

OFFICIAL COUNCIL PROCEEDINGS

November 15, 2011
7:00 p.m.

ROLL CALL

Present: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Draper and Mayor Pro Tem Knickerbocker - 7

Absent: -0-

CALL TO ORDER

There being a quorum present, Mayor Hark called the meeting to order.

INVOCATION

Mayor Pro Tem Knickerbocker gave the invocation.

PLEDGE OF ALLEGIANCE

Cole & John Bryant and Cub Scout Pack 110 led the Pledge of Allegiance to the Flag.

APPROVAL OF MINUTES Regularly Scheduled Council Meeting – November 1, 2011

Motion was made by Council Member Louderman to approve the minutes of the last regular Council meeting that was held on November 1, 2011. Motion was seconded by Council Member Hark.

Motion carried.

APPROVAL OF PAYROLL AND CLAIMS First Half – November, 2011

Motion was made by Council Member Dobson to approve the payroll and claims for the first half of November, 2011. Motion was seconded by Council Member Barta.

Motion carried.

RICHARD DRAPER – 6TH WARD COUNCIL MEMBER
Re: Municipal Election – Hannibal Smoke-Free Air Act
(Bill No. 11-029, to follow)

Sixth Ward Council Member Richard Draper presented Bill No.11-029, that would authorize a ballot issue regarding the Hannibal Smoke-Free Air Act, if approved. Draper explained that the ordinance he was proposing to be placed on the April ballot was a matter of promoting public health in the face of a known threat, tobacco smoke. He added that there was some question whether or not Council should become involved in “the rights” of citizens or leave that responsibility to special interest groups. He cited the dangers in exposure to second-hand tobacco smoke, and listed the various areas in support of these statistics, including:

- 348 Countries throughout the World
- U.S. National Institutes of Health
- Centers for Disease Control
- United States Surgeon General
- U.S National Cancer Institute
- United States Environmental Protection Agency
- California Environmental Protection Agency
- American Heart Association
- American Lung Association
- American Cancer Society
- American Medical Association
- American Osteopathic Association
- American Academy of Pediatrics
- American Hospital Association
- American College of Emergency Physicians

From this he concluded that this proposal was not based solely upon junk science and emotions.

He did not wish to overlook smokers’ rights or begrudge anyone’s right to smoke because he was very aware of what a difficult addiction smoking was to conquer; however, smokers do not have the right to affect the health of others because of their personal choices. There is no provision in the Constitution that guarantees smokers’ rights.

There is no ‘right to smoke’ and this statement has been upheld every time it has been litigated. There has never been a court decision made in favor of smokers’ rights, there is no such thing. Draper admitted that smokers should be able to enjoy their choices, but not at others expense.

He said the reason he believed City Council should be involved instead of abdicating “Breathe Easy Hannibal” to initiate a petition and obtain the required number of signatures to place the issue on the ballot was because of its importance to everyone. And even though Council could pass this ordinance without a vote of the people, since it is within the scope of the City Charter; however, instead of that he proposed that the Citizens of Hannibal should exercise their right through the ballot box because of the relevance and significance of this issue. Each and every one should be given the opportunity to decide.

Mayor Pro Tem Knickerbocker began by commending Dr. Draper, adding that he was obviously very committed to this issue. He admitted that he did not disagree second hand smoke was harmful; but believed it should be a matter of personal choice. He added that, even though he believes smoking is bad, causes serious health problems and even death, it encompasses a much larger issue, the issue of individual freedoms and rights, which are founding principles of our Country. He commented that an individual, who happened to be a business owner, should not be excluded from private property rights, simply because the public may sometimes be invited into the individual’s private property. He stated that, in his opinion, citizens should be able to have control and say-so regarding their private property.

Knickerbocker concluded that this was more a “right-to-property” issue than a health issue. He believed that by passing laws, such as this one, we would be infringing upon the property rights of individuals. People have the right to choose and as the years progress, more and more people are making the choice not to smoke and to be more healthy. He said that he believes it is a good thing that businesses in the area are choosing to be non-smoking; but, this decision is entirely up to the property owner and regards owner’s property rights.

Knickerbocker commented that it is the citizen’s right, as well, who do not like the smoky environment to abstain from going to these places of business. Employees also have the right to choose whether or not to work in an establishment that is not smoke-free. Business owners, as well as employees and patrons, have the right to choose, in Knickerbocker’s opinion.

He added that this should entail more than government involvement. Instead, it should be the responsibility of organizations and/or special interest groups to advocate and support these issues. These groups have recently discussed this issue within the City and have been gaining support for this cause. They have done much advertising on television/ radio and should continue by obtaining the required signatures on a petition to bring before Council. Then this issue could be put before a vote of the citizens. That would remove the City’s involvement since a requirement by the City Charter states that if there is a valid petition brought before Council the issue must be placed on the ballot for a vote of the people.

Council Member Barta spoke in support of Council Member Draper and expressed his belief that the people should be the ones to decide this issue. He commented that the vast majority of Hannibal residents do not smoke and added that placing the responsibility of bringing this issue forth onto the public is not normal procedure. In Barta’s opinion, the benefits of this smoking ban are undeniable and passage will improve local economy.

Mayor Pro Tem Knickerbocker countered that this issue is different than other ballot issues that Council has endorsed in the past. Those did not regard individual property rights, confined to locations. In the other ordinances, Council was dealing with the operation of government and how those ordinances would affect large numbers of people who did not have a choice with regard to what was occurring around them. This ordinance has to do with individual freedom and personal choice. He agreed with Council Member Barta that Council should speak for the silent majority; however, this is not the case. This is the vocal majority, who have been advertising for years. He believed that it would be very simple to obtain the required signatures, since it only requires 10% of registered voters. He also believed that this should be accomplished without the involvement of Council since this issue concerns a very serious personal property right of citizens. In Knickerbocker's opinion the special interest groups should do the leg work and not take the easy way out.

Council Member Draper countered that the property rights Mayor Pro Tem had mentioned were a fallacy. These do not exist, since smoking does not impact property rights. The property right of a business owner is to provide service to his customers. He added that, as a business owner, if you are going to make a living by providing services to the public, it then becomes your responsibility to provide for the safety of those individuals, as well.

Draper stated that the first thing that is done when someone contests the side in an argument is to question the facts. In the smoking issue, the facts are indisputable by all the major medical organizations in the world. Secondly, according to Council Member Draper, there is no cost to the community, since a Municipal Election is scheduled to take place anyway. He admitted that this is not the easy way out, adding that the easy way would be to place this responsibility on someone else's shoulders. Responsibility begins with us, according to Draper.

Mayor Hark commented that he had listened to both sides which were well taken. He said that he was not in favor of forcing his will on someone else. He wondered what would be accomplished if Council required those who were in favor of the smoking ban to obtain 1,000 (or even 10,000) signatures. The end result will still be the same. The people will choose, and this is who should choose, anyway. Mayor Hark said he had no problem with placing this on the ballot and let the people choose.

Mayor Hark added that, whether it passes or not, citizens have the freedom of choice, to go where they want. He said that he does not take his grandchildren in smoking establishments since he believes adults have to protect their children. Hark restated that Council could spend much time discussing this issue and whether or not to place it on the ballot, but ultimately, it will be placed on the ballot; therefore, it was his opinion to go ahead and approve the ordinance placing it on the ballot instead of waiting. Let the people decide whether or not they want Hannibal to be smoke-free.

Council Member Dobson commented that Council has dealt with equipment and parking ordinances. During discussion, they have always listened to both sides and he believes that Council should listen to the other side regarding this issue, as well. Since people are just

becoming aware of this, he suggested it be tabled until comments of all are heard, such as Chamber of Commerce, Downtown business owners, etc.

Council Member Hark believed that a public hearing was not necessary since ultimately it will be placed on the ballot; however, Knickerbocker disagreed, because he said this had been discussed for the past four years, yet had never been placed on the ballot, to date. He added that facts aren't the important issue, but the individual's property rights are; so, he respectfully disagreed.

Council Member Louderman commented that when this bill comes up for a second reading during the next regular Council meeting, people will be present, who wish to speak. He, too, would like to hear from the Chamber of Commerce and business owners and was not opposed to tabling the bill at this time. Motion to table was made by Council Member Dobson. Motion was seconded by Council Member Louderman.

Roll Call

Yes: Council Members Dobson, Louderman and Mayor Pro Tem Knickerbocker - 3

No: Council Member Barta, Mayor Hark, Council Members Hark and Draper – 4

Motion failed.

JEFF LAGARCE – CITY MANAGER
Re: Decennial Census Report, 2010 – Ward Boundaries
(Bill No. 11-026, to follow)

City Manager LaGarce presented the first of two items he was to present, the introduction of Bill No. 11-026, regarding amendment of ward boundaries following the 2010 Decennial Census Report. LaGarce explained that based on the map that had been presented to the Mayor and Council during the November 1st Council meeting, this bill was prepared to adopt those ward boundaries.

He pointed out one change to the map previously presented. This was a recommendation made by the County Clerk that the American Legion hall should remain in Ward 6. LaGarce commented that he had spoken to the Council Member in the 5th Ward, who had no objection. Along with passage of this ordinance, the City will be assisting the County Clerk with implementation, according to LaGarce, so that she can distribute the notices by December 13th.

LaGarce explained that the City's current map and language are consistent with the County Clerk's. Previously, there were four small areas that were not, with errors that were built into the system. These were ten to twenty year old inconsistencies. The current amendment will

correct these. Bill No. 11-026 will receive a first reading later, during the meeting, with Council approval

Re: City Property, Grape Street Water Tower – Lease Agreement

Double O Missouri Corporation

(Bill No. 11-027, to follow)

LaGarce's second agenda item was the introduction of Bill No. 11-027, to follow. LaGarce explained that this bill, regarding a lease agreement with Double O Missouri Corporation would allow them use of an old communications building and tower on Grape Street adjacent to the water tower. Bill No. 11-027 would receive a first reading with Council approval. He added that this item was merely for housekeeping purposes.

Two weeks ago, Council had approved a lease with Townsquare Media, LLC for use of this property because of their anticipated purchase of Double O Missouri Corporation, the current lease holder. Since that purchase has now been delayed, Double O requests the lease instrument in their name. The lease approved on November 1st, as well as the amended one being recommended, renews a 1989 lease containing identical terms.

ANGELICA N. VANCE – CITY CLERK

Re: 2012 Municipal Election – Municipal Judge and 1st & 3rd Ward Council Members

April 3, 2012

(Bill No. 11-028, to follow)

City Clerk Vance presented the next item on the evening's agenda, Bill No. 11-028, authorizing a 2012 Municipal Election for Municipal Judge, and Council Members for the First and Third Wards. These positions are currently being held by Fredrich Cruse, Kevin Knickerbocker and Lou Barta, respectively. Vance explained that this request is in accordance with the provisions of Section 17.01 of the Hannibal City Charter. With Council approval, a Municipal Election would be scheduled for April 3, 2012. This bill was scheduled for a first reading later, during the meeting.

Vance advised that the first date of candidate filing for these positions will be on December 13th at 8:00 a.m. and the final filing day will be January 17, 2012 at 5:00 p.m.

JOEY BURNHAM – BUILDING INSPECTOR

Re: Permit Fee Schedule

(Resolution No. 1777-11, to follow)

City Building Inspector Joey Burnham came before Council to introduce Resolution No. 1777-11 amending the non-owner occupied inspection ordinance required by the Property Maintenance Department to include the same fee schedule used on the former ordinance. Burnham recommended approval of this resolution, to follow.

City Manager LaGarce added that the new ordinance states that the fee schedule will be reviewed annually and adjusted, according to the Consumer Price Index.

MARK REES – CITY ENGINEER
Re: Minor Subdivision Zoning Assignment
Bluebird Media Network, LLC
(Bill No. 11-025, to follow)

City Engineer Mark Rees presented Bill No. 11-025 which was on the agenda to be given a first reading later in during the meeting, with Council approval. Rees explained this bill was drafted, at the recommendation of the Planning and Zoning Commission, to approve a Minor Subdivision of a MoDOT commuter parking lot on Mark Twain Avenue. Application was made by Bluebird Media Network LLC, who is interested in purchasing this lot and constructing a storage building for their communication equipment. Since right-of-ways in Hannibal do not have a zone; and, for that reason, this request is being presented to Council for approval, according to Rees.

ANDY DORIAN – PARKS & RECREATION DIRECTOR
Re: Bid Award Approval, 2003 F450 4x4 Bucket Truck
Utility Fleet Sales

Parks & Recreation Director Andy Dorian informed Council that he had recently opened bids for a used bucket truck. He explained that one bidder responded to the request for sealed bids. Utility Fleet Sales submitted the only bid, a 2003 F450 4x4 bucket truck with a working height of 34 feet, in the amount of \$29,960.10. Dorian stated that \$30,000 had been budgeted for this item, which the Parks Department has needed for several years to complete various tasks, such as hanging Christmas lights, maintenance at the Admiral Coontz Armory, painting projects and tree pruning. His recommendation was to accept the bid \$29,960.10 from Utility Fleet Sales.

Council Member Draper made a motion to award the bid for the purchase of the bucket truck to Utility Fleet Sales for a total bid amount of \$29,960.10. Motion was seconded by Council Member Hark.

Motion carried.

Re: Riverview Park Restrooms – Engineering/Architectural Agreement
Architechnics, Inc.
(Resolution No. 1778-11, to follow)

Dorian reminded Council of the vandalism at Riverview Park early this fall, resulting in extensive fire damage to the Men's and Women's Restrooms there. For this reason, the structure must be razed and reconstructed; and, according to Dorian, new restrooms will be rebuilt at the same location.

Recently, RFQ's were requested with five companies responding. After interviews were completed, the Parks and Recreation Department recommended approval of an engineering/architectural agreement with Architechnics, Inc. for the lump sum "not to exceed" amount of \$17,500. Dorian advised Council that, because of the unknown factors, such as whether or not the concrete base or existing plumbing can be saved, they decided to enter into a contract for a lump sum (not to exceed) amount; however, he assured Council that this amount would be reduced if the project does not encounter many roadblocks and totals approximately \$100,000.

He recommended approval of Resolution No. 1778+11, to follow, that would also approve this agreement with Architechnics, Inc.

ROBERT STEVENSON – BPW GENERAL MANAGER

Re: Approval, Board Governance Policy

BPW General Manager Robert Stevenson came before Council with a request for approval of the BPW governance policy. He explained that the members of the Board of Public Works had requested that the set of governance policies be forwarded to Council for their review, concurrence, comments and/or approval; and he added that the Board has been working on this set of policies which define the standards of behavior and ethics for the past several months. The Board Members believe that the policies developed exceed the standards, as set forth in the Hannibal City Charter. They have approved the language, but will have final approval at the next Board meeting, scheduled for November 16th (the next day) and are also seeking approval from Council

Council Member Barta questioned whether or not this was the first time anything like this had been adopted by the Board. Mr. Stevenson responded that, to his knowledge, this was a first. In the past, the BPW only followed what was in the City Charter.

LEON WALLACE – STREET SUPERINTENDENT

Re: Approval, Budget Amendment

Street Superintendent Leon Wallace came before Council with a request for approval of a budget amendment. Wallace explained that one of the Street Department 2-ton dump trucks was experiencing mechanical difficulties and needed the motor replaced. Approximate cost of the repairs would be \$8,000; and are extremely important since this vehicle will be needed for the upcoming snow season. Motion was made by Mayor Hark to approve Wallace's request. Motion was seconded by Council Member Draper.

City Manager LaGarce explained that money was currently in the budget to cover this expense; however, because of the magnitude, it is likely to create a deficit in the Vehicle/Equipment Maintenance Line by June 30, 2012. For that reason, he requested that the cost of repairs be taken from the Contingency Fund.

Motion carried.

RESOLUTION NO. 1777-11

**A RESOLUTION AMENDING THE NON-OWNER OCCUPIED INSPECTION
ORDINANCE REQUIRED BY PROPERTY MAINTENANCE TO INCLUDE A FEE
SCHEDULE**

Motion was made by Council Member Louderman to have the City Clerk read Resolution No.1777-11 and call the roll for adoption. Motion was seconded by Council Member Barta.

Motion carried.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Draper and Mayor Pro Tem Knickerbocker - 7

No: -0-

Mayor Hark declared Resolution No. 1777-11 duly approved and adopted on this date.

RESOLUTION NO. 1778-11

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN
ENGINEERING/ARCHITECTURAL SERVICE AGREEMENT BETWEEN THE
CITY OF HANNIBAL AND ARCHITECHNICS, INC FOR THE DESIGN OF
RESTROOMS IN RIVERVIEW PARK IN AN AMOUNT NOT TO EXCEED \$17,500**

Motion was made by Council Member Barta to have the City Clerk read Resolution No.1778-11 and call the roll for adoption. Motion was seconded by Council Member Draper.

Motion carried.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Draper and Mayor Pro Tem Knickerbocker - 7

No: -0-

Mayor Hark declared Resolution No. 1778-11 duly approved and adopted on this date.

BILL NO. 11-025

AN ORDINANCE ASSIGNING A ZONE TO A TRACT OF LAND LYING IN A. S. ROBARDS SUBDIVISION OF OUT LOTS 87 AND 88, IN MARION COUNTY, MISSOURI FROM HAVING NO ZONE TO E-COMMERCIAL ZONING DISTRICT AND AMENDING THE CITY'S ZONING MAP ACCORDINGLY

FIRST READING

Motion was made by Council Member Louderman to give Bill No. 11-025 a first reading.
Motion was seconded by Council Member Hark.

Motion carried.

BILL NO. 11-026

AN ORDINANCE AMENDING CHAPTER 10, ELECTIONS OF THE CODE OF THE CITY OF HANNIBAL IN REFERENCE TO WARD BOUNDARIES

FIRST READING

Motion was made by Council Member Draper to give Bill No. 11-026 a first reading.
Motion was seconded by Council Member Hark.

Motion carried.

BILL NO. 11-027

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF HANNIBAL AND DOUBLE 0 MISSOURI CORPORATION FOR USE OF PROPERTY LOCATED NEAR THE GRAPE STREET WATER TOWER

FIRST READING

Motion was made by Council Member Dobson to give Bill No. 11-027 a first reading.
Motion was seconded by Council Member Barta.

Motion carried.

BILL NO. 11-028

AN ORDINANCE OF THE CITY OF HANNIBAL PROVIDING FOR A MUNICIPAL ELECTION TO BE HELD, TUESDAY, APRIL 3, 2012 FOR THE PURPOSE OF ELECTING A MUNICIPAL JUDGE AND COUNCIL MEMBERS OF THE FIRST AND THIRD WARDS

FIRST READING

Motion was made by Council Member Louderman to give Bill No. 11-028 a first reading. Motion was seconded by Council Member Draper.

Motion carried.

BILL NO. 11-029

AN ORDINANCE PROVIDING FOR A MUNICIPAL ELECTION TO BE HELD TUESDAY, APRIL 3, 2012 TO DETERMINE WHETHER THE CITY OF HANNIBAL SHOULD ENACT ORDINANCES TO PROHIBIT SMOKING IN INDOOR WORKPLACES AND PUBLIC PLACES, TO BE KNOWN AS THE HANNIBAL SMOKE-FREE AIR ACT

FIRST READING

Motion was made by Council Member Draper to give Bill No. 11-029 a first reading. Motion was seconded by Council Member Hark.

Motion carried. Mayor Pro Tem Knickerbocker commented that in the years that he had sat on Council he had remembered many discussions with varying differences of opinion that had not gone as well as the discussion regarding this issue. He commended Council for their good quality discussion in spite of the differences in opinion, adding that it was very refreshing change.

Roll Call

Yes: Council Member Barta, Mayor Hark, Council Members Louderman, Hark and Draper - 5

No: Council Member Dobson and Mayor Pro Tem Knickerbocker – 2

Motion to read carried.

CLOSED SESSION

In Accordance with RSMo. 610-021 (2)

At this time, Mayor Hark entertained a motion to go into closed session in accordance with RSMo 610-021, sub-paragraph two (2), admitting himself, rest of Council, City Manager LaGarce, City Attorney James Lemon, City Clerk Vance and Parks Director Dorian. Motion was made by Council Member Dobson to go into Closed Session, as directed by Mayor Hark. Motion was seconded by Council Member Hark.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Draper and Mayor Pro Tem Knickerbocker - 7

No: -0-

Motion carried.

OPEN SESSION

Motion was made by Mayor Pro Tem Knickerbocker to return to open session at this time. Motion was seconded by Council Member Hark.

Motion carried.

ADJOURNMENT

Motion was made by Mayor Pro Tem Knickerbocker to adjourn the meeting. Motion was seconded by Council Member Hark.

Motion carried.