

*City of Hannibal*

**OFFICIAL COUNCIL PROCEEDINGS**

**Tuesday September 21, 2021  
Council Chambers  
7:00 p.m.**

**ROLL CALL**

**Present:** Council Members Veach, McCoy, Franke, Mayor Hark, Council Member Bowen – 5

**Absent:** Mayor Pro Tem Dobson and Council Member Welch – 2

**CALL TO ORDER**

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

**INVOCATION**

The invocation was then given by Council Member McCoy.

**PLEDGE OF ALLEGIANCE**

Mayor Hark then requested Hannibal Police Officer Mulheron to lead the Pledge of Allegiance to the Flag.

A motion was made by Council Member McCoy to excuse Mayor Pro Tem Dobson and Council Member Welch from the meeting. The motion was seconded by Council Member Veach.

Motion carried.

**APPROVAL OF AGENDA**

A motion was made by Council Member Veach to approve the agenda, as presented, and posted. The motion was seconded by Council Member Franke.

Motion carried.

**APPROVAL OF MINUTES**

**Closed Session Minutes – July 6, 2021  
Regularly Scheduled Council Meeting – September 7, 2021**

A motion was made by Council Member McCoy to approve the closed session minutes from July 6, 2021, along with the regularly scheduled Council meeting held September 7, 2021. The motion was seconded by Council Member Veach.

Motion carried.

**APPROVAL OF PAYROLL AND CLAIMS  
First Half – September 2021**

A motion was made by Council Member Bowen to approve the payroll and claims for the first half of September 2021. The motion was seconded by Council Member Veach.

Motion carried.

**MARGEE TUCKER, EXECUTIVE DIRECTOR – HANNIBAL NUTRITION CENTER  
Re: Annual Report & Funding Request**

Mayor Hark advised that due to a family illness, Margee Tucker, Executive Director of the Hannibal Nutrition Center, is unable to attend. She has requested her item to be moved to the October 5, 2021 Council meeting.

**JAMES LEMON – CITY ATTORNEY  
Re: Stormwater Funding Options**

James Lemon, City Attorney, then addressed Council reporting on a meeting he had with the City Engineer, representatives of the Board of Public Works and various other staff from the City of Hannibal. As Council is aware there was a pretty severe stormwater failure on North Street along with various other locations throughout Hannibal which has caused a great deal of concern to the citizens and they felt this was something the BPW and City staff should start discussing.

Lemon advised the biggest issue being Hannibal is a very old City, over 100 years old, and the City has been dealing with sewer issues since the beginning, which makes some of the sewer systems 100 years old as well. Historically, when you go back that far, stormwater and sanitary sewers were frequently the same. Even up into the 1980's people, during construction, were dumping directly into the storm sewer. Due to this the BPW on numerous occasions have had various issues where they had to deal with stormwater draining into sanitary sewer system.

Lemon advised Council that historically Missouri followed the "common enemy doctrine", which states that water is a common enemy. All the property/land owner has to do is to make sure the water gets off their property, dumping it onto someone else's property, making it no longer their responsibility. As a result, land owners would construct their own methods of stormwater conveyances, which were often ditches, or others methods built with bricks, stone or even cast iron. What Hannibal has underground, in multiple locations, particularly under Mark Twain Avenue, is privately built stormsewers that are all loosely hooked together, also which the City has no easement for. These stormsewers frequently have pavement over them and in some cases even have buildings built over top of and what is waiting is a "really big mess".

This is further complicated by Missouri Department of Natural Resources (DNR) and Environmental Protection Agency (EPA) starting to do enforcements and are really focusing on stormwater. This directly is a result by our MS4 permits, etc. that they are regulating the BPW on, amongst other issues. As a result, we need to take a look at how we are going to fix these issues. The thing the City doesn't want to happen is the EPA and DNR to come in and start enforcing. What they do is, come in, evaluate the system, give you a very short amount of time to correct the issues, and if not corrected they sue the City, which they will likely win, and the Federal or State courts forces the City to make the repairs, they don't care if the City has the funds to fix the issues or not.

Lemon advised, the City Manager, City Engineer, Director of Central Services and members of the BPW met to decide what could be done to fix these issues. The first thing people think is, the City has a Board of Public Works, and they should fix it. People assume "they have all the money in the world", people are paying their utilities so why isn't that being taken care of. Lemon advised, under Missouri Law, the BPW can't cross money into various funds, in other words, they cannot spend electric funds to fix sewer, water funds to fix electric, etc. Unfortunately, the City does not have a source of funds for stormwater either. This issue was taken to the vote of the people by the BPW, at the direction of the City Council, and the people chose not to fund the stormwater utility. There are a couple of options for Council to consider:

- 1) The BPW could promulgate rates; hold public hearings, etc.. The problem is there is a Missouri Supreme Court case called *Zweig v. Metropolitan St. Louis Sewer District*, which happened in 2013. In that case, the Metropolitan Sewer district had promulgated a rate structure for a stormwater sewer which used impervious surfaces to decide how much each property owner would pay. They were sued by ratepayers who claimed that this method violated the Hancock Amendment. The Missouri Supreme Court agreed with the ratepayers and struck down the fee. It basically boiled down to the idea that if rates are to be promulgated using a standard utility method, you need to be able to reasonably show how much stormwater an individual property is putting into the system. This would be a violation of the Hancock amendment, as it would be considered a tax, not a fee. From his research it does not appear that any utility company has figured a way to accurately calculate how much water a property puts into the system.
- 2) Allow the BPW to put the matter on the ballot again and make sure people understand what is being voted on and see if it passes.
- 3) The BPW could ask Council to reverse its prior decision of stormwater being a separate utility of the Board of Public Works, taking it back under the City, resulting in it being paid for from the General Fund. There is no funding available in the general fund, however, they could look at funding through a sales tax or other options.

Lemon advised the BPW is seeking guidance on which option the City is looking at. Council Member Franke advised that the City doesn't have the money in the General Fund to take care of its current obligations and that's why the City went to the public with a recent sales tax issue that did not pass. If the City were to "take back" the responsibility for stormwater, it would have further obligations that they don't already have fundings for. Council Member Franke trusts the BPW, the Board and the staff to do their job and he trusts them to come up with the best funding mechanism possible to fund the stormwater utility.

Council Member Bowen, advised he is still on the sales tax side and if you put a mandate on everyone's house, citizens can't do anything about it. With a sales tax, people could cut their spending, which would allow visitors to also pay for it. If the City goes to a flat rate per household, he believes it would take \$20 or \$30 per house to even be able to touch projects. If assessed \$5 per customer, with 5,000 customers, that would only generate \$300,000 per year. Then, he questioned how do we pay back the money that was already spent on stormwater? Then you have to increase to \$10 per customer per month, is anyone going to vote to approve that? If it does pass in April, he doesn't feel the sales tax will pass for who knows how long, which means the City won't have the funds to fund the much needed projects. If the City goes with the stormwater that is a fee structure that mandates each bill payer he feels it "shoots the City in the foot".

Mayor Hark then advised that anything that affects the public at large and their pocket book, the citizen should have a chance to voice their vote. When you are talking about fees and taxes he believes in the people in Hannibal, who have passed a Park Tax, a Street Tax, however, recently we have not been successful in getting a tax increase passed. He feels it was because people didn't see the impact it would have. However, he can remember the days of the tax increase which funded the highway, which was dedicated to specific "things", in that case it was the highway. In this instance it could be stormwater and whatever, a certain percentage to each, with a sunset of five (5) years. This would give the citizens an opportunity to measure the success and they could look back and see if it projects have been done and the City could go back and ask for the voters to approve after it sunsets. If the City fails to perform, and again asks for approval from the citizens, it likely wouldn't be approved. This option would give the citizens and visitors a chance to pay for the infrastructure the City needs. Mayor Hark believes if DNR or the EPA comes in and penalizes the City, the City will have no way to pay for the imposed penalties and mandated repairs. If something that drastic happens, the City could lose the members of the police force, staff people, equipment, etc. He has seen communities where this has occurred, DNR has come in and advised they shall fix things and don't tell them how or provide a mechanism to fund it, they just have to do it. In turn if they don't voluntarily repair the issues, they cut federal funding and start seizing assets. This is a matter that Council needs to come together to be sure the direction they are going is not only successful in getting the projects done, but palatable for the community. He believes a measure for "X" amount or a sales tax, gives people a freedom to check their spending and allows those that visit the City to contribute as well.

Council Member Veach feels that there also should be a "daylight" placed on the issue and take it to the voters with a sales tax proposition on the next ballot.

Council Member McCoy agrees and feels the biggest thing is doing it the right way and educating the public, such as showing them the failures. Most people don't know whose responsibility it is, the City needs to be clear. The sunset is great and gives people the opportunity to see there is "daylight at the end of the tunnel", also having people that visit the City paying their fair share as well.

Lemon advised he did not provide Council any proposed ballot language this evening, however, he can certainly work on a potential Ordinance for a ballot measure if that is Council's pleasure. If the Council prefers to let constituents contact them or wait for a full Council to be in attendance, he could wait a bit longer. The stormwater issue is something that concerns him and the City Engineer, City Manager and the BPW wanted the Council to be aware of the results of their recent meeting.

Council Member McCoy advised he feels that feedback from the community is important and also having the full Council in place is important as well. He would challenge all Council to go out and listen and “pole” their constituents on what they want. However, until it is addressed and discussed openly, nothing gets addressed. Council Member Bowen advised the increase in the sales tax that was on the last ballot, did pass in his ward.

Council Member Franke asked if the sales tax could be dedicated to a stormwater fee/fund. Lemon advised that there is a statute on point that states you can have a special tax for Parks and/or stormwater and gives a particular amount, and he believes the City is maxed out or close to being so for that specific dedication. However, if the City issues a Capital Improvement Tax, agreeing a portion of it goes to stormwater, he found no case law that taking that route would be a violation of the statute. It would be his recommendation that if they propose a Capital Improvement Tax that allows for that, it would not be a violation. However, he believes the point is well taken and there is some argument that it might be. That being said, if the City is responsible for stormwater conveyance, that would be a Capital Improvement and the City could certainly spend that on stormwater. Council Member Franke requested that a more clear opinion be given before it comes back before the Council, as you can’t build a utility around an uncertain funding source. Lemon advised that if the City is funding it with a Capital Improvement Tax, the Council should reverse its decision on the stormwater and it should be the responsibility of the City not the BPW. From a practical stand point and to avoid a violation of the state law, if the City is going to fund it with a sales tax, it should be a Capital Improvement of the City. If it’s going to be funded as a utility, using the impervious surface as a measure, it still has to go to the vote of the people. Council Member Franke asked Lemon if the BPW uses impervious surface, it has to go to the vote of the people, in which Lemon advised that’s how he reads the law. Council Member Franke thanked Lemon for the clarification.

Council Member Bowen then advised that the Council has to vote and discuss and it’s not a whim of the Council. He also questioned if the stormwater tax would be a different account, aside from the General Fund and questioned if it could be done that way. Lemon advised that the way the law is written is sales tax goes into the general fund, however, you can dedicate it to a specific reason.

City Manager Peck advised that the Parks Sales Tax is set up in a separate account, City Clerk Zerbonia just had to set up a separate account for the American Rescue Plan Act (ARPA) funds. Lemon advised that Council Member Franke’s point of dedicating a certain percentage, is a concern of the City running afoul of the law. However, the City could provide the public with a list of projects that they intend to use the Capital Improvement tax for, which can be a mixture of things. He doesn’t believe the City is prohibited from saying that one of the things the City would do with those funds is the North Street stormwater repairs or others of that nature. He does not feel that is a violation of the statute, however, he feels that percentages should not be used.

**JAMES HARK - MAYOR**  
**Re: Approval of Reappointments**

Mayor Hark reminded Council of the candidates he presented for recommendation of re-appointments during the last Council meeting. He is recommending approval of Mary Bowman and Roy Hark to be re-appointed to the Hannibal Convention & Visitors Bureau Board.

#### HANNIBAL CONVENTION & VISITORS BUREAU

- **Mary Bowman – reappointment for a term to expire September 2026**
- **Roy Hark – reappointment for a term to expire September 2026**

A motion was made by Council Member McCoy to approve the re-appointments of Mary Bowman and Roy Hark for terms to expire September 2026, to the Hannibal Convention & Visitors Bureau Board. The motion was seconded by Council Member Bowen.

Motion carried.

Mayor Hark then reminded Council of the candidate he presented for recommendation of re-appointment during the last Council meeting. He is recommending approval of Pat Benson to be re-appointed to the Policemen & Firemen Retirement Board.

#### POLICEMEN & FIREMEN RETIREMENT BOARD

- **Pat Benson – reappointment for a term to expire December 2024**

A motion was made by Council Member Franke to approve the re-appointment of Pat Benson for a term to expire December 2024, to the Policemen & Firemen Retirement Board. The motion was seconded by Council Member Veach.

#### **Re: Recommendation of Reappointments**

Mayor Hark then made the following recommendations of re-appointment to the Hannibal Tree Board.

#### HANNIBAL TREE BOARD

- **Maxx Vance – reappointment for a term to expire September 2024**

He advised this nomination will be considered for approval at the next regular Council meeting, to be held October 5, 2021.

Mayor Hark then made the following recommendations of re-appointment to the Hannibal Airport Commission.

#### AIRPORT COMMISSION

- **John Ortwerth – reappointment for a term to expire September 2023**

He advised this nomination will also be considered for approval at the next regular Council meeting, to be held October 5, 2021.

#### **LISA PECK – CITY MANAGER**

**Re: Emergency Declaration Limb Pickup Policy**  
*(Resolution No. 2371-21, to follow)*

Lisa Peck, City Manager, advised Council that currently, there is some confusion amongst staff, Council and the public as to when City workers will pick up limbs. The policy, she is proposing,

is designed to alleviate any confusion by establishing clear criterion which, if met, permits the City to take public action. The criteria is that if an Emergency Declaration is made, due to a storm, during those events, City staff may pick up limbs citizens place by the curb. Council Member Bowen questioned how long would the City pick up the limbs following a declaration and when would they stop pickup. Andy Dorian, Director of Central Services, then stepped forward to address his question. He advised that what the City departments try to do is set a 30 day perimeter, giving the public time to get yard debris picked up. It's unreasonable to think everyone can get the debris picked up and placed near the curb in 1-2 weeks. The department will then complete a "sweep" of the City to pick up all limbs. Peck added that with the timing of this most recent storm particularly, City crews have other issues to take care of, paving etc. Council Member Franke advised that he feels this is a very good thing the City does, and when a citizen has a large limb or tree that falls, this is hugely helpful and a direct service as some have no means to get it to the waste lot and he thanked Peck for defining the policy. Peck advised that nothing prohibits a private individual from getting rid of the limbs themselves by continuing to take to the City's yard waste lot or hiring a private contractor.

Mayor Hark stated Resolution No. 2371-21 is to follow, for approval.

## **RESOLUTION NO. 2371-21**

### **A RESOLUTION OF THE CITY OF HANNIBAL ADOPTING A LIMB PICK UP POLICY, UPON EMERGENCY DECLARATION, FOR THE USE OF CITY RESOURCES BY THE CITY OF HANNIBAL**

A motion was made by Council Member Veach to have the City Clerk read Resolution No. 2371-21 and call the roll for adoption. The motion was seconded by Council Member Bowen.

#### **ROLL CALL**

**Yes:** Council Members Veach, McCoy, Franke, Mayor Hark and Council Member Bowen - 5

**No:** - 0 -

**Absent:** Mayor Pro Tem Dobson and Council Member Welch - 2

Motion carried.

Mayor Hark declared Resolution No. 2371-21 duly approved and adopted on this date.

**BILL NO. 21-027**

**AN ORDINANCE OF THE CITY OF HANNIBAL REVOKING AND REPLACING CHAPTER 28, *STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES*, ARTICLE VI – *TREE REGULATION*, DIVISION 3 – *PLANTING, MAINTENANCE AND REMOVAL OF TREES*, SECTION 28-295 *TREE MAINTENANCE OF THE REVISED ORDINANCES OF THE CITY OF HANNIBAL REGARDING TREE MAINTENANCE***

***Second & Final Reading***

A motion was made by Council Member Veach to have the City Clerk read Bill No. 21-027 and call the roll for adoption. The motion was seconded by Council Member Bowen.

**ROLL CALL**

**Yes:** Council Members Veach, McCoy, Franke, Mayor Hark and Council Member Bowen - 5

**No:** - 0 -

**Absent:** Mayor Pro Tem Dobson and Council Member Welch - 2

Motion carried.

Mayor Hark declared Bill No. 21-027 duly approved and adopted on this date.

**BILL NO. 21-028**

**AN ORDINANCE OF THE CITY OF HANNIBAL APPROVING AND ACCEPTING THE FINAL PLAT OF THE WILLING SUBDIVISION, A SUBDIVISION BEING PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 57 NORTH, RANGE 5 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MARION COUNTY, MISSOURI**

***Second & Final Reading***

A motion was made by Council Member Veach to have the City Clerk read Bill No. 21-028 and call the roll for adoption. The motion was seconded by Council Member Bowen.

**ROLL CALL**

**Yes:** Council Members Veach, McCoy, Franke, Mayor Hark and Council Member Bowen - 5

**No:** - 0 -

**Absent:** Mayor Pro Tem Dobson and Council Member Welch - 2

Motion carried.

Mayor Hark declared Bill No. 21-028 duly approved and adopted on this date.

**CLOSED SESSION**  
*In Accordance with RSMo. 610.021 (2) (3) (13)*

Mayor Hark then entertained a motion to enter into closed session in accordance with RSMo. 610-021, sub-paragraphs (2), (3) and (13) admitting himself, City Council Members, City Attorney James Lemon, City Manager Lisa Peck, City Clerk Angel Zerbonia, Director of Hannibal Regional Economic Development Council Corey Mehaffey, Aswin Patel and Jeff Hampton. A motion was made by Council Member Veach to enter into closed session. The motion was seconded by Council Member Bowen.

**ROLL CALL**

**Yes:** Council Members Veach, McCoy, Franke, Mayor Hark and Council Member Bowen - 5

**No:** - 0 -

**Absent:** Mayor Pro Tem Dobson and Council Member Welch - 2  
Motion carried.

**OPEN SESSION**

A motion was made by Council Member Bowen to return to open session. The motion was seconded by Council Member Veach.

Motion carried.

**ADJOURNMENT**

A motion was then made by Council Member Bowen to adjourn the meeting. The motion was seconded by Council Member McCoy.

Motion carried.

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**James R. Hark, Mayor**

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**Angelica N. Zerbonia, MRCC, CMO - City Clerk**