100,000, it could attract qualified individuals.

Councilor Pernsteiner noted that \$100,000 plus benefits is higher than any other city in Idaho with the exception of Boise. The amended motion on the floor failed for lack of a majority. *ROLL CALL VOTE: VOTING AYE: Schroeder; Bradbury. VOTING NAY: Collins; Blakey; Kelly; Miller; Pernsteiner.*

Mayor Pro Tem Schroeder offered a motion to approve the first reading of Ordinance 4821 by title only. Councilor Pernsteiner seconded the motion. The motion 5 to 2 with Blakey and Bradbury voting nay.

ORDINANCE 4821: "AN ORDINANCE OF THE CITY OF LEWISTON AMENDING SECTION 2-34 OF THE LEWISTON CITY CODE TO FIX THE COMPENSATION OF THE MAYOR IN THE EVENT THE CITY REVERTS TO A MAYOR-COUNCIL FORM OF GOVERNMENT; AND PROVIDING AN EFFECTIVE DATE"

2. Second and Third Reading

- a. Ordinance 4819: *Enacting Section 13-25 of the Lewiston City Code which provides that, in the event the city reverts to a Strong-Mayor form of government, the Mayor of the City of Lewiston shall be elected by a majority of the votes cast for any candidate running for the Office of Mayor- Action Item (Gómez)*

City Attorney Gómez explained that Ordinance 4819 provides that in the event the city reverts to a strong mayor form of government, the mayor would be elected by a majority of the votes cast pursuant to Idaho Code Section 50-612. If no candidate receives a majority of the votes cast, a runoff election within 30 days of the general election would be required and the city would be obligated to pay for such runoff election.

A motion and second to combine the second and third readings and to waive the third reading in full of Ordinance 4819 were made by Councilor Blakey and Mayor Pro Tem Schroeder.

Councilor Pernsteiner proposed a motion to separate the second and third readings and to hold the potential second reading this evening and the potential third reading and adoption at the July 12, 2021, regular meeting. Mayor Pro Tem Schroeder seconded the motion.

The motion to combine the second and third readings failed.
ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Bradbury; Kelly; Pernsteiner. VOTING NAY: Blakey; Miller.

Mayor Pro Tem Schroeder then moved to approve the second reading of Ordinance 4819. Councilor Pernsteiner provided the second.

Councilor Pernsteiner agreed with earlier comments that nobody wants a longer election or to add costs to an already expensive process. He noted that lower voter turnout at a runoff election is also a valid concern. Not in favor of a change in government, Mr. Pernsteiner said his concern lies with the way the city currently elects its councilors, noting that nobody received 50 percent of the votes. The intent is to get a representative sample of the community as a whole and the Council then serves as a body of 7. When applied to state legislature or federal legislature, the same thing can be said about those individuals. Mr. Pernsteiner stated that if the form of government should change to mayor/council, then the power is more concentrated and should be represented by a majority of the community.

Councilor Bradbury stated the city currently has a city manager who has more power than the Mayor. He said he believes a runoff election would be a waste of time and money and is only being proposed by this council to discourage the proposition as it has been put forward.

City Attorney Gómez explained that recall elections have a lot of requirements. In order for it to be successful, two things have to happen: a majority of those voting in the recall election have to vote for the recall, and the number of people who vote for the recall has to be equal or greater than the number of votes that voted that person in.

Councilor Blakey emphasized that the current city manager could be removed at any time if that's what the city council decides. However, an elected mayor cannot be potentially removed for two years by means of an election before the voters. City Attorney Gómez clarified that the Mayor is elected to a four-year term. The mayor could also be removed from office through a recall election, but there are a many regulations. Mr. Blakey added that the council has much more flexibility and control of the destiny of the City of Lewiston under a manager council form of government.

Mayor Collins said it is not his intention to subvert a change in the form of government; however, he said his main focus is that if it does change to a strong mayor his concern is that it could happen with such a small amount of votes.

Councilor Pernsteiner said that in conversations he has had with individuals who are concerned about the proposition, a 50 percent vote makes this more powerful to them. To say the city manager has more power than a mayor is a farce. This is one of the

cruxes of the misunderstandings about the current form of government. Mr. Pernsteiner said the nature of a hired position is when authority is abused, it can be replaced immediately. The level of accountability is much higher with the current form of government than what is being proposed. He stated he believes the 50 percent majority vote makes this action more palatable.

A motion was then made by Mayor Pro Tem Schroeder and seconded by Councilor Pernsteiner to read Ordinance 4819 for the second time by title only. The motion carried 6 to 1, with Councilor Bradbury voting nay.

ORDINANCE 4819: "AN ORDINANCE OF THE CITY OF LEWISTON ENACTING SECTION 13-25 OF THE LEWISTON CITY CODE, WHICH PROVIDES THAT, IN THE EVENT THE CITY REVERTS TO A MAYOR-COUNCIL FORM OF GOVERNMENT, THE MAYOR OF THE CITY OF LEWISTON SHALL BE ELECTED BY A MAJORITY OF THE VOTES CAST FOR ANY CANDIDATE RUNNING FOR THE OFFICE OF MAYOR; AND PROVIDING AN EFFECTIVE DATE"

3. *Adoption and Approval of Ordinance Summaries*

a. *Ordinance 4819* - Action Item

Potential adoption and approval of Ordinance 4819 and the Ordinance Summary was moved to the July 12, 2021, Regular meeting.

C. *ITEMS MOVED FROM THE CONSENT AGENDA* - Action Item

Councilor Blakey questioned the amount the City has expended to date on the lawsuit filed by Councilor Bradbury. Administrative Services Director Marsh noted that amount at approximately \$35,000.

Mayor Pro Tem Schroeder moved and Councilor Pernsteiner seconded approval of the Vouchers Payable. *ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Blakey; Bradbury; Kelly; Miller; Pernsteiner. VOTING NAY: None.*

VII. *UNFINISHED AND NEW BUSINESS*

A. *CITY COUNCILOR COMMENTS*

Mayor Pro Tem Schroeder said she was contacted prior to this evening's meeting by an individual concerned about fires over the Fourth of July holiday.

Councilor Pernsteiner said he would value more citizen input on the salary for a potential mayor, as well as the majority vote issue discussed earlier in the evening. He noted that he has had very few interactions on these topics and would encourage people to speak up or send in e-mails with their thoughts.

In response to a question raised by Councilor Kelly regarding cooling shelters, City Manager Nygaard explained that staff has been working closely with Emergency Management Coordinator Bill Reynolds. The city's library and Community Center, as well as two schools, have been identified for use if needed. Mr. Nygaard noted that he would ensure that the policing officers were aware of the shelters so they can share the information with those who may not receive press releases.

Councilor Bradbury said that last winter the city did not have a warming center and now it doesn't have a cooling center. He noted that \$600,000 in grant money has specifically been designated for low income housing and the homeless and not one penny has been spent on the homeless population. City Manager Nygaard clarified that there are four cooling shelters available if needed, and emphasized that there is not \$600,000 available for the homeless. He noted that Mr. Bradbury's statements are inaccurate and reiterated that no money was given to the city for the homeless population.

Councilor Pernsteiner noted that he too wanted to clear up the misinformation given by Councilor Bradbury. He stated that the \$600,000 in grant funding was not allocated for the homeless and noted that there are a number of community partners who focus on that demographic.

Councilor Miller challenged Councilor Bradbury to indicate what he specifically could do to impact the homeless population. Mr. Bradbury noted that he was bringing it to the attention of the Council for action.

B. CITY MANAGER COMMENTS

City Manager Nygaard reported that Asotin County has established a ban on fireworks within the County. The Nez Perce County Commissioners will be meeting tomorrow to discuss the same issue. Mr. Nygaard suggested this topic be added to a budget agenda this week for the Council to discuss.

Chief Myklebust reported that a wildland fire started today that was contained to 5 to 7-acres and was started by the conduction of heat on equipment. He noted that he is working closely with the Nez Perce County Commissioners and the Prosecutor's office with regard to the legalities of a ban and will keep the Council updated. Chief Myklebust said his plan is to increase his staff by 10 additional people on July 4th, but as seen by today's fire, it doesn't take a firework to start a fire in these hot conditions. He added that as the Fire Chief, he does have the right to enact burn bans, but said he would like to have the support of the Council if that's what necessary to keep the community safe.

Councilor Blakey asked that this topic be added to the Thursday, July 1, 2021, budget agenda for discussion.

C. ADVISORY BOARD AND COMMISSION APPOINTMENTS

Mayor Collins moved to appoint Sammy Andrews to the Parks and Recreation Commission. The motion was seconded by Mayor Pro Tem Schroeder and carried unanimously.

Mayor Collins then offered a motion to appoint Daniel Haines to the Business Improvement District Advisory Board. The motion was seconded by Mayor Pro Tem Schroeder and carried unanimously.

D. AGENDA TOPICS - ACTION ITEM

There were no new topics offered for future agenda discussion.

VIII. ADJOURNMENT

There being no further business to come before the Lewiston City Council, Mayor Pro Tem Schroeder and Councilor Blakey moved and seconded adjournment of the June 28, 2021, Regular Council Meeting at 7:55 p.m.

Kari Ravencroft, Recording Secretary

Date approved by City Council