

**LILYDALE CITY COUNCIL MEETING**  
**September 9, 2013**

**Present:** Mayor Anita Pampusch; Council Members Bob Bullard, John Diehl, Marilyn Lundberg, and Warren Peterson; Mike O'Brien, City Civil Attorney; Mike Aschenbrener, Chief of Police; David Neameyer, Building Official; Mary Schultz, City Clerk and Administrative Assistant, KimberLee West.

**Also Present:** Planning Commissioners Roxanne Sands and Jim Maher, and Michael Cronin, Holiday Station Stores.

**Absent:** Criminal Attorney Tom Lehmann.

The City Council Meeting was called to order at 4:33 p.m. by Mayor Pampusch. The Pledge of Allegiance was recited.

**Agenda - Motion by Councilmember Lundberg, seconded by Councilmember Bullard to approve the agenda with the deletion of item 5, Criminal Attorney Report. Passed 4-0. (Councilmember Diehl was absent for the vote.)**

**Minutes** – Councilmember Bullard asked that the word “lay-over” be changed to “table” in the approval of Ordinance 13-02. **Motion by Councilmember Peterson, seconded by Councilmember Lundberg to approve the August 12, 2013 City Council Minutes as amended. Passed 4-0. (Councilmember Diehl was absent for the vote.)**

**Civil Attorney Report** – No Report.

**Building Official Report**– Building Official David Neameyer says there were 8 permits issued and none closed in August.

**Police Report** – Chief Aschenbrener is working with Attorney O'Brien on a tobacco ordinance and it is expected to be presented at the October City Council Meeting.

**Business License Revocation Hearing** – The city council is considering the revocation of the business license for Newport Massage of Lilydale, located at 823 Sibley Memorial Hwy. Two criminal complaints were filed against the business owner earlier this year. City Attorney O'Brien sent a letter notifying the business owner of the hearing. No one from the business was present. Chief Aschenbrener says the massage parlor has been open periodically. **Motion by Councilmember Bullard, seconded by Councilmember Lundberg to revoke the business license for Newport Massage. Passed 4-0. (Councilmember Diehl was absent for the vote.)**

Councilmember Diehl arrived at 4:53 p.m.

**Proposed 2014 Budget & Levy** - Clerk Schultz presented the proposed budgets for the General fund and Debt Service fund and the levy for 2014. Schultz noted increases to police and fire. Funds were budgeted for Victoria Road street maintenance in the amount of \$30,000. It was noted that this amount is a soft number since a firm amount was not available from Mendota Heights Public Works yet. Revenue totals \$532,650, which includes \$476,300 coming from the property tax levy. Expenses total \$570,809. If necessary, reserve funds will be used to cover the difference between revenue and expenses.

**Resolution 13-12, 2014 Budget & Proposed Levy Certification** - The 2014 levy to be certified to Dakota County is \$476,300. The 2014 preliminary budget is \$570,809. **Motion by Councilmember Bullard, seconded Councilmember Lundberg to approve Resolution 13-12. Passed 5-0.**

**Resolution 13-13 Approving a Temporary Extension of Liquor License** - Mayor Pampusch explained a resolution needs to be approved in order for businesses to sell wine and beer in the parking lot of River Bluffs Center for Lilydaze on September 28, 2013. She asked that Sunfish Cellars, LLC DBA Sunfish Cellars be

authorized under this resolution. **Motion by Councilmember Lundberg, seconded by Councilmember Peterson to pass Resolution 13-13 as amended. Passed 5-0.**

**Ordinance 13-02 Amending Chapter IX, Building and Land Use Regulations, Part 3, Zoning Ordinance Related to Signage** - Mayor Pampusch suggested the city adopt an ordinance that will cover what we want the city to look like now and in the future. She noted not all businesses are going to continue with the same kind of sign they have right now, and we should anticipate changes in technology.

Councilmember Lundberg suggested the business owners be asked for feedback on the proposed ordinance. Councilmember Diehl stated business owners were asked to provide input on the sign ordinance several years ago when it was being revised and they seemed to have little interest in the topic.

The council discussed limiting Electric Changeable Copy Signs to convenience stores, and the rationale for discriminating against other types of businesses from having them.

The City Council made the following changes to the draft ordinance.

1. Page 13, section 903.0809, item 7, delete the word “and”.
2. Page 9, section 903.0806, item d., rewrite second sentence to read: “A sign is permitted for the purpose of leasing, selling or promoting a development project; or for promoting a residential permit of three (3) or more dwelling units; or for a commercial area. Such a sign shall not exceed one hundred (100) square feet of advertising area.”
3. Page 9, section 903.0806, item d.3., change the sentence to read “The content of the message on such signs shall include an offer of the property for lease or sale, the management company or owner’s name, the phone number, and other information related to the lease or sale.” **Motion by Councilmember Diehl, seconded by Councilmember Lundberg to approve the wording. Passed 5-0.**
4. Page 1, section 903.0801, delete the second sentence. **Motion by Councilmember Lundberg, seconded by Councilmember Diehl to approve the change. Passed 5-0.**
5. Page 11, section 903.0808, item 3., add “except as permitted by the city council.” **Motion by Councilmember Diehl, seconded by Councilmember Peterson to approve the change. Passed 5-0.**
6. Page 11, section 903.0808, item 9., correct typo, “immortal” should be “immoral”.
7. Page 18, section 903.0815, delete the words “the price of automotive fuels, and other.” **Motion by Councilmember Peterson, seconded by Councilmember Bullard to approve the change. Passed 3-2 (Diehl and Lundberg opposed).**

Councilmember Diehl offered a statement of rationale to distinguish convenience stores for purposes of these regulations, specifically section 903.0815. He requested the statement be included in the meeting minutes.

**Motion by Councilmember Diehl to adopt Ordinance 13-02 as amended with the following statement of rationale to be incorporated in the minutes, seconded by Councilmember Bullard. Passed 5-0.**

Convenience Store Signs Statement of Rationale

Proposed amendments to Lilydale Code Section 903.0815 allow electric changeable copy to be used, by permit, to advertise the price of automotive fuels and, in our new language, other products sold on site.

The Special Task Force and the Planning Commission have recommended that this type of signage should only be allowed for “convenience stores.” The clear implication is that the use of electric changeable message may *not* be used by other businesses in Lilydale, and a question has arisen as to whether there is a legally sustainable rational basis to distinguish advertising by “convenience stores” vs. other businesses.

The natural extension of that proposition is that, if this is not a rational category, every dentist’s office, law office, restaurant, exercise club, cigar store, entertainment location, pet grooming business, and so forth, could have an electric changeable message board that not only identified the business name and the general business purpose, but that could have illuminated messages that would change once every ten seconds. The Council finds that allowing this type of communication by convenience stores is logical and a distinction between those

types of businesses and all other businesses that might use this technology is rational in the context of the legitimate purposes of the sign ordinance.

Allowing this for convenience stores is logical because these businesses have historically had changeable signs to communicate the fluctuating prices of automotive fuels, and they have historically used older technology to communicate other items for sale in stores that are otherwise perceived to be simply motor fuel businesses. Allowing more flexibility in technology in these sites is merely a continuation of the traditional distinction and permissible usages.

Second, as the foregoing implies, without this type of communication a potential customer would think of that business only as selling gasoline and other automotive products. The use of changeable signs to reflect other products allows these businesses to communicate the other types of goods that are sold in their respective establishments, which is not necessarily obvious from the nature of the general business.

Distinguishing other types of businesses (and not extending this new type of signage to those businesses) reflects a rational distinction because those businesses have a more stable type of inventory which is effectively communicated to the public by a more conventional sign and/or is known to the public by implication given the names of the respective businesses, i.e., the Perfect Ash is obviously a tobacco product store.

Conversely, it is within the legitimate discretion and judgment of the city council to recognize the benefit to consumers and other citizens in being aware of varied products that are available at a convenience store and thus tolerating whatever limited distraction or affront to aesthetics might be presented by this technology, while rationally determining that the extension of this to every business in town, to have illuminating signs changing their message to the public every ten seconds on every business up and down Sibley Memorial Highway, would clearly be an affront to aesthetics and the quiet enjoyment of our community by its citizens and visitors.

**Summary of Ordinance 13-02** – It was recommended that the sentence “The Sign Ordinance is not intended to and does not restrict, limit, or control the content of message of signs.” be removed. Attorney O’Brien stated he did modify the Ordinance Summary to include the following language recommended by Councilmember Diehl in an email message dated September 9, 2013: “Ordinance 13-02 leaves much of Lilydale Code Section 908.03 unchanged. Ordinance 13-02 fulfills the foregoing purposes with amendments that recognize current technology, improve regulations, and when required, clarify the sign permitting process.” O’Brien also changed the Ordinance Summary to include that the entire ordinance can be viewed on the city’s website. **Motion by Councilmember Lundberg, seconded by Councilmember Diehl to approve the Summary of Ordinance 13-02 as amended. Passed 5-0.**

**Bluff Management Report** – Great River Greening has prepared a report, “The Path to a Comprehensive Bluff Management Plan for Lilydale”, that will be presented to stakeholders and property owners on October 10, 2013 at 7 p.m. at Lilydale city hall. Councilmember Lundberg says the reference to Mayfield Heights Diversion in the second to last paragraph on page three of the Report is incorrect. It should be listed as Stormwater Project 1. Lundberg feels Dakota County is not emphasized enough in the Report and suggested Steve Sullivan from the County be involved. In addition, Dakota County has financial resources and needs to be convinced that this project is worthwhile. She says Dakota County cut two benches out of the bluff along the limestone after the tragic deaths of two young boys (referring to the bluff failure in Lilydale Regional Park this past spring).

**Clerk’s Report** – Clerk Schultz presented the August financial reports. Schultz recommended the Public Budget Meeting be held on December 9<sup>th</sup> at 6 p.m. **Motion by Councilmember Peterson, seconded by Councilmember Diehl to approve the August financial reports and hold a public budget meeting on December 9, 2013. Passed 5-0.**

**Mayor’s Report** – Mayor Pampusch announced the various activities that will be happening for Lilydale, including a wine cruise, 0.5K and photo contest.

Mayor Pampusch says she and Councilmember Lundberg met with the DNR about the Mississippi River Critical Corridor Area Rule Standards. The DNR has categorized Lilydale in the Urban Open Space district. Our existing ordinance was compared with the proposed MRCCA Rule Standards. Mayor Pampusch anticipates there will be very little change for the City of Lilydale as a result of the revised standards.

There being no further business, the meeting was adjourned at 6:44 p.m.

Respectfully submitted:

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Mary Schultz, City Clerk

Final copy reviewed by:

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Anita Pampusch, Mayor