

City of Rigby
Council Meeting Minutes
May 1, 2014

Mayor Richardson called the meeting to order at 7:00 pm Thursday, May 1, 2014. The pledge of allegiance was given by Kimber Tower and Councilman Simonson offered the prayer.

Mayor Richardson asked the clerk to call the roll.

Councilman Walker	Present
Councilman Taylor	Present
Councilman Maloney	Present
Councilman Sullenger	Present
Councilman Simonson	Present
Councilman Olsen	Absent

Also present: Chief Hammon and Attorney Robin Dunn

Treasurer's Report March 31, 2014:

The city treasurer came forward and reviewed with the council his financial report for the period ending March 31, 2014. He reviewed the management letter that was included in the council packet. Overall, expenditures for all of the city's governmental and enterprise funds were within the forecasted budget percentage (50%) but for the park/rodeo committee and the sewer collection project.

He commented that the park/rodeo committee has incurred expenditures during the winter months in preparation of the activities held in the summer and fall of the year. He also stated the sewer construction project is being completed and the budgeted amount is below what the final construction project will be.

As for actual revenues to budgeted revenues are exceeding budget all the governmental and enterprise funds. He reviewed the various departments within the general fund and again noted that the departments were for the most part within the acceptable percentage of actual to budget. For the city to be at the half way point for this fiscal year, he did not see any "red" flags warnings.

Councilman Walker would like to see an estimate of expenditures to be spent for over/under for the remaining portion of the year.

March journal entries. He reviewed the entries he made to put the city's financial statements on the modified accrual basis of accounting. There were entries made to accrue for outstanding property taxes, accrued interest earnings, monthly transactions to record the internal service fund, and reclassification entries.

Councilman Sullenger moved to accept the March 2014 financial statements and March's journal entries seconded by Council Maloney.

The asked for a voice poll: All in favor none opposed.

Chickens in city limits – Code 5.4-5:

Councilman Walker presented to the council a sheet with questions he asked the Idaho Falls Animal Control personnel. In general the officer indicated they have not had an issue with the ordinance allowing chickens.

Chief Hammon reviewed with the council the pros/cons that his office drew up about concerning where the city code was lacking specific ordinances. He also commented that Idaho Falls does have an animal control officer which the city does not. One of the main concerns was where a chicken at large would be housed until the owner could be identified. One of the issues raised was having a yard fenced. Dogs do not need to be fenced whereas chickens need to be either fenced or maintained in a chicken coop.

The Mayor summarized the issues to three items: 1) number of chickens allowed; 2) size of the yard in relation to the number of chickens; 3) sale of eggs and the slaughter of chickens inside city limits.

Councilman Simonson referred to the Idaho Falls code which restricted homeowners to 6 chickens. He added that some regulation was needed similar to what is required to obtain a kennel license, banning roosters and having the chickens contained in a chicken coop or some way to contain them. Several of his neighbors commented they didn't want one next door. He raised the question as to the number of dogs within the city limits compared with the number of dogs licenses issued were far lower than the actual count. Councilman Simonson wanted something that is comprehensive and enforceable.

Councilman Walker raised the question if the city could enact a variance to an ordinance. The attorney responded that he had not heard of a variance to an ordinance. The planning/zoning issues variance from the ordinances. Variance for home base business is applied through the planning/zoning commission. Walker also liked the idea of notifying neighbors and the containment of chickens. He also indicated on the pro/con listing, once an ordinance is established four or five of the issues would be taken care of.

Councilman Taylor moved to suspend the discussion and move to the next item on the agenda and return to the discussion later in the meeting seconded by Councilman Simonson.

The asked for a voice poll: All in favor none opposed.

Lease Agreement – FyberCom Wireless:

Jared Stowell representing FyberCom. Mr. Stowell reviewed the lease agreement that was forwarded to the council under an earlier mailing. The new lease increased the monthly lease and provided for the lessee being responsible for the power.

The Mayor indicated the council wanted to have all three cellphone leases in agreement. The attorney indicated that he had discussed the lease with FyberCom and his preference would be that all three lease contracts be the same. He also noted the Verizon lease next on the agenda has been reviewed and updated to be compatible with the ATT lease. Mr. Stowell wanted to proceed; they have hired employees and would like to move forward as soon as possible. The council discussed the number of subscribers that the tower would serve, size of the receptors, and interference with other cellphone tenant(s).

Councilman Simonson moved to suspend discussion with FyberCom pending the determination of the Verizon lease seconded by Councilman Taylor.

The mayor asked for a voice poll: All in favor none opposed.

Verizon Lease:

The attorney reviewed the lease that he received back from Verizon with the council. The items that the city made were noted in red and the revision made by Verizon were under lined and printed in red. All of the revisions were considered fine in his view. The council discussed paragraph 16 – Assignment/Sublease. The new language allows subleasing and/or assignment within the tenant’s principal, affiliates or subsidiaries not needing city approval. All other assignment or sublease would need city’s written approval. Paragraph #5(f) – Termination – Verizon changed the cause for the city to terminate to “if the city is ordered to remove the structure by any governmental authority”.

The attorney noted to the council the effective date is different from the rent commencement date. The difference in dates is when construction begins the monthly rent begins, not when the lease is signed.

Councilman Taylor moved to approve the Verizon lease as revised seconded by Councilman Simonson.

Mayor Richardson asked the clerk to call the roll.

Councilman Walker	Yes
Councilman Taylor	Yes
Councilman Maloney	Yes
Councilman Sullenger	Yes
Councilman Simonson	Yes

Lease Agreement – FyberCom Wireless - Continued:

The council discussed amending the Verizon lease to adapt to FyberCom. Council discussed the monthly lease amount and the space needed for the ground space. Mr. Stowell indicated his system runs on a lower frequency and lower transmission power than either ATT or Verizon. Most of FyberCom equipment has battery backup and would not need an auxiliary generator until the subscriber list hit between 300-400 subscribers. The size needed would not exceed 3 feet by 5 feet.

The mayor reviewed the two changes: 1) monthly lease and 2) size of ground space needed. Also discussed the permission from the other two tenants would need to be obtained. Council noted paragraph #8 – Interference covers the lessee equipment would not interfere with the other tenants equipment.

Councilman Taylor asked what the fee would be for city access. Mr. Stowell indicated the fee would be \$19/month. Discussed providing the internet to the library, city hall, and wastewater treatment plant free of charge to the city.

Councilman Taylor moved to modify the Verizon lease contract for FyberCom with the following changes:

- 1) Monthly lease \$200 per month
- 2) Ground space 5 feet by 5 feet
- 3) Provide free internet access to the library, city hall and wastewater treatment plant (if available)
- 4) Consent from Verizon and ATT

Motion seconded by Councilman Maloney.

Mayor Richardson asked the clerk to call the roll.

Councilman Walker	Yes
Councilman Taylor	Yes
Councilman Maloney	Yes
Councilman Sullenger	Yes
Councilman Simonson	Yes

The mayor also indicated that Fybercom would need to a sketch of the ground space to accompany the lease.

Chickens in city limits – Code 5.4-5 continued:

Councilman Taylor handed out a number of ordinances that he obtained from other cities along with other suggested ordinances that he would like the council to begin the discussion.

Councilman Simonson felt the Idaho Falls ordinance was a good starting point for the city to begin discussion. He also stated a restriction was needed to keep the chickens from running free. Comment made that the third restriction in the Idaho Falls code addresses that concern.

The mayor questioned if the restriction should be limited to residential homes as opposed to apartments. Council felt the restriction to R-2 homes would be left to the landlord could place restrictions on chickens as they do with dogs and cats.

The mayor stated he felt the restriction for of sales for pecuniary gain should be removed. Councilman Simonson referred to the handout presented by Councilman Walker that addressed that question.

Councilman Taylor commented to Councilman Simonson that Simonson was only looking at the Idaho Falls ordinance and was not looking at any other that were presented. Simonson commented that Idaho Falls had reviewed the restriction with due diligence and felt it was the model the city should look at. He would like to take it and to adapt it to address Rigby's concern.

The mayor brought up the restriction prohibiting the slaughtering of chickens. Councilman Taylor indicated there is an ordinance that addresses the slaughtering of animals and did not need to be redundant.

Councilman Simonson brought up the concern of receiving permission from the neighbors to house chickens. Discussion involved permission versus notification to neighbors.

Discussion of the number of chickens, Councilman Taylor felt ten was a good number. Councilman Walker stated that if the lower number of chickens were not for pecuniary gain the number of chickens would not be profitable to have egg sales. If ten was allowed and later ten became a problem could the city lower the number allowed. For those who want production would want more than eight chickens. Councilman Taylor felt the city was limiting the number of chickens allowed, where no one could have 48 chickens even though he felt the city was restricting their constitutional rights to have 48 chickens. Council had a brief discussion on the number of 10, 9, and 8 chickens via a showing of hands. The number eight garnered the majority.

The city code allows the slaughter of animals given that the offal must be cleaned up. The mayor indicated the prohibition against the slaughter could be either removed or have the other reference in the code amended.

Restriction against the sale of eggs was discussed. The mayor commented that limiting the number of chickens allowed the council has restricted the number of eggs that could be sold.

The council mentioned residents could not have gerbils, hamsters or goldfish. Councilman Sullenger referred back to the code that referenced "livestock" as being cows, horses, goats as livestock and gerbils, hamsters and goldfish are not livestock but are domestic animals. The mayor stated dogs are regulated but cats are not.

The mayor stated the Idaho Falls prohibits the sale of egg but the city overlook the prohibition and allows residents to sale eggs. Eight chickens are not going to generate enough eggs to become an issue as seen in Idaho Falls admission that they do not enforce the prohibition of sale. Councilman Taylor also commented on the Idaho Falls ordinance and the actual lack of enforcement. Comment was made not to make something illegal that the council knows will happen.

Discussion on how to implement the ordinance, adopt the current ordinance repeal or amend the conflicting ordinance.

Councilman Taylor questioned Council Simonson on the third point in the Idaho Falls ordinance restricting the chickens to the back yard does not specify that the chickens must be in a chicken coop. Councilman Simonson indicated the restriction to the back yard was up to the owner to tend and care for the chickens as long as the chickens do not come into the neighbor yards.

Councilman Taylor moved to move forward with the ordinance, adopting Idaho Falls code 5.5.3D striking reference #1 and #2 of the Idaho Falls code and change the number of chickens allowed from six (6) to eight (8) seconded by Councilman Walker.

Mayor Richardson asked the clerk to call the roll.

Councilman Walker	Yes
Councilman Taylor	Yes
Councilman Maloney	No
Councilman Sullenger	No
Councilman Simonson	No

Motion failed.

Councilman Simonson moved to adopt Idaho Falls code 5.5.3D changing the number of chickens allowed from six (6) to eight (8). Motion died lack of a second.

Councilman Sullenger moved to make an amended motion, to adopt Idaho Falls code 5.5.3D striking the second reference prohibiting the slaughter of chickens, keeping reference #1 – prohibiting the sale for pecuniary gain and keeping reference #3 – chickens housed in rear yard and changing the number of chickens from six (6) to eight (8) seconded by Councilman Taylor.

Mayor Richardson asked the clerk to call the roll.

Councilman Walker	Yes
Councilman Taylor	Yes

Councilman Maloney	No
Councilman Sullenger	Yes
Councilman Simonson	No

Mayor informed the clerk to proceed with the publication of the ordinance.

Approval of Bills:

The mayor asked about the reimbursement to the library. Clerk indicated it was to reimburse the library's petty cash fund. Councilman Taylor moved to authorize the payment of the bills seconded by Councilman Maloney.

Mayor Richardson asked the clerk to call the roll.

Councilman Walker	Yes
Councilman Taylor	Yes
Councilman Maloney	Yes
Councilman Sullenger	Yes
Councilman Simonson	Yes

Approval of Minutes:

Councilman Taylor moved to approve the minutes seconded by Councilman Sullenger.

The mayor asked for a voice poll: All in favor none opposed.

Other Council Business:

Public Comment – The mayor commented that a member of the public had asked why public comment was held to the end of the meeting and why it couldn't be moved forward. He asked if there was any opposition to moving to the first of the agenda. Councilman Taylor objected and Councilman Simonson indicated that if the public got involved prior to the council business it could conflict with the decision process.

Auditor concern with Park/Rodeo and Airport: The mayor wanted the council to consider having council oversee the park/rodeo and airport board and thought the two boards should be brought forward for a council discussion. Council's consensus was to have them on the agenda for a discussion.

Discussion on the LID Funding: The mayor indicated that he had received revised engineer's estimate for the cost of the LID improvements and would like to put the project out to bid. He wanted to inform the council that it was coming up.

Library Week: Councilman Taylor indicated library week went over very well. There were 127 new memberships sold during the week. In addition there will be an animal safari coming May 7, 2014.

Public Comment:

None

Executive Session:

Councilman Sullenger moved that the council enter into executive session per Idaho Code 67-2345(f) –to discuss with legal counsel the ramification and legal options regarding delivery of surface water, seconded by Councilman Maloney.

Mayor Richardson asked the clerk to call the roll.

Councilman Walker	Yes
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Councilman Taylor	Yes
Councilman Maloney	Yes
Councilman Sullenger	Yes
Councilman Simonson	Yes

Council Adjourned into executive session at 9:40pm.

Council exit executive session at 10:00pm.

Water Rights involving the Burgess Canal:

The mayor discussed the city had obtained verbal permission from the Burgess Canal to install a pump in the canal to irrigate the south park. The mayor discussed the city's rights and access to the water which the city is a shareholder. The city has not used the water for a number of years.

Councilman Maloney moved that the mayor be authorized to hire a water right attorney to protect the city's access rights to the Burgess Canal water, to have the mayor, city attorney and public work superintendent attend the canal board monthly meeting to ask the board to allow the city access to the water. Motion seconded by Councilman Simonson.

Councilman Taylor amended the motion to instruct the city to turn on the pump when water is available in the canal. Amended motion seconded by Councilman Simonson.

The mayor asked for a voice poll on the amended motion: All in favor none opposed.

The mayor asked the clerk to poll the council on the original motion as amended:

Mayor Richardson asked the clerk to call the roll.	
Councilman Walker	Yes
Councilman Taylor	Yes
Councilman Maloney	Yes
Councilman Sullenger	Yes
Councilman Simonson	Yes

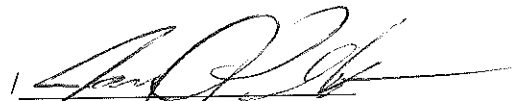
Adjournment:

Councilman Simonson moved to adjourn seconded by Councilman Taylor.


The mayor asked for a voice poll: All in favor none opposed.

Meeting adjourned: 10:04pm

CITY OF RIGBY


Jason Richardson, Mayor

ATTEST:


David Swager, Clerk