

## OFFICIAL COUNCIL PROCEEDINGS

**Tuesday, August 19, 2014  
Council Chambers  
7:00 p.m.**

### ROLL CALL

**Present:** Council Members Hark, Locke, Mayor Pro Tem Knickerbocker,  
Council Members Dobson, Lionberger, Mayor Hark and Council  
Member Louderman - 7

**Absent:** -0-

### CALL TO ORDER

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

### INVOCATION

At this time, Council Member Lionberger gave the invocation.

### PLEDGE OF ALLEGIANCE

Council Member Hark led the Pledge of Allegiance to the Flag.

### APPROVAL OF MINUTES

#### **Regularly Scheduled Council Meeting – August 5, 2014**

Motion was made by Council Member Louderman to approve the minutes of the regularly scheduled Council meeting that was held on August 5, 2014. Motion was seconded by Council Member Locke.

Motion carried.

### APPROVAL OF PAYROLL AND CLAIMS

#### **First Half – August, 2014**

Motion was made by Council Member Dobson to approve the payroll and claims for the first half of August, 2014. Motion was seconded by Council Member Locke.

Motion carried.

**VICKI CASSADY, OWNER – GAME ON SPORTS BAR & GRILL**  
**Re: Administrative Appeal, Liquor Sales to Minors – Administrative Penalty**

Ms. Vicki Cassady, Manager and Part-owner of Game On Sports Bar & Grill, came before Council to request an administrative appeal to the recent penalty assessed at the bar for the sale of liquor. She indicated that Game On has been operating in Hannibal since October, 2013; and, during that time two unfortunate incidents have occurred, in which employees had served alcohol to under-age individuals. She proceeded to explain their position with regard to these incidents and to seek a resolution of this penalty.

According to Cassady, the business had not been open for an entire month when the first incident occurred. She added that this had been a crazy time when their employees were being trained and there was much business traffic. Cassady commented that one of the employees served alcohol to a young lady that was one day away from her 21<sup>st</sup> birthday. She advised that the server was no longer an employee. This was Game On's first offense.

The second incident occurred several months ago; and, according to Ms. Cassady, she had no legitimate excuse for it. She believed that, ultimately, it was the fault of the employee. She stated that the Bar & Grill's employees are trained to the best of their ability, giving Council a brief synopsis of their "One Minute Meetings" and listing other training programs that they utilize.

She stated that each employee signs an agreement when commencing their employment, agreeing to a penalty if they serve a minor. Cassady did realize, however, that it is ultimately the owner's responsibility when violations occur. Since that time, additional steps have been put into place to prevent this from reoccurring. She was cognizant of the consequences if a 3<sup>rd</sup> violation was assessed; therefore, she asked Council to allow them to appeal the penalty. She pointed out that they were not represented by an attorney and she was unsure of their right to an appeal or whether Council would have any basis to grant it or to remove the penalty. She asked, respectively, for Council to give any leeway that they could and to recognize that Game On was trying their hardest to comply with the Hannibal law.

Mayor Pro Tem Knickerbocker commented that Council has had to address this same issue of request for appeal with other entities at various time in the past. He reminded Council that the issue of underage drinking was addressed, in order to maintain better compliance rates, a number of years ago. At that time, the City Ordinances were amended and a process was put into place to assess penalties. Subsequently, bar owners were unhappy with the changes; therefore, the Police Chief met with them and received input regarding a process that would work. Knickerbocker continued by stating that the bar owners suggested the option of adding the second strike and the administrative penalty *before* the three-day license suspension. He clarified that the idea came directly from the bar owners. Instead of the suspension, the administrative penalty was added at the bar owners request, according to Knickerbocker. He added that Council has had requests for appeal in the past and have denied them. In his opinion, Council needed to be consistent with their decisions. He indicated that he did understand they did not wish to pay the \$500 penalty, but if Council starts backing away from these, he fears their progress will be sacrificed.

City Attorney Lemon commented that he had prosecuted both incidents. In Game On's defense, with regard to the first offense, the waitress had been working for T.J.'s and definitely knew better. Lemon said that he believed that it was an unintentional mistake on her part. With regard to the second incident, he believed that it occurred, as characterized, a careless mistake and the worst of the two. In conclusion, Mr. Lemon commented that the first incident occurred, as Ms. Cassady said, shortly after opening, while they were still operating with some staff from T.J.'s and this could be a mitigating factor; however, the second incident was definitely well prosecuted.

Ms. Cassady stated that she believed a stiffer penalty should be imposed on the person serving the alcohol to the minor, instead of the bar, since overseeing the servers is similar to being a kindergarten teacher. She indicated that she continues to impress upon her staff the seriousness of these offenses, but still cannot take her eyes off of them for fear of violations. She commented that Game On is not an underage bar where much underage drinking occurs. They attempt to gear their clientele to 30+ patrons. This helps to discourage minors from patronizing her establishment.

Chief Davis was asked to comment and he explained that he had searched for discretions to allow an appeal and, according to the ordinance, the wording used is "shall assess". Davis advised that this criteria had been met, advising that, if the prosecutor believed that there was an issue with the offense, he should not have proceeded. According to the Chief, the record stands, there are two convictions; and, as stated in the ordinance, he is required to deliver the information to the City Manager. He assured Council that this had been done; therefore, it is no longer a police matter, but is at the Council's discretion. He concluded by stating that this type of reasoning is why the City had such poor ratings on alcohol compliance in 2007, prior to the amendment to the Code. If the appeal is heard, Davis feared that all progress would be undone, the City would slip right back into old compliance issues and the current program would be neutered.

Council Member Dobson commented that, when the last business owners came before Council, Council determined that their hands were tied by the ordinance. They had no choice. Chief Davis concurred and added that, during the meeting with business owners, spoken about by Knickerbocker, their biggest concern was not the fine, but the three-day suspension of the license, since the loss of license would have huge ramifications. They were the group who suggested the fines. He added that he did understand Cassady's concerns; however, ultimately a liquor license is not a right, but a privilege that is granted by the State and the City. City Attorney Lemon agreed with Davis' concept of "shall assess" and this was done by the City Manager; however, in his opinion, the right of appeal is to Council and they have the right to overturn the City Manager's assessment on an administrative action, if they so desire and there are extenuating circumstances. Lemon drew this conclusion from general state statutes: If a person doesn't like the determination of an administrative appeal, they can first appeal to that body; and, if that body refuses to take action, then they could file a petition in circuit court.

Davis argued that, if there is no mitigating circumstance showing inaccuracy in the information provided, after two convictions that have previously been through court and are on record, the penalty should stand. He believed this issue is a "slippery slope", since once this road is taken, there is no turning back. This will be used as the reference each time in the future.

Lemon stated that he was not suggesting that Council should overrule, only that they did have this option. He added that he was also not suggesting that the first prosecution was an invalid one, only that Game On had just assumed operations and there had been little opportunity for training. The Chief debated that, using that logic, each time a new employee violates the ordinance, would constitute a freebie.

Council Member Louderman explained that Council can not strive to improve the City's code; and, then regress. He understands Cassady's position; however, minors were served in the establishment and the ordinances clearly state the penalties for violations. The length of time in operation was irrelevant, in his opinion.

Cassady questioned the legality of the under-age informant's alcohol consumption. Chief Davis wished to clarify some issues that were unclear. He explained that, if this were to occur in this type of circumstance, the department would be opened up to liability. He added that, anyone who knew him would also know that he would never allow that to happen. He advised that his department follows the state regulations that are set by Liquor Control. Davis asked Corporal Nacke and Sergeant Grote to come forward to address the issue.

Sergeant Jennifer Grote explained that she had been conducting these stings for over seven years; and, added that there is a process that is used to select the young people that are utilized. These include:

- No convictions involving alcohol
- 18-19 years of age
- Guidelines to discourage them from looking older, e.g., no facial hair, receding hairline will wear hat (backwards), excessive make-up not allowed
- Fake IDs are not used, the legal IDs that are used are not altered\
- If asked the young person will admit that they are underage
- No trickery is used

Grote indicated that they did not use young people who were approaching 21 years of age, so she did not know where that information originated. She added that she would be happy to explain the procedure and welcomed any questions. She assured Council that the department was not attempting to trick anyone, only to ensure everyday compliance of the business owners. Photos are taken of the individuals before they go out to insure that they are compliant with guidelines, such as makeup, facial hair, etc.

Sergeant Grote stated that she was involved in the first instance and believed that the employee, serving the minor, had been employed at T.J.'s; therefore, should have known to check the ID. She added that ID's state very clearly in bright red lettering – UNDER 21!

In response to the accusation of alcohol consumption by the minor, Sergeant Grote advised that minors do not consume alcohol, when restaurants are busy and things are happening alcohol does disappear, but usually it is found in the dark soda that is also sitting on the table. The appearance of alcohol consumption must be given.

In conclusion, Mayor Hark stated that, unless Council wished to override the penalty assessment, he believed that there was no alternative than to uphold it.

## **JULIE ROLSEN – HISTORIC HANNIBAL MARKETING COUNCIL**

### **Re: Request, Street Closures – Twain on Main**

*Memorial Day Weekend – 2015, 2016, 2017, 2018, & 2019*

Julie Rolsen, representing the Historic Hannibal Marketing Council, came before Council with a request for street closures during the Twain on Main event to be held over the Memorial Day Weekend on the following years: 2015, 2016, 2017, 2018 and 2019. All requests are similar to previous years' requests. She suggested the approval of numerous years to save Council's time, since each request is the same, from year to year. She called John Lyng to the microphone.

Mr. Lyng explained that their request was to use the same streets, alleys and parking lots for the next five years; however, there was a logistical issue with this request from the Clerk's Office. These requests triggered the opening of a file when a group comes before Council for permission to utilize City property during a special event. This occurs so that the process begins to secure the required hold harmless agreement and certificate of insurance. After meeting with the Clerk, Lyng wished to revise their request, asking permission for the 2015 event and ensuing years, provided a written request, a certificate of insurance and hold harmless are submitted to the Clerk's Office in January of each year and they are compliant with all other requirements of the Clerk's Office.

Mayor Pro Tem Knickerbocker responded that he appreciated the presenters' attempt to save Council's time; however, with future unknowns, he believed it was better to approve year-to-year. Lyng commented that occurrences may happen, regardless of when the approval is granted. City Attorney Lemon agreed that Council can cancel an event at any time.

Mayor Hark had concerns because giving permission for numerous events at once does not allow Council to address certain issues that others in the downtown area may have, such as blocking stores, etc.; however, Mr. Lyng argued that this particular event, which accommodates approximately 100+ vendors, is held the same time each year - Memorial Day weekend. The vendors, who come from different areas, attempt to establish a schedule so that they know ahead of time where they are going to be on upcoming weekends; therefore, they ask about scheduling the upcoming event during the one that is occurring. Approval for various years in advance would simplify these issues, but Lyng said that he was agreeable with any decision of Council. Knickerbocker appreciated Lyng's position, since he had been in Lyng's position with the JayCee's.

During the discussion, City Attorney Lemon suggested a use agreement could be developed, much like the one that was enacted with the YMens' Club. In it Council could specify points of compliance that would be required. Council decided that the process was beginning to get too complicated, so Rolsen amended her request to only include Council approval for use of property during the 2015 event only. Motion was made by Council Member Louderman to approve Rolsen's amended request. Motion was seconded by Mayor Hark.

Motion carried.

**HAROLD LAIN, PROPERTY OWNER – 611 GRAND AVENUE**  
**Re: Sewer Discharge Issues**

Harlan Lain, property owner of 611 Grand Avenue, came before Council to discuss sewer discharge issues with regard to his property on Grand Avenue. Lain explained that he had previously spoken with Council Members Lionberger, Louderman and Dobson about this issue.

On February 25, 2013, Lain recalled that his sewer stopped up, for the third time in forty-one years, since he had lived on Grand Avenue. His plumber, Bill Wilson, was called and attempted to snake the sewer; however, his equipment became hung-up in the sewer line. Wilson offered to call the BPW, who sent employees to run a mobile camera. At this time it was discovered that Lain's sewer had been discharging into the City's storm sewer since the house was built in 1959.

Lain was advised, by Mr. Wilson, to call the BPW which he did. Subsequently, Mr. Lain received correspondence from the City Building Inspector, Joey Burnham, who he contacted immediately. Burnham informed Lain that he should speak with Matthew Munzlinger. During the conversation with Mr. Munzlinger, Lain was advised that he would be responsible for the sewer issue; however, he did not agree since there was some speculation that this should have been corrected when the Grand Avenue project was completed since the City and the BPW had been aware of the problem for years. Lain also believes the City is admitting, at least, a portion of the guilt since they are offering to refund five years of taxes, or \$1,680.00.

Lain commented that he had made contact with Paul White on three separate occasions who assessed the problem, but could not arrive at an estimate since the issue was too complicated considering underground utilities, etc. White was to review the Grand Avenue storm sewer layout and make a determination.

City Manager LaGarce indicated that the City was unaware of the problem until Munzlinger received a call from the Department of Natural Resources on February 11, 2014. Munzlinger informed LaGarce of the call from DNR; and, then made him aware of BPW's intention to investigate. Lain indicated that he was not interested in arguing; however, he believed that the problem should have been addressed many years ago. He added that he had been paying BPW bills for 52 years, never being delinquent, and he believed that the BPW should give sewer rebates for more than five years since it will be necessary to tear up Grand Avenue to correct the problem and the cost will be high.

LaGarce assured Lain that, if there was any street work involved, the City would be willing to make the initial cut and finish, since DNR was requiring the City to make this correction or have fines levied against it. He spoke with Council, then requested City staff members to hand deliver the required letter to each household that was affected. LaGarce also attended a BPW meeting and asked them to offer a rebate or refund to these sixteen residents. The Board was reluctant to offer these beyond the five year period since, according to the law, they are not required to maintain financial records for more than five years. In reference to the rebates/refunds, the City Manager stated that the BPW was merely trying to do a nice thing, not admit guilt.

Mr. Lain indicated that, during a meeting with City Building Inspector Burnham in the City Clerk's Office, he had been assured that this issue would be resolved; however, a short time later, Lain read an article in the newspaper that expressed the City's intention to file litigation against or shut off the utilities of the residents that failed to comply. Both Council and the City Manager assured Lain that no utilities would be disconnected; however, Lain was still concerned that Munzlinger had been aware of the problem in 2013 (possibly much longer) but it was just now, in 2014, being addressed. He lamented that this is an unexpected expense for him since he is 72 years old, retired and on a fixed income. He indicated that he has been paying taxes for 42 years and believed these expenses should be paid by the City and/or BPW. Mr. Lain concluded by stating that, it was his understanding, his situation is more complicated than those on other streets who have much easier hook-ups.

Council Member Dobson questioned whether a fine, imposed by DNR for non-compliance, would be issued to the City or Mr. Lain. City Attorney Lemon responded that he was unsure, but believed that both parties would be cited; however, the City's fine would most-likely be larger. Dobson then posed a question to Heath Hall, BPW representative, regarding why this problem was not discovered during the Grand Avenue Project. Hall responded that, during a conversation with the foreman on the sewer crew who worked the Grand Avenue Project, he was told that they were not specifically looking for illegal sewer connections during this project. A couple that were directly connected to the storm sewer, were found to be in the way of Bleigh Construction's work. Since this was an extremely large pipe that was replaced, there were also many *legally*-connected sanitary sewer services that were in the way. Hall explained that the BPW worked with Bleigh to reconnect these legal connections.

Hall advised that Mr. Lain's sewer line is not directly connected to the main replaced during the Grand Avenue Project, but is connected to a lateral that runs several more feet to Grand Avenue. He agreed that Bill Wilson had, indeed, called the BPW a year ago to inform them of Mr. Lain's sewer situation. Subsequently, Matt Munzlinger, head of the Sewer Department, indicated that he had called Mr. Lain to make him aware of this. He admitted that, after notifying him that his sewer must be reconnected to the sanitary, the matter was dropped.

Heath Hall stated that the sewer main is 8-10 feet from the curb, into the concrete street, directly in front of Lain's residence. He added that the Board of Public Works has agreed to allow him to connect into the manhole, which is very irregular and doesn't meet their standard guidelines; however, the sanitary sewer is twelve feet deep. According to Hall, connecting to the manhole will be much less expensive for Mr. Lain and probably could be completed for the rebated amount if the City would agree to cut out and replaces the concrete street. City Manager LaGarce read a letter from Mr. Munzlinger, regarding Lain and the related sewer issue. In the letter, Munzlinger attests that "the storm sewer where Mr. Lain's sewer was connected was not part of the Grand Avenue Project". In response to a question posed by Mayor Hark, LaGarce admitted that, if it had been discovered, the problem would have probably been fixed as part of the project; however, Hall disagreed since it was on private property. Hall stated that Lain would have probably been contacted and a decision would have been made at that time.

Mayor Pro Tem Knickerbocker commented that, since:

- the City is cutting out the street and replacing it
- Lain is getting five years rebate from BPW

This may be a non-issue. He suggested that Lain get his quote from Paul White Construction. Chances are very good that everything will work out. White indicated that he could have a quote in approximately 72 hours. LaGarce advised that the City would offer this same solution for any resident dealing with a similar situation.

**ROY G. HARK - MAYOR**  
**Re: Recommendation of Appointment**

Mayor Hark made the following recommendation:

HANNIBAL CONVENTION & VISITOR'S BUREAU

- **Mike O'Cheltree – reappointment for a term to expire September, 2019**

This nomination will be considered for approval at the next regular Council meeting, to be held on September 2, 2014.

**JEFF LAGARCE – CITY MANAGER**  
**Re: Approval of Appointments**

City Manager LaGarce reminded Council of candidates presented at the last meeting for the Hannibal Park Board. These were:

HANNIBAL PARK BOARD

- **Jeriod Turner – appointment for a term to expire July, 2017**
- **Tom Batenhorst – appointment for an unexpired term to expire July, 2016**

He asked Council for their approval of these nominations. Motion was made by Mayor Hark to approve Jeriod Turner's and Tom Batenhorst's appointments to the Park Board for a term to expire July, 2017. Motion was seconded by Council Member Dobson.

Motion carried.

**Re: Recommendation of Appointment**

City Manager LaGarce made the following recommendation:

PLANNING & ZONING COMMISSION

- **Jim Bensman – appointment for a four (4) year term to expire, June, 2018**

This nomination will be considered for approval at the next regular Council meeting, to be held on September 2, 2014.

## **BRIAN CHAPLIN – PUBLIC WORKS SUPERINTENDENT**

### **Re: Approval, Declaration of Surplus Property**

Brian Chaplin, Public Works Superintendent, introduced the next item on the agenda, Council approval of the list of City items as surplus property to be slated for sale at the September 27<sup>th</sup> City Auction. This must be done so that a City auction of these items could be held. Motion was made by Mayor Hark to approve the list of surplus property. Motion was seconded by Mayor Pro Tem Knickerbocker.

Motion carried.

### **Re: Approval, City Auction – Yancey Auction Services**

*Saturday, September 27, 2014 – 10:00 a.m.*

Then, Chaplin presented the next item, regarding the City Auction. The City is again planning an auction to dispose of surplus property, and Mr. John Yancey has agreed to provide the auctioneer services at no cost to the City. Chaplin added that Street Department personnel will assist. He recommended approval of Yancey Auction Services as the auctioneer for the 2014 City Auction that would be held on September 27, 2014, 10:00 a.m. at the Hannibal Street Department. Motion was made by Council Member Lionberger to approve Yancey Auction Services to provide auction services during the 2014 City Auction on September 27, 2014, 10:00 a.m. at the Hannibal Street Department. Motion was seconded by Council Member Louderman.

Motion carried.

### **Re: Traffic Committee Recommendations**

Chaplin presented two recommendations from the Traffic Committee, held on August 12, 2014. He detailed these recommendations, as follows:

- Permanent Street Closure – Lemon & Wardlaw Streets
- No Semi-Traffic Signage – New London Gravel & Orchard

Andy Dorian, Parks Director, asked that it be made a part of the record that, some time ago, he had made a request to utilize Lemon & Wardlaw Streets. This would be to accommodate any future park that may be located in this area. Dorian reminded Council that, since this is a flood buyout area, no concrete parking lot can be constructed here; however, it would work perfectly for diagonal parking. Dorian's request was noted.

Both of these requests received recommendations from the Traffic Committee, according to Chaplin. Since no action was taken by Council, the recommendations became effective on August 19, 2014.

**DOUG WARREN – DIRECTOR OF FINANCE**  
**Re: Request, Set Public Hearing – 2014 Property Tax Levy**  
*Tuesday, September 2, 2014 – 6:45 p.m.*

Finance Director Doug Warren addressed Council with a request to hold a public hearing regarding the 2014 Property Tax Levy on September 2, 2014 at 6:45 p.m. Motion was made by Council Member Lionberger to approve the Finance Director's request to set the public hearing on September 2, 2014 at 6:45 p.m. Motion was seconded by Council Member Louderman.

Motion carried.

**LYNDELL DAVIS – POLICE CHIEF**  
**Re: State Vendor Purchase Approval, Police Package Vehicles**  
*Lou Fusz Ford*

Police Chief Lyndell Davis explained that the Hannibal Police Department recently accepted sealed bids for the partial replacement of police vehicles. He explained that this was a portion of their five-year capital improvement plan and was supposed to be presented last fall; however, because of budget restraints, he had been asked, by the City Manager, to postpone this request for an additional year. He advised that, in August, price quotes were requested from two local dealers, as well as the state vendor, Lou Fusz Ford in Chesterfield, MO.

Davis stated that, at the time of the memo, he had only received a price quote from one local dealer because the second dealer declined. Since that time, this vendor has withdrawn its price quote; therefore, the only one left is the quote from the state vendor. He said that there may be two reasons for this:

- It is very difficult to compete with a State bid
- HPD purchases turnkey vehicles, which means that upon arrival, officers can immediately begin utilizing these vehicles. They contain everything from equipment to decals, etc.

According to Davis, just like the current black & white Mark units, these will have the video camera capabilities. Also, if approved, these vehicles will have all-wheel drive capability.

Over the last few years, with the inclement weather, the HPD would have had difficulty answering calls if not for the assistance of the Fire Department; however, all-wheel drive will alleviate that problem. In accordance with the City Charter, Section 9.13 paragraph (a) line (6), Davis requested Council approval to accept the State Vendor, Lou Fusz' quote. After the trade-ins and the down payment already provided for in the current HPD budget are deducted, the balance left would total \$264,800.50 to be financed.

Davis commented that the majority of the vehicles being traded in will have in excess of 120,000 odometer miles and are becoming expensive to maintain, as well as unreliable for emergency response. He explained that these vehicles would be purchased, utilizing a lease agreement from one of the lenders currently being reviewed by Finance Director Douglas Warren. This agreement would have a total of (3) three annual payments with the first

payment due in the Fall of 2015. He added that, by utilizing the State Bid Contractor, the volume purchasing of the vehicles and extremely favorable interest rates, there will be approximately \$52,000 more in savings over the course of the next three (3) years than what was originally estimated in the current (5) five year Capital Improvement Plan previously approved by Council.

Motion was made by Council Member Dobson to approve Chief Davis' request. Motion was seconded by Council Member Hark.

Motion carried.

### **CLOSED SESSION**

#### ***In Accordance with RSMo. 610-021(1) (2) & (9) – Employee Group Negotiations***

At this time, Mayor Hark entertained a motion to go into closed session in accordance with RSMo 610-021, sub-paragraph one (1), two (2) and nine (9), admitting himself, rest of Council, City Manager LaGarce, City Attorney James Lemon, City Clerk Angelica Vance, City Collector Phyllis Nelson, Fire Chief Bill Madore and Deputy Fire Chief Mike Benjamin. Motion was made by Council Member Louderman to go into Closed Session, as directed by Mayor Hark. Motion was seconded by Council Member Hark.

#### **Roll Call**

**Yes:** Council Members Hark, Locke, Mayor Pro Tem Knickerbocker, Council Members Dobson, Lionberger, Mayor Hark and Council Member Louderman – 7

**No:** -0-

**Absent:** -0-

Motion carried.

### **OPEN SESSION**

Motion was made by Council Member Dobson to return to open session at this time. Motion was seconded by Council Member Hark.

Motion carried.

### **ADJOURNMENT**

Motion was made by Council Member Dobson to adjourn the meeting. Motion was seconded by Council Member Hark.

Motion carried.

