

AUGUST 24, 2020

T HE CITY COUNCIL OF THE CITY OF LEWISTON, IDAHO, met in a Regular meeting on Monday, August 24, 2020, at the Lewiston City Library, 411 D Street. Mayor Collins called the meeting to order at 6:00 p.m.

I. ROLL CALL

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

II. PLEDGE OF ALLEGIANCE

Councilor Kelly led the Pledge of Allegiance.

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

Public Information Officer Maurer read comments submitted by NPC Commissioner Doug Havens regarding Nez Perce County's contribution of \$681,000 to the airport and their plans for a 0 percent property tax increase. He encouraged the City Council to join the County in its airport support.

James Spencer, Lapwai, expressed concerns about the airport and asked that his letter noting such concerns be included in its entirety in the minutes (attached).

Marcia Creason, President of Lewiston Library Foundation, thanked Council for approval of the outdoor space and performance center. She reported that the Foundation has been selling tiles as a means of fundraising and only has \$50,000 left to reach its goal. She noted that the Foundation also received a \$75,000 grant from the Laura Moore Cunningham Foundation that will be used toward outdoor furniture, etc.

John Michael expressed concern that he believes the Council is becoming the status quo gang. He suggested they work towards Clearwater Paper putting less toxins into the air, restoring steelhead and salmon runs by lowering the rivers, taking fluoride out of the drinking water, putting less pesticides on city parks, and providing housing and safe spots for low income and homeless individuals. Mr. Michael questioned the need for a new fire station and increased rates and encouraged the Council to quit overspending.

IV. PRESENTATIONS

- A. **FINANCIAL PRESENTATION – JUNE 30, 2020:** *Report provided in accordance with Idaho Code 50-208 – No verbal report*

V. CONSENT AGENDA

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

Councilors Pernsteiner and Kelly moved and seconded, respectively, adoption of the Consent Agenda. *ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Blakey; Bradbury; Kelly; Miller; Pernsteiner. VOTING NAY: None.*

- A. **RESOLUTION 2020-25:** *Considering the destruction of certain Human Resources Department records*
- B. **RESOLUTION 2020-28:** *Considering conveying ownership of sections of fire hose to the Wheatland Fire Protection District*
- C. **RESOLUTION 2020-41:** *Considering acceptance of a public stormwater utility and access easement from Simon R. Howard, Matthew P. Howard, and Jennifer A. Howard to the City of Lewiston*

VI. ACTIVE AGENDA

- A. **FINAL PLAT – NORTHEAST CROSSING PHASE IIIB:** *Considering acceptance and approval of the Northeast Crossing Addition – Phase IIIB final plat consisting of 24 residential lots on 7.44 acres*

Councilor Kelly said he ruled on this item while on the Planning & Zoning Commission and indicated he would like to recuse himself from voting on this issue. The Council agreed.

Public Works Director Davies explained that this subdivision consists of 24 residential lots on 7.44 acres located east of the previous Northeast Crossing Phase IIA development. This phase includes a northerly extension of Pathfinder Way and completion of the east-west street known as Discovery Drive. In addition, all associated water, wastewater and stormwater improvements will be completed.

Councilor Blakey asked if there is currently a building on this land. Mr. Davies explained the developer has permission to build on one lot, but approval of this final plat would give them permission to construct on the remaining 23 lots.

A motion was offered by Councilor Pernsteiner to approve the Northeast Crossing Addition - Phase IIIB final plat. Councilor Blakey seconded the motion. ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Blakey; Bradbury; Miller; Pernsteiner. VOTING NAY: None. ABSTAINING: Kelly

B. ORDINANCES

1. Third Readings

a. Ordinance 4782

Councilors Blakey and Pernsteiner moved and seconded to waive the third reading in full of Ordinance 4782. The motion carried unanimously.

A motion was offered by Mayor Pro Tem Schroeder and seconded by Councilor Blakey, respectively, to approve the third reading of Ordinance 4782 by title only. There were no objections and the motion carried 7 to 0.

ORDINANCE 4782: "AN ORDINANCE OF THE CITY OF LEWISTON AMENDING ORDINANCE NUMBER 4759, THE ANNUAL APPROPRIATION ORDINANCE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019, AND ENDING SEPTEMBER 30, 2020, APPROPRIATING ADDITIONAL MONIES THAT ARE TO BE RECEIVED BY THE CITY OF LEWISTON, IDAHO IN THE SUM OF SEVENTEEN MILLION SIX HUNDRED FORTY-NINE THOUSAND SIX HUNDRED NINETY DOLLARS (\$17,649,690); AND PROVIDING AN EFFECTIVE DATE"

b. Ordinance 4783

It was moved by Mayor Pro Tem Schroeder to waive the third reading in full of Ordinance 4783. Councilor Pernsteiner offered a second and it carried unanimously.

Mayor Pro Tem Schroeder then made a motion to approve the third reading of Ordinance 4783 by title only. The motion was seconded by Councilor Pernsteiner.

Councilor Bradbury said he took an oath to uphold the Constitution, State and City laws when he signed on to serve as a councilmember. He said that he is persuaded that what he has to discuss has legal merit. The State Code is a labyrinth at best, but is structured fairly simply with regard to property taxes, sales taxes and taxes on individuals. Municipalities are allowed only to impose property taxes. The Idaho Code provides four types of utilities for which a city can charge fees: water, wastewater, sanitation and electric. That being said, Mr. Bradbury said he believes the cost of providing water to the golf course should be repaid and was an illegal action. Utility services provided to a customer for free or at a reduced cost must be billed to the city and the city must pay that amount which equates to \$1,728,543.

Secondly, Councilor Bradbury addressed the loans from the Sanitation Fund to the golf course in the amount of \$138,713, and to the library in the amount of \$800,000. Though the Memorandum of Understanding states these were funds transfers, they were clearly loans that were to be paid back over 20 years with interest. Mr. Bradbury said he went to court to stop the council from bypassing the voters when it came to the water and wastewater treatment plants because that required a long-term loan without an emergency requirement. The loans to the golf course and the library were not put out to the voters and therefore are void and immediately repayable. Continuing, Councilor Bradbury explained that State law is very clear that a utility cannot charge more than the cost of providing the service. The city was certainly exceeding the cost of providing service if it was able to loan \$2 million for things that were totally unrelated to what the utilities provide. He recited case law, noting that these transactions were unconstitutional.

Finally, Councilor Bradbury addressed street impact fees. The Supreme Court has said that fees can only be charged for a direct public service to a particular consumer. A tax is a forced contribution by the public at large to meet a public need. Maintaining public streets is a public need for which the public is being charged and is unrelated to the charges being instituted by the utilities. Mr. Bradbury noted that the water system has charged \$1,915,000,000 for street repair, Sanitation has charged \$4,563,000,000 for street repair and wastewater has charged \$980,000 for street repair. He noted he believes these are unconstitutional taxes. Mr. Bradbury questioned the Council as to what they would do if he goes to court and prevails and the city is required to repay over \$7 million to these utilities in the middle of the budget year. He noted it would destroy this budget and impact the city's ability to function.

Councilor Bradbury moved to table the third reading of Ordinance 4783 until the Council has a chance to discuss it further.

City Manager Nygaard explained there is a scheduling issue in terms of tabling this ordinance. If the expenditures are not passed, then the levy rate cannot be passed and submitted to the State of Idaho.

The motion failed for lack of a second.

The third reading carried 6 to 1 with Councilor Bradbury voting nay.

ORDINANCE 4783: "AN ORDINANCE OF THE CITY OF LEWISTON, TO BE TERMED THE "2021 ANNUAL APPROPRIATION ORDINANCE", APPROPRIATING SUMS OF MONEY AUTHORIZED BY LAW AND DEEMED NECESSARY FOR ALL GENERAL AND SPECIAL MUNICIPAL PURPOSES OF THE CITY OF LEWISTON, IDAHO, FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021, PROVIDING FOR THE FILING OF A COPY OF THIS ORDINANCE WITH THE SECRETARY OF STATE, AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE"

c. Ordinance 4781

Councilor Blakey moved to waive the third reading in full of Ordinance 4781. The motion was seconded by Mayor Pro Tem Schroeder and carried 7 to 0.

A motion and second were offered by Councilors Blakey and Pernsteiner, respectively, to approve the third reading of Ordinance 4781 by title only.

Councilor Bradbury indicated he would like to carry over his comments from above to this Ordinance as well.

After asking a few questions with regard to the approximate 90 days in Reserves, Mayor Collins moved to take money from Reserves equal to one day and to lower the percentage of tax increase accordingly. Councilor Bradbury seconded the motion.

Councilor Blakey said he believes that the Mayor's motion was made merely to play to the public and to assist with his reelection to

the Council. He expressed concern for potential shortfalls in next year's budget due to COVID. Though the City may be on track with financial recovery and is seeing unemployment numbers dropping as people get back to work, there is no way to tell what will happen when the CARES funding runs out. Mr. Blakey said he doesn't see the point of the motion on the floor.

Mayor Collins responded to Mr. Blakey's comments by stating that at this point, he has no intention of running again for the Council next year. Secondly, he emphasized that he is not playing to the public. He noted that he has high faith in City staff to find ways to make ends meet. Stating he grew up in a poor family environment, he knows how hard things can be and has a distinct place in his heart for people who struggle. Even though the motion may only save people a few dollars a year, Mr. Collins said he feels it is important to voice his stance and to stand up for the individuals that were like him.

In response to a question raised by Councilor Blakey, Administrative Services Director Marsh indicated that 1 day of reserves would equate to about \$80,000 from the General Fund, or about \$3 or \$4 dollars in savings per \$100,000 of taxable property per year. Councilor Bradbury noted that he applauds the motive behind the motion. People are suffering and things are bound to get worse before they get better. Though the motion is modest, it is the very least the Council can do.

Councilor Miller said she appreciates the explanation provided by the Mayor as to why he would like to lower property taxes. She said she agrees with the recommendation and noted that the intent is to show the citizens that the Council does want to do everything they can to lessen their burden.

Mayor Pro Tem Schroeder stated she would be more inclined to approve the 3.5 percent in forgone taxes if needed. She noted she is not sure that a \$3 or \$4 savings per \$100,000 of taxable property per year would help a great deal.

The motion to amend the budget by lowering the property tax increase by approximately \$80,000, or one day of reserves, carried.
ROLL CALL VOTE: VOTING AYE: Collins; Bradbury; Kelly; Miller. VOTING NAY: Schroeder; Blakey; Pernsteiner.

The motion to read carried 6 to 1, with Councilor Bradbury voting nay.

ORDINANCE 4781: "AN ORDINANCE OF THE CITY OF LEWISTON FIXING AND ESTABLISHING THE TAX CERTIFICATION ON ALL TAXABLE PROPERTIS SITUATED WITHIN THE CORPORATE LIMITS OF THE CITY OF LEWISTON FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021, FOR THE PURPOSE OF PROVIDING AND RAISING MONIES FOR MUNICIPAL AND CORPORATE PURPOSES; PROVIDING FOR THE TAX CERTIFICATION TO THE BOARD OF COUNTY COMMISSIONERS OF NEZ PERCE COUNTY, IDAHO, IN THE AMOUNT OF TWENTY-THREE MILLION ONE HUNDRED THIRTY-FIVE THOUSAND FOUR HUNDRED SIXTY DOLLARS (\$22,955,460); PROVIDING A CERTIFIED COPY OF THE 2021 ANNUAL APPROPRIATION ORDINANCE TO THE BOARD OF COUNTY COMMISSIONERS OF NEZ PERCE COUNTY, IDAHO, AS ADOPTED BY THE CITY OF LEWISTON FOR THE 2020-2021 FISCAL YEAR; AND PROVIDING AN EFFECTIVE DATE"

2. *Adoption and Approval of Ordinance Summaries*

- a. *Ordinance 4782*
- b. *Ordinance 4783*
- c. *Ordinance 4781*

Upon a motion and second from Mayor Pro Tem Schroeder and Councilor Blakey, Ordinance 4782, 4783 and 4781 were adopted and the Ordinance Summaries were approved. ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Blakey; Kelly; Miller; Pernsteiner. VOTING NAY: Bradbury

VII. PUBLIC HEARINGS

- A. *PUBLIC HEARING RE: FORGONE TAXES*: *Accepting testimony on the consideration of accruing foregone tax which equates to the amount of property tax the Council elects to not levy for amounts that are less than the 3 percent increase as permitted for the 2021 fiscal year.*

Mayor Collins announced that this was the time and place advertised for the public hearing regarding forgone taxes. He opened the hearing and asked that a staff report be provided.

Administrative Services Director Marsh explained tonight's public hearing is for the purpose of considering accruing forgone taxes. Forgone taxes equate to the amount of property tax the Council elects to not levy for

amounts that are less than the 3 percent increase as permitted for the 2021 fiscal year. These taxes may be levied in future years if the Council deems appropriate. The amount proposed this evening is \$227,250 which would be added to the current forgone amount of just under \$1.4 million.

For clarification, Councilor Bradbury asked if these monies are being kept in reserve to use as deemed necessary by the Council. Mr. Marsh confirmed, but explained that the City doesn't hold these monies. The State Tax Commission actually monitors and manages the figure. He noted that the Council chose to use forgone taxes about 15 years ago for Snake River Avenue and again about 3 years ago to establish a reserve fund for a fire station and Community Park.

Mayor Collins asked for testimony both in favor or in opposition of the proposed forgone taxes. There being none, he declared the hearing closed.

VIII. ACTIVE AGENDA

- A. **RESOLUTION 2020-36:** *Considering certifying \$227,250 of forgone taxes to be budgeted by the City of Lewiston for Fiscal Year 2021*

A motion was made by Councilor Blakey and seconded by Mayor Pro Tem Schroeder to approve Resolution 2020-36.

Councilor Bradbury stated he believes the only way to limit spending by this Council is to limit the amount of money available. Despite the fact the world is in economic disaster and in the middle of a pandemic, the Council seems to deny nothing. He stated he opposes the motion on the floor.

Mayor Pro Tem Schroeder moved to amend Resolution 2020-36 from \$147,250 to \$227,250. Councilor Pernsteiner seconded the motion. *ROLL CALL VOTE: VOTING AYE: Collins; Schroeder; Blakey; Kelly; Miller; Pernsteiner. VOTING NAY: Bradbury*

- B. **ITEMS MOVED FROM THE CONSENT AGENDA**

There were no items moved from the Consent Agenda.

IX. UNFINISHED AND NEW BUSINESS

A. CITY COUNCILOR COMMENTS

Councilor Blakey thanked the Council and staff for a job well done on the budget. He then noted that he received an e-mail from a citizen expressing concerns about the parking lot at Knox Concrete and asked Mr. Barker to contact the business in an effort to resolve.

Councilor Pernsteiner announced there are new numbers out for June with regard to the local economy. The unemployment rate is down 4.2 percent in Nez Perce County and recovery is well under way. Though there is still a way to go, he noted that about 1,800 jobs have been added over the past three months.

Councilor Blakey indicated COVID numbers are on the rise and will continue to explode as schools open back up. He said he believes that the Council will most likely be addressing mandatory masks sooner than later in Lewiston.

As this is the end of the budget session, Councilor Bradbury said he wants the residents that are not watering their lawns, who can't pay their rent or mortgage, who are evicted from their homes, who are utilizing the food bank for the first time in their lives, or who are experiencing domestic violence due to unemployment know that this Council did not do one single thing during the budget process to ease their burdens.

B. CITY MANAGER COMMENTS

There were no City Manager comments.

C. ADVISORY BOARD AND COMMISSION APPOINTMENTS

Mayor Collins announced that there would soon be an opening on the Airport Authority Board as Deb Smith has submitted her resignation. He thanked Ms. Smith for her knowledge and participation and noted that an advertisement would soon be going out for those interested in submitting an application.

D. AGENDA TOPICS

There were no new agenda topics offered for future discussion.

X. ADJOURNMENT

There being no further business to come before the Lewiston City Council, Councilor Pernsteiner moved and Councilor Blakey seconded adjournment of the August 24, 2020, Regular Council Meeting at 7:15 p.m.

Kari Ravencroft, Recording Secretary

Date approved by City Council