

DIRECTORS' ORGANIZATIONAL MEETING

MONDAY, July 17, 2017

555 S. 10TH STREET

BILL LUXFORD STUDIO

I. MINUTES

1. Approval of Directors' Minutes July 10, 2017

II. ADJUSTMENTS TO AGENDA

III. CITY CLERK

IV. MAYOR'S CORRESPONDENCE

V. DIRECTORS CORRESPONDENCE

PLANNING COMMISSION

1. Administrative Approvals from July 4, 2017 through July 10, 2017

VI. BOARDS/COMMITTEES/COMMISSION REPORTS

1. Public Building Commission (PBC) - Camp, Raybould (7.11.17)
2. Parks & Rec- Gaylor Baird (7.13.17)
3. Joint Budget Committee (JBC) - Gaylor Baird, Lamm (7.14.17)

VII. COUNCIL MEMBERS

1. Continued discussion on purchasing new electronic devices

VIII. MEETINGS/INVITATIONS

See invitation list.

IX. ADJOURNMENT

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Present: Roy Christensen, Jane Raybould, Cyndi Lamm, Carl Eskridge, Bennie Shobe, Jon Camp, and Leirion Gaylor Baird

Others Present: Teresa Meier, City Clerk; Rick Hoppe, Chief of Staff, Mayor's Office. Jeff Kirkpatrick, City Attorney. Dave Landis, Urban Development. Others present but not familiar with names and department heads.

Chair, Roy Christensen opened the meeting at 2:00 p.m.

I. MINUTES

II. ADJUSTMENTS TO AGENDA – Camp requested he report on the Public Safety Committee.

III. CITY CLERK

Item 1 will need a Motion to approve the request by Public Works.

Meier Under Public Hearing – Liquor Resolutions, Items 7/8 will be called together.

Under Public Hearing Ordinances – 2nd Reading, Items 12/14, 15/16, and 17/21 will be called together.

IV. MAYOR'S OFFICE

LPD Chief Bliemeister and Lincoln Fire and Rescue (LFR) reported on the Fireworks trend Fourth of July 2017.

On July 3, 2017 LPD responded to 380 calls for service. This includes 48 firework related calls. Included in the 380 calls were an armed robbery, suicide, and suspicious death of a 32 year old. In addition, a combination of 49 officers provided security, crowd control, and traffic direction for a crowd estimated at 25,000 people at Oak Lake Park for July Jam.

On July 4th, 2017 LPD responded 362 calls for service. This includes 49 firework related calls. Included in the 362 calls were an armed robbery and death investigation of an 8 month old child.

Typically on a July 4th day LPD takes an average of 1350 calls of which not all calls are fireworks related. The calls for service that were received on July 4, 2017 were still within the average on any other typical day. In addition, a firework injuries emergency room data report was provided detailing direct correlation of injuries sustained from the use of fireworks. On July 3, 2017 LPD and LFR responded to two reports of fireworks related injuries. On July 4, 2017 one person was hospitalized due to a fireworks injury. Often times when LDP and LFP respond to a call with injury and there is a transport to the hospital both LPD and LFR are going to have resources at the scene. One perspective that LPD Chief Bliemeister made certain Council member were made aware of is Nebraska Revised Statute 28-1249 allows for the sale of fireworks outside the limits of any incorporated city or village from June 24 through July 5 and between December 28 and January 1. The use of legal fireworks is NOT regulated unincorporated areas of the state. Lincoln Municipal Code 9.44.080 allows for the sale and use of fireworks on July 3rd and July 4th. By Municipal Ordinance, any person that lights off a firework in their yard and that firework lands in a neighboring yard, said person who lit off that firework has committed a misdemeanor. That is a tough thing for LPD to enforce and police. LPD could enhance the number of arrests that are made during the July 4th holiday by increasing staffing and paying overtime by placing officers in plain cars and have them drive through neighborhoods writing out misdemeanor citations as there is time in the day. In closing, LPD will only respond to reports of fireworks that include specific information relevant to the report, such as an address of where the fireworks are being discharged. If the caller only provides a general description

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of the area, such as 70th and Adams, there is no way to pinpoint the exact location where the fireworks are coming from. Council Eskridge inquired if the neighboring counties were able to sell more explosive fireworks than that of the City of Lincoln. The answer, no, the sale of legal fireworks is regulated by the State. However, outside the borders of Nebraska there are fireworks that can be purchased that otherwise could not be purchased within the State of Nebraska. In closing, when large sectors of the population are breaking the law, it is very difficult for the police to respond and enforce the laws. Every year beginning June 24th parents and citizens of the City of Lincoln are outside the City limits and they are purchasing fireworks and bringing them back into Lincoln and shooting them off. Council member Camp inquired as to how the LPD officers providing security at July Jam are paid. Rick Hoppe responded that the expense comes out of the general expense budget.

Jeff Kirkpatrick, City Attorney, spoke in regards to the Mid Biennium Budget memo. Kirkpatrick stated that anytime the Law Department, which is legal counsel for the City as an entity, provides legal advice to a Director, the Mayor, members of the City Council; that is a legal opinion which is covered under the attorney/client privilege. The attorney/client privilege belongs to the client. When you look at a memo that has been given to the City Council as a whole or at the request of a Council member, then the question is, "who is the client"? The client remains the entity. The decision to release attorney/client information is not the decision of the attorney it does not belong to the law department rather it belongs to the client. What this means in the case of the executive branch is it would be decision of the Mayor to release information. In the case of the City Council the decision to release information does not belong to individual Council members, it is up to the Council an entity. So the information can only be released after a vote by majority of the Council to release said information. There does not need to be a resolutions vote by to the Council to release information, it would just need to be voted on as an agenda item with an official recorded vote by the Council. The Directors' Organizational meeting would be a venue to make that decision. Council member Christensen asked Kirkpatrick which memo he was specifically speaking of. Kirkpatrick responded it has to do with the Mid Biennium Budget memo, prepared by Jeff Kirkpatrick, that was sent to all Council members and how state law interacts with the City code. Council member Lamm requested the memo in an open meeting. One question that was raised, does it make a difference in the manner that it was requested at to the attorney/client privilege. Kirkpatrick stated that is doesn't make a difference. However, if Lamm would have come to Kirkpatrick privately then the information would not have necessarily been shared with the entire Council. The short answer is; the privilege belongs to the City Council as an entity and needs to be voted on as an entity. Lamm went on record and stated that she will always vote to release anything that is requested.

A motion to vote on the release of the Mid Biennium Budget Memorandum was moved by Lamm, seconded by Gaylor Baird. (Adopted, 7-0)

V. BOARDS/COMMITTEES/COMMISSION REPORTS

1. Public Building Commission (PBC) – Camp, Raybould (07.11.17)

Camp reported wrapping up the jail area of the 605 building. There is another area of the building, a small janitor's closet, and converting it into a mother's room. Discussion was also had on the installation of showers in the Public Defender's building. They are working on some radio transmission situations, which was brought to the attention of the Commission by the Sheriff's Department, relating to the transmitters relaying signals.

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2. Parks & Recreation– Gaylor Baird (07.13.17)

Gaylor Baird reported they met at Irving Dale School which gave them an opportunity to tour the Irving Dale Rec Center and the site for the master plan for Irving Dale, Stransky, and Rudge Park and the idea of connecting the three parks and enhancing with capital improvements. Discussion was had on the storm water drainage, trails, and not duplicating certain recreational equipment due to the close proximity of the three parks. There was a lengthy discussion involving the proposed policies regarding golf fees that came from the golf sub-committee. One suggestion was to do some cost recovery with tournaments that schools can play and/or season fees to play on the courses. The seasonal fees imposed a structure where they would pay about 33% of the junior fees. The Parks & Recreation Advisory Committee passed that suggestion on to the Mayor. In regards to charging schools for the tournaments and participation fees on top of the seasonal fees was the bulk of the discussion. In the end the committee decided that it was acceptable to charge schools from outside the City for the tournament fee but didn't feel they were ready to impose that fee on LPS, colleges and University's that are already paying an upfront fee. Further discussion will be had on this topic.

3. Joint Budget Committee (JBC) – Lamm, Gaylor Baird (07.14.17)

Gaylor Baird reported discussion was had with United Way about the process of the JBC grants. The two worked together on the grant process with United Way having more of an online process. There is a plan to refine the process at the next meeting by having a working session to work through some of the programmatic investigations. Sara Hoyle, Huma Services Director talked about Project Restore, which is a program preventing youth from entering the juvenile justice system by allowing them the opportunity to participate in diversion through the school. Initial data shows that there is a reduction in the number of minority youth that are headed in the juvenile justice system. There is definitely a change in the percentages of who is entering and that is positive. Sara also spoke about the Shields Unite program, which is an innovated partnership between LPD and the Salvation Army that is working with youth and families developing relationships throughout the community between officers and at risk youth. The closeness and development of relationships also helps officers have a better understanding of issues within the community. The program is showing good positive signs of being very successful. The State Bar Association has also shown some interest in this program. The program will start back up in August.

There is a transition of primary care from the Lincoln Lancaster County Health Department to the Peoples Health Center general assistant clients are going to be served out of the Peoples Health Center which will help increase the number of people who have a medical needs because they are co-located with primary health care, mental behavioral health care and health 360.

4. ISPC – Raybould (07.13.17)

Raybould reported they have finalized the definitions for security of the systems. It was open for discussion and feedback and has been approved. Discussion was had on Kronos and upgrades to the payroll/time management system that needs to be updated. At this time a number of options are still being considered. Proposals and estimates are being gathered with joint efforts by Information Services Department.

5. Public Safety Committee – Camp

Camp reported a sub-committee has met the past two weeks to discuss the four fire stations, of which 3 will be full fire stations with the fourth being a combined fire/police station. One entity to construct the four stations has been submitted to the Mayor for approval.

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VI. COUNCIL MEMBERS

1. Discussion on purchasing new electronic devices for the Council - Angie, Excluded Office Specialist for the City Council, reported a response has not been received from IS on the additional estimates. This topic will be revisited once the information is received.

VII. ADJOURNMENT

Chair, Christensen adjourned the meeting at 2:55 p.m.

Mid Biennium Budget Memorandum

TO Councilwoman Lamm
DEPARTMENT City Council
ATTENTION
COPIES TO

DATE May 31, 2017
FROM Jeff Kirkpatrick
DEPARTMENT City Law
SUBJECT Budget Procedures

The City Council Is Allowed to Add Spending to the Budget During the Mid-Biennium Under Certain Circumstances.

State law specifically allows the Lincoln City Council to amend the biennial budget under certain limited circumstances even though the city charter forbids the Council to adopt a new annual budget for the second year of a biennium.

Both the Lincoln City Charter and the Lincoln Municipal Code state that, “After a biennial budget is adopted, neither the mayor nor the council shall adopt a new annual budget in the second year of the biennial period.” Charter Art. IX, Sec. 26a; LMC 3.06.40. The Charter adds “The power to amend or revise the biennial budget shall be as provided in Article IX, Section 27 of this charter.” Charter Art. IX, Sec. 26a.

Section 26a clarifies that the procedures for revising the city biennial budget are those powers provided in Article IX, Section 27 and those powers established by ordinance when the biennial budget process was created. Article IX, Section 27 addresses the appropriations process and lays out several routes for revising the adopted city budget:

- A. If revenues are lower than expected, the Mayor is authorized to reduce appropriations in order to avoid a deficit.
- B. The Mayor may transfer balances within a department or agency. The Council does not need to approve such transfers, but the Mayor must notify the Council of the transfers within 7 days.
- C. The Council may authorize appropriation transfers between departments and may authorize emergency appropriations in the event of an emergency threatening serious loss of life, health, or property in the community.

Section 27 does not refer to any procedures for revising an adopted biennial budget. However, Section 26a, in establishing the option of a biennial budget procedure, states, “The City may by ordinance establish a process for the adoption of a balanced biennial budget for biennial periods” When the Council did so, it specifically noted, “The council shall not make any appropriation in addition to those authorized in the biennial budget, except that it may revise the previously adopted biennial budget pursuant to Nebraska state law.” LMC 3.06.050

Nebraska State Law

The state law that governs local subdivision budgets is codified in the Nebraska Budget Act, Neb Rev. Stat. §§13-501-13-513. The Budget Act requires governing bodies within the state to follow prescribed budget practices and procedures.

Under the Nebraska Budget Act: “[W]henever during the current fiscal year or biennial period it becomes apparent to a governing body that (a) there are circumstances which could not reasonably have

been anticipated at the time the budget for the current year or biennial period was adopted . . . such governing body may propose to revise the previously adopted budget statement and shall conduct a public hearing on such proposal.” Neb. Rev. Stat. §13-511(1) (emphasis added).

The procedure for revising a biennial budget mid-biennium is similar to adopting the budget originally in that it can only be done after a properly noticed public hearing.

(2) Notice of the time and place of the hearing shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. Such published notice shall set forth (a) the time and place of the hearing, (b) the amount in dollars of additional or reduced money required and for what purpose, (c) a statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year or biennial period to meet the need for additional money in that manner, (d) a copy of the summary of the originally adopted budget previously published, and (e) a copy of the summary of the proposed revised budget. Neb. Rev. Stat. §13-511(2).

The City Charter Does Not Overrule State Law in This Area.

Under Article IX, Section 27, the Charter allows mid-biennium budget adjustments for reductions, transfers, reappropriations, and emergencies which threaten life, health, or property. Article IX, Section 26a allows for the biennial budget process to be provided by ordinance. Under LMC 3.06.050, the biennial budget ordinance authorizes biennial budget revisions pursuant to state law. The state Budget Act creates an avenue for making revisions for additional appropriations when there are circumstances which could not reasonably have been anticipated when the current budget was adopted. The city Charter does not mention that as an option, raising the question of whether the state law applies in the absence of a specific Charter provision.

Our reading of the Charter provisions indicates that the City, through its Charter provisions and Code, recognizes and is consistent with state law on budget procedure and authorizes mid-biennium budget adjustments as stated above.

You have raised the question of whether the state law applies in the absence of a specific Charter provision. Even if the City Charter did not provide for an ordinance on the biennial budget process or the biennial budget ordinance did not reference state law, on matters of general statewide concern, the City Charter yields to state law. It is well established that under a home rule charter, a city's power must be consistent with and subject to the constitution and laws of this state, except as to local matters of strictly municipal concern. See *Home Builders Ass'n of Lincoln v. City of Lincoln*, 271 Neb. 353, 711 N.W.2d 871 (2006); *Dell v. City of Lincoln*, 170 Neb. 176, 102 N.W.2d 62 (1960). See, also, *Hall v. Cox Cable of Omaha, Inc.*, 212 Neb. 887, 327 N.W.2d 595 (1982).

In *Home Builders*, Lincoln's authority to enact an impact fee ordinance was challenged as an invalid exercise of the city's power. The Nebraska Supreme Court held that, as a home rule charter city, Lincoln did have the power to establish and collect an impact fee. The Court noted that Lincoln's current home rule charter grants all powers possible to the city. The question in the *Home Builders* case was whether, “in the absence of an express provision, the City may exercise that power [to impose an impact fee].” *Home Builders Ass'n of Lincoln* at 360. The Court held that, “[U]ntil the superior authority of the state has been asserted by a general statutory enactment, the municipality may properly act under its charter.” *Id.*

The constitutional limitation that a home rule charter must be consistent with and subject to the laws of the state simply means that on matters of such general concern to the people of the state as to involve a public need or policy, the charter must yield to state legislation. *Jacobberger v. Lee Terry*, 211 Neb. 878, 320 N.W.2d 900 (1982). *Jacobberger* is an instructive case. It resulted from the Nebraska legislature passing a law requiring Omaha to organize its city council along district lines, rather than the existing system whereby all council members were elected at large. A citizen sued to stop the reorganization of the council, arguing that, under a prior Supreme Court case, “in adopting a home rule charter, . . . the city had the right to make provision therein for any form of local government it desired. . . .” The *Jacobberger* court drew a distinction between allowing a city to decide between a commission or a mayor-council form of government and a city charter that controlled its citizens’ right to vote and entitlement to proportionate representation and upheld the legislature’s authority to determine the city council’s make-up despite contrary city charter provisions.

As to the issue in question, the Legislature has determined that the budget processes of its various subdivisions are of sufficient statewide concern that they should be addressed in statute, to ensure fiscal prudence, budget transparency, and sufficient consistency of procedures so that state auditor’s office can efficiently and effectively carry out its mandate. Thus, it is clear that this is an area in which state law applies, even to home rule cities since, “the superior authority of the state has been asserted by a general statutory enactment.”

This is not a situation where state law countermands the city charter. The charter establishes that the council cannot pass a new annual budget for the second year of a biennium. It does not address the issue of whether the budget can be revised to deal with unanticipated circumstances. Neb. Rev. Stat. §13-511(1) does not allow for the passage of a new annual budget at the mid-biennium, it only allows for revisions in areas where there have been unanticipated developments.

Mid-Biennium Adjustments Were Anticipated When Charter Change Was Adopted.

Prior to the biennial budget amendment to the Charter being adopted by Lincoln voters, city staff explained that the biennial budget process would not completely freeze the city budget for two years. The specific explanation was: “This proposal will not prevent the City from making changes to the budget during the second year. As is the case with the State of Nebraska, the proposal will allow for mid-biennium adjustments, especially if significant changes in revenue or unforeseen expenses arise.” The Charter language that was adopted does not make a specific reference to the Nebraska Budget Act. There are two reasons for this omission. The first is that it would be improper to embed in the Charter, which can only be changed by a vote of the people, a reference to a state law that could be changed by the state legislature during any session. The second reason is Justice Hendry, who as City Attorney did much of the preparatory work on the Charter amendment, advised that then existing Charter language was overloaded with process details that more properly belonged in the city code.

Mid-Biennium Adjustments Have Occurred During First Two Biennial Budgets.

As expected, budget revisions have been a standard part of each mid-biennium budget review thus far. These are the mid-biennium adjustments made during the two initial biennium budget periods:

2013-14 (Resolution A-87532)

Holmes Golf Clubhouse– \$50,000 Keno

Tennis Facility Improvements – \$50,000 Keno
Pinewood Bowl electric improvements – \$40,000 Keno
Greenway Corridor Trails – \$250,000 grant/private funds
Entry Corridors – \$1,900,000 other funding
Urban Dev/Prim. & Sec. Retail Corridor - \$120,000 TIF
Create Public Works Fiber/Conduit Fund and appropriate all revenue received

2015-16 (Resolutions A-89225, A-89226, and A-89227)

Centennial Mall – \$510,000 TIF
Fire Trucks - \$2.0 million COPS & \$636,540 General Fund
Public Works & Utilities/Buses - \$205,900 SR
Public Works & Utilities/MSR Roof & HVAC repairs - \$2,150,000 lease purchase financing
Urban Dev/South Haymarket Surface Parking - \$350,000 TIF
Appropriate sponsorship funds for the Bike Share Program

Conclusion

Making revisions to the biennial budget at the mid-biennium due to circumstances that were not anticipated at the time the budget was originally adopted is allowed under the Nebraska Budget Act. While mid-term budget additions under any circumstances other than emergencies are not provided for in Lincoln’s Charter, this is a situation where the superior authority of the state has been asserted by a general statutory enactment. State law provides for budget revisions under certain, limited conditions. Given the general, statewide interest in local subdivisions having an ability to adapt their budgets to changing conditions, the Charter’s silence in this area does not trump the state’s specific statutory guidance. The City Council can make revisions to the city’s biennial budget as long as those changes are in response to circumstances that could not have been anticipated at the time the budget was originally adopted.