

REGULAR MEETING, MAY 4, 2020

SWEAR IN COMMISSIONERS

City Attorney Riggins administered the Oath of Office to newly elected City Commissioners Michael Johnson and Charlie Struble.

Mayor David Ruth Jr. administered the Oath of Office to City Attorney Quentin L. Riggins.

The Regular Session of the Deadwood City Commission convened on Monday, May 4, 2020 at 5:00 p.m. in the Deadwood City Commission Chambers, 102 Sherman Street, Deadwood, South Dakota. Mayor David Ruth Jr. called the meeting to order with the following members present: Department Heads, City Attorney Quentin L. Riggins, and Commissioners Michael Johnson, Sharon Martinisko, and Charlie Struble, and Gary Todd. All motions passed unanimously unless otherwise stated.

COMMISSION DEPARTMENTAL APPOINTMENTS

Mayor Ruth Jr. announced the following Commission appointments:

David Ruth Jr. – Finance Commissioner, Chamber of Commerce Representative;

Sharon Martinisko – Public Works, Parks & Recreation, Safety Commissioner and Black Hills Council of Local Governments Representative;

Gary Todd – Police and Fire Commissioner and Commission President;

Charlie Struble – Planning and Zoning, Historic Preservation Commissioner, Deadwood History Inc. Board Member, and Event Committee Representative;

Michael Johnson – Library Representative, Public Buildings, and Trolley Commissioner.

APPROVAL OF MINUTES

Martinisko moved, Struble seconded to approve the minutes of April 20, and 27, 2020. Roll Call: Aye-All. Motion carried.

APRIL, 2020 PAYROLL: COMMISSION, \$2,730.76; FINANCE, \$18,619.99; PUBLIC BUILDINGS, \$10,577.63; POLICE, \$88,391.30; FIRE, \$5,679.60; BUILDING INSPECTION, \$4,244.40; STREETS, \$29,743.76; PARKS, \$21,035.65; PLANNING & ZONING, \$4,418.08; LIBRARY, \$3,707.09; RECREATION CENTER, \$9,610.87; HISTORIC PRESERVATION, \$18,146.21; WATER, \$19,510.70; PARKING METER, \$8,201.63; TROLLEY, \$17,438.28; PARKING RAMP, \$950.00. **PAYROLL TOTAL: \$263,005.95.**

APRIL, 2020 PAYROLL PAYMENTS:

Internal Revenue Service, \$68,788.70; S.D. Retirement System, \$27,859.28; Delta Dental, \$4,347.25.

APPROVAL OF DISBURSEMENTS

Struble moved, Martinisko seconded to approve the May 4, 2020 disbursements. Roll Call: Aye-All. Motion carried.

A & B BUSINESS SOLUTIONS	CONTRACT	343.17
A - Z SHREDDING	SERVICE	27.85
ACE HARDWARE	SUPPLIES	15.99
AFFORDABLY CREATIVE	PROJECT	6,455.00
ALL ASPECTS	SERVICE	700.00
ATCO INTERNATIONAL	SUPPLIES	481.50
BH CHEMICAL	SUPPLIES	894.63
BOMGAARS	SUPPLIES	674.29
CENTURY BUSINESS	CONTRACT	249.80
CHAINS AW CENTER	SUPPLIES	847.79
CHAMBERLIN ARCHITECTS	PROJECT	2,250.00
CONVERGINT TECHNOLOGIES	SERVICE	255.10
DANNY'S PLUMBING	PROJECT	901.02
DVFD	REIMBURSEMENT	13.65
EAGLE ENTERPRISES	SUPPLIES	988.00
EMERY-PRATT	BOOKS	31.13
EPCO ENVIRONMENTAL	SUPPLIES	1,138.15
FASNACHT, GLENN	PROJECT	701.76
FIB CREDIT CARDS	SUPPLIES	1,118.25
FLAT EARTH SIGN	SERVICE	2,495.00
FOOTHILLS SEED	SUPPLIES	630.00
GALLS	UNIFORMS	121.85
GARDNER CONSTRUCTION	SERVICE	3,380.00
GOLDEN WEST	SERVICE	212.50
GRASSROOTS ADVISORS	TABLETS	961.11
HOWELL, RODNEY	PROJECT	10,000.00
IT STRAPS ON	SUPPLIES	124.26
JACOBS WELDING	SERVICE	926.21
JS CONSTRUCTION	PROJECT	5,066.57
KNECHT HOME CENTER	GRANT	600.00
KNECHT HOME CENTER	SUPPLIES	33.32
LAWRENCE CO. REGISTER	SERVICE	90.00
LAWRENCE CO. TREASURER	TAX	1,805.76
LYNN'S	SUPPLIES	41.77
MACK, ASHLEY	REFUND	30.00
MEADE COUNTY REGISTER	SERVICE	30.00
MENARD'S	SUPPLIES	411.51

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MIDWEST ART CONSERVATION	MEMBERSHIP	50.00
MIDWEST TAPE	DVDS	439.51
MDU	SERVICE	6,634.06
MUNICODE	SERVICE	5,850.00
MUTUAL OF OMAHA	INSURANCE	253.82
NHS OF THE BLACK HILLS	SERVICE	4,155.00
NORTHWEST PIPE FITTINGS	SUPPLIES	605.71
QUIK SIGNS	SIGNS	783.68
RASMUSSEN MECHANICAL	SUPPLIES	87.00
S AND C CLEANERS	CLEANING	5,850.50
SALSBURY INDUSTRIES	SUPPLIES	215.34
SD DEPT. OF CORRECTIONS	FIREWISE	9,014.98
SD PUBLIC HEALTH LAB	TESTING	30.00
SERVALL	SUPPLIES	387.64
SPEIRS, MARK	PROJECT	1,336.74
STRETCH'S	SERVICE	491.37
STUEN CONSTRUCTION	SERVICE	5,567.50
TCF EQUIPMENT FINANCE	TROLLEYS	9,400.86
THE LORD'S CUPBOARD	RECYCLING	45.88
TRIPLE K	SERVICE	173.50
TWILIGHT	SUPPLIES	712.50
TWIN CITY HARDWARE	SUPPLIES	4,639.89
VAST	SERVICE	3,330.99
VERIZON WIRELESS	SERVICE	186.34
WELLMARK	INSURANCE	51,743.77
WHEELER LUMBER	SUPPLIES	103.20
WINTER & COMPANY	PROJECT	8,725.00

Total \$165,861.72

CONSENT

Johnson moved, Todd seconded to approve the following consent items. Roll Call: Aye-All.
Motion carried.

- A. Permission to rescind Swimming Pool contract with Lead-Deadwood Schools due to CDC's social distancing recommendations.
- B. Permission to rescind Adaptive Swim contract with Lead-Deadwood Schools due to CDC's social distancing recommendations.
- C. Allow use of Sherman Street lot on Saturday, September 12, 2020 for the Big Mick (first date approved was June 20)
- D. Permission to hire Straight Line Striping to stripe the Sherman Street District in the amount of \$3,421.98. (To be paid from Streets budget)
- E. Permission to hire Black Hills Asphalt to repair asphalt in the event Complex parking lots in the amount of \$5,625.00. (To be paid from Street budget)
- F. Permission to hire Colten Radensleben, Colt Bradley and Owen Wisser for Public Works Seasonal positions at \$12.50 per hour effective 5/5/2020, pending pre-employment screening.
- G. Permission to hire Greg Nelson for Public Works Seasonal Technician position at \$14.50 per hour effective 5/5/2020, pending pre-employment screening.

BID ITEMS

Surplus Items

Mayor Ruth Jr. stated bids were opened for the surplus items at 2:00 p.m. on April 28 as advertised.

2007 John Deere X748 Tractor – James Lee - \$4,500.00; Larry Shama - \$1,227.00; Tom Kruzel - \$825.00; Van Der Vorste - \$651.00; Kerry Ruth - \$601.00, and Tim Havens - \$521.00
2000 Kawasaki KAF950A1 Mule – Troy Prella - \$1,750.00; Lowe Roofing - \$1,500.00; Larry Mitchell - \$1,000.00; Tom Kruzel - \$750.00; Donald Kryger - \$707.00, and Van Der Vorste - \$366.00
2002 Genie GS2032 Lift – Troy Prella - \$3,001.00; Lowe Roofing - \$2,000.00; Tim Conrad - \$1,800.00; Rasmussen Mechanical - \$1,500.00; Van Der Vorste - \$501.00, and Tom Kruzel - \$450.00
1989 Freightliner FLD120 – Kenny Gardner - \$5,500.00; Lowe Roofing - \$5,000.00; Tim Conrad - \$2,210.00, and Van Der Vorste - \$1,501.00

Finance Officer McKeown stated 4 pieces of equipment were surplus, with a total of 22 bids received. Department Heads reviewed and recommend approval of top bidder for each piece of equipment. Martinisko moved, Struble seconded to approve top bidders of surplus items listed. Roll Call: Aye-All. Motion carried.

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TIF #12

Mayor Ruth Jr. stated one bid was opened for Installation of the Infrastructure related to TIF #12 Affordable Housing Stage Run at 2:00 p.m. on April 30 as advertised. Bid bond and acknowledge of Addendum #1 were received.

Lind-Exco Inc. - \$222,060.44

Public Works Director Nelson Jr. recommends Commission approval, and staffs engineers estimate was \$215,000.00. Martinisko moved, Johnson seconded to accept bid from Lind-Exco for the Infrastructure related to TIF #12 Affordable Housing Stage Run. Roll Call: Aye-All. Motion carried.

PUBLIC HEARINGS

Set

Martinisko moved, Todd seconded to set public hearing on May 18 for Retail (on-off sale) Malt Beverage, and Retail (on-off sale) Wine Licenses for Midnight Star at 677 Main Street. Roll Call: Aye-All. Motion carried.

NEW BUSINESS

Ordinance

McKeown stated no changes between first and second readings. Martinisko moved, Todd seconded to approve second reading of Ordinance 1311, Business Licenses. Roll Call: Aye-All. Motion carried.

Resolution

McKeown explained the fees. Todd moved, Struble seconded to approve Resolution 2020-16, Business License Rate Fees. Roll Call: Aye-All. Motion carried.

Resolution 2020-16

A RESOLUTION SETTING FORTH RATES FOR USE BY THE CITY OF DEADWOOD.

WHEREAS, the City Ordinances require certain use fees, charges for services and other designations to be established by resolution.

NOW THEREFORE BE IT RESOLVED THAT the City of Deadwood hereby establishes the following fee(s) and other designations associated with City Ordinance #1311: Business Licenses effective June 1, 2020.

Business License Fee:

2020 Business License – Initial license prior to September 30, 2020 the fee shall be waived.

New License after October 1, 2020\$100.00

Annual Renewal(s).....\$20.00

Dated this 4th day of May, 2020

ATTEST:

/s/ Jessica McKeown, Finance Officer

CITY OF DEADWOOD

/s/ David Ruth Jr., Mayor

Application

McKeown explained the application. Martinisko moved, Johnson seconded to approve City of Deadwood Business License Application and Certificate. Roll Call: Aye-All. Motion carried.

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Ordinance

City Attorney Riggins stated after first reading the Governor rescinded Executive Order 2020-12 and replaced with 2020-20. The order adopted a plan to reopen South Dakota, which won't impact the second reading today due to emergency basis, also allows adjustment by Resolution. Mayor Ruth Jr. stated the executive order has some required language, which says "shall" instead of "should", and asked Riggins to explain. Riggins replied Governor has made statements stating municipalities are free to determine however they would like to re-open businesses, the use of the word "shall" to him and other attorneys that have interpreted it says otherwise, in essence the use of the word "shall" says you shall follow the plan to reopen South Dakota, and in his opinion it doesn't give the city a lot of discretion other than to adopt this plan and allow businesses to reopen. Commissioner Martinisko asked if ordinance allows the city to revisit if needed. Riggins replied yes, ordinance allows city to vary its term by resolution. He stated for example if Governor came out with new executive order with community spread in Lawrence County, City can take immediate action by resolution. Mayor Ruth asked if city has to wait for Governor to make that declaration because of executive order. Riggins replied city would be in the same position as earlier when issued shut down, but makes it tricky with the word "shall." Commissioner Todd asked Riggins, his opinion if that was the Governors intention to open or did she misspeak when she said shall versus should. Riggins stated an attorney has spoken with Governors attorney and they maintain language is suggesting how to reopen but use of the word "shall" is there and prior executive orders did not say shall. Todd moved, Martinisko seconded to approve second reading of Ordinance 1312, Emergency Ordinance to address a public health crisis by implementing certain measures which have deemed necessary to slow the community spread of Coronavirus (COVID-19). Mayor Ruth Jr. stated all of us have received a lot of calls with concerns, some people with misgivings, nervous about the date and speed at which we are reopening Deadwood. He stated the legal ramifications of not following the executive order of the Governor is really steep, and for that reason he is reluctantly supporting the opening on this date. City will make every effort through resolution and guidelines to make ensure that city is setting forward proper steps and placing the right foundation so that everything can be safe. Commissioner Martinisko stated at the beginning, city and staff looked at how to protect citizens, employers, employees and the town. We did that without the assistance of leaders at the state level. She stated city was on the path of reopening at a pace the city felt comfortable following but now city is being told what to do. She also stated city knows what is best for the people and also know what has to be done when told we shall. Commissioner Struble agrees with Mayor Ruth Jr. and Martinisko. Struble strongly believe the number one priority should be the health and wellbeing of employees and citizens and cannot support at this time. Roll Call: Aye-Johnson, Martinisko, Ruth, Todd. Nay-Struble. Motion carried.

Ordinance

Riggins stated this ordinance allows city to enforce any violations of an executive order coming forward. He also stated this is an emergency nuisance ordinance which will be in effect along as the pandemic is here. Martinisko moved, Johnson seconded to approve second reading of Ordinance 1313, Ordinance Amending Chapter 8.16 of the City of Deadwood Municipal Code Addressing Nuisances. Roll Call: Aye-All. Motion carried.

Resolution

Riggins stated resolution adopts guidelines and plan for reopening business set forth by the Governor in executive order 2020-20 and would allow businesses to reopen on Thursday, May 7. Commissioner Martinisko respects employers, and they will do what is right for staff as well as customers. Johnson moved, Todd seconded to approve Resolution 2020-17, Emergency Resolution to address the re-opening of Deadwood businesses closed due to the public health crisis caused by Coronavirus (COVID-19). Commissioner Struble believes it is too soon to reopen and cannot support. Roll Call: Aye-Johnson, Ruth, Martinisko. Nay- Struble, Todd. Motion carried.

Resolution 2020-17

AN EMERGENCY RESOLUTION TO ADDRESS THE RE-OPENING OF DEADWOOD BUSINESSES CLOSED DUE TO THE PUBLIC HEALTH CRISIS CAUSED BY THE CORONAVIRUS (COVID-19)

WHEREAS, the City of Deadwood has the authority pursuant Deadwood Municipal Ordinance 1312 to further define or administer Ordinance 1312 through the passage of a properly enacted resolution or resolutions as deemed necessary; and

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WHEREAS, Ordinance 1312 allows casino owners to submit a plan of compliance to the Deadwood City Commission to operate table games in conformance with Executive Order 2020-12 and the CDC's COVID-19 guidelines; and

WHEREAS, the City of Deadwood has received a plan of compliance, attached hereto, from the Deadwood Gaming Association ("DGA"); and

WHEREAS, on April 28, 2020 South Dakota Governor Kristi Noem, issued Executive Order 2020-20 repealing Executive Order 2020-12 which adopted South Dakota's Back to Normal Plan; and

WHEREAS, following the issuance of Executive Order 2020-20 the City of Deadwood believes it necessary to adopt the requirements of Executive Order 2020-20 which adopted South Dakota's Back to Normal Plan; and

WHEREAS, The City of Deadwood believes it is in the best interest of the Citizens of Deadwood for businesses to develop plans to resume operations in a manner that allows for "reasonable physical distancing, good hygiene, and appropriate sanitation" as directed by the South Dakota Back to Normal Plan; and

WHEREAS, the City of Deadwood will permit all businesses to open in accordance with the criteria set forth in the South Dakota Back to Normal Plan on May 7, 2020 which will allow businesses the time to resume operations in a manner that allows for "reasonable physical distancing, good hygiene, and appropriate sanitation."

NOW THEREFORE, BE IT ORDAINED, by the City Commission of the City of Deadwood that:

1. Effective May 7, 2020 all businesses in the City of Deadwood may begin operations in accordance with Executive Order 2020-20 and the terms of South Dakota's Back to Normal Plan which it incorporates
2. The plan of compliance presented by the Deadwood Gaming Association ("DGA") is hereby adopted and casinos within Deadwood may operate table games in accordance with its terms.

BE IT FURTHER ORDAINED, that, pursuant to SDCL 9-32-1 and 9-29-1, this resolution is necessary for the immediate preservation of the public peace, health, safety, and welfare of the City and Deadwood shall become effective immediately upon passage.

Dated this 4th day of May, 2020

ATTEST:

/s/ Jessica McKeown, Finance Officer

CITY OF DEADWOOD

/s/ David Ruth Jr., Mayor

Mayor Ruth Jr. read a statement. He said as many of you are aware, last week Governor unveiled her "re-open South Dakota" plan and with it issued a new Executive Order. This Executive Order has drastically limited our ability to mandate closures. The reopening of Deadwood does not require that all businesses open, it does specify the conditions under which they may choose to do so. Our entire community, both business and residential, has a responsibility to ensure that we all are doing our part to keep Deadwood safe. Safe for our visitors, safe for our workforce, and safe for our residents. So I ask you all to follow the CDC guidelines so that we can keep each other healthy through these uncertain times. He thanked everyone for their time and to check with Chamber of Commerce to see what businesses are planning to do. He asks that every business that does open, not to open until they are prepared to follow all guidelines that have passed including; social distancing, requirements of PPE, masks if six feet is impossible to maintain, and things to that nature. He thanked Commissioners for their vote and is confident that together, we all do our part and we will get through this.

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Guidelines

Commissioner Martinisko commended Safety Officer Kruzel, and hopes everyone implements, maintains and follows these guidelines. Martinisko moved, Todd seconded to approve City of Deadwood Guidelines for re-opening of Deadwood businesses. Roll Call: Aye-All. Motion carried.

Permission

Historic Preservation Officer Kuchenbecker explained the movement of the hillside and retaining wall, and is asking for declaration of emergency to begin work immediately. Discussion was held concerning contractor, and location. Todd moved, Martinisko seconded to declare an emergency under SDCL 5-18A-9 for work to be done on City property and adjacent property due to movement of both the hillside and retaining wall behind the residence at 30 Adams Street, which is a threat to public safety and property. Roll Call: Aye-All. Motion carried.

Contract

Public Works Director Nelson Jr. explained this service is all the engineering, design service, geotechnical cost that are reimbursable from FEMA, related to damage from July 4, 2019 storm. Martinisko moved, Struble seconded to enter into contract with Albertson Engineering and assembled professionals in the amount of \$302,367.10 for design services associated with July 4, 2019 flood damage with portions to be reimbursed through FEMA as part of the disaster declaration DR-4467 Project #123113. Roll Call: Aye-All. Motion carried.

INFORMATIONAL ITEMS AND ITEMS FROM CITIZENS

Mayor Ruth Jr. read an email from resident, Joe Schmitz regarding speed of vehicles traveling on Stage Run Road, and will pass along to Chief of Police.

Bobby Rock thanked Chief Mertens for police escort for Friday Night Cruise.

Tom Koth, Madame Peacocks, stated on March 25, Commission passed Resolution 2020-10, after reading through it to see how it would pertain and affect his business. Koth reached out to Attorney Riggins for legal opinion on requiring business to close or stay open. He stated Riggins said he would look into it and return his call but no return call was received. Koth reopened business on May 1, which ended up having a Police Officer shut us down. He stated the police officer was not following CDC guidelines. He asked Attorney Riggins why no return call. Mayor Ruth stated in regards to specific questions and answers, he asked Tom to provide them and he will get the answers. Ruth Jr. also stated the purpose of the meeting in to not place any one individual in the "hot seat." Attorney Riggins replied he was dealing with numerous calls from numerous businesses, and spoke with the police department regarding your business and was told the business was not reopening. Koth asked if his business was authorized to be open under Resolution 2020-10. Riggins replied no, he is the same as other business owners. Koth asked what category under Resolution 2020-10 does it state that his business could not be open. Riggins replied your business is retail, same as other retain that could not be open.

Julie Koth, Madame Peacocks, stated no place in the Resolution does it state "clothing store or gift shop." She also stated there is several ordinances no being enforced throughout town.

Attorney Riggins requested Executive Session for legal matters per SDCL 1-25-2(3) and personnel matters per SDCL 1-25-2 (1) with possible action.

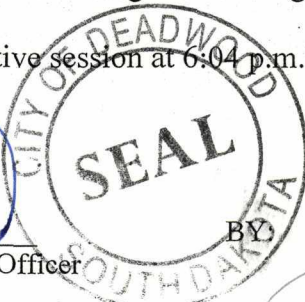
ADJOURNMENT

Martinisko moved, Struble seconded to adjourn the regular session at 5:47 p.m. and convene into Executive Session for legal matters per SDCL 1-25-2(3) and personnel matters per SDCL 1-25-2 (1) with possible action. The next regular meeting will be on Monday, May 18, 2020.

After coming out of executive session at 6:04 p.m. Martinisko moved, Johnson seconded to adjourn.

ATTEST:

Jessicca McKeown, Finance Officer



DATE:

David Ruth Jr., Mayor

Published once at the total approximate cost of _____