

Minutes
City of Mackay
Regular Meeting of the City Council
Tuesday, November 8, 2022

CALL TO ORDER

Wayne Olsen, Mayor called the meeting to order at 6:00p.m. Recited the pledge of allegiance.

Roll Call

Wayne Olsen, Dean Wall, Mike Foster, Richard Mangum, and Michelle Teninty. Councilman Blackwell is on vacation.

RECOGNITION OF VISITORS

Bob Bagley, Theodor J Smith, John Farish, A woman with John Farish that didn't sign in, Mike Evans, Bob Bagley, Dawn & Charles Davidson, Lin Hintze, Lori Hardy, Shayne Whitfield, Deputy Harvey, Carolyn Smith, Margaret VanOrden, Jesse & Mindy Cecil, Al Krause, Shirley Olsen, Trent Van Leuven, Kasey Lang, Christine O'Kelley, Frank Cecil, Amber Beck, and William J Erickson.

Mayor Olsen asked if there is anyone here that is in the audience that wishes to address the City Council that has something that they want to discuss that is not already listed on the agenda I would turn the time over to them and give each three minutes to do so.

Mr. Trent Van Leuven started; I teach agriculture over at the high school. We have the Christmas bazaar coming up next week, and over the last few years, we've brought it up from 17-18 vendors, so we've got about 47 right now. And the money goes towards sending kids back to Washington, DC every other year, and it's been a good thing for everybody. We continue to hope to grow the bazaar. If for whatever reason, you guys ever decide to apply those vendor fees to the bizarre, it would take out about half the people that only want to show up and be at one event. It would be a detriment to the area for the Christmas bazaar.

Mayor Olsen started; Before I get into the meeting, I'm going to take a few minutes to address the letter to the editor of the Arco Advertiser entitled "there's political mischief going on in Mackay" that was dated November the third 2022 and submitted to the editor by Al Kraus. I want the minutes of this meeting to record what I'm about to say in their entirety. I'll provide the clerk with an electronic copy, so you don't have to take detailed minutes. The subject of this letter was resolution 2022-14, which is titled "Events". Mr. Kraus suggests that this resolution was sprung on the public. First of all, a resolution is not for the general public to obey. A resolution is the same as a motion by the City Council. Rather than being recorded in the meeting minutes, it is given a number for filing purposes and documented in the resolution. A resolution is used to set internal policy for the use of the mayor and City Council such as personnel policy, city procedures, use of city facilities and establishing fees that are required by ordinances like sewer and water. A resolution is not a city law which is required to be obeyed by the citizens and it is not enforced by the city. A resolution cannot be vetoed. Mr. Kraus states in his letter and I quote, "this resolution had apparently been worked out in private work sessions and has already been agreed upon." He continues to state, and I quote, "what they did simply is not right or ethical". All

the regular City Council meetings since the last of August of this year, have addressed the subject of events held in Mackay. The regular Council meeting of 8/23, event vendor fees was Item six on the agenda. Regular City Council meeting held September 13, 2022. Event vendor fees was item seven on the agenda. Regular City Council meeting held September 27, 2022, titled resolution 20 2214 city owned property was item seven on the agenda. Regular City Council meeting held October 25. Resolution 20 2214 entitled events was item eight on that agenda. This is something that has been discussed for several months. And at great length, minutes of these meetings and what was discussed are available from the City Clerk. And they're also posted online. I quote Mr. Kraus again when he stated, "give the City Council a chance to reverse their errors in judgment". I, and each of these Council members took an oath as we assumed our elected offices to uphold the Constitution of the State of Idaho which includes all laws of the State of Idaho. These laws include laws governing organized events, vendor licenses, and state and local sales tax as stipulated and referenced in that resolution 2022-14. None of the items addressed in the Resolution are even remotely new to this community. Permits to use City of Mackay property were first required by Ordinance 425 over seven years ago. Vendor licenses in the City of Mackay have been required for over five years by Ordinance 441. And city sales tax became effective when it was approved by the citizens of Mackay at an election in 2019, which is over three years ago. I have copies of the Idaho codes which retailer's, vendors, sponsors, promoters are required to obey if they are to do business in the State of Idaho. These codes take precedence over any and all ordinances of the City of Mackay and are not subject to change or discussion at this meeting. Resolution 2022-14 lists the City Ordinances as I've just read and associated forms to use to obtain permission to use a particular City property. This resolution is to be used by City personnel to ensure every requester is treated equally and fairly. I would turn time over to the Council if any of you have any further comments.

SHERIFF'S REPORT

Mayor Olsen confirmed with Deputy Harvey that we had no Sheriff's report.

LRED

Mike Evans said our organization received a \$20,000 grant from rural development, to develop a tourism plan for our town. We are working with the Department of Commerce. We met with the head program manager, Karen Appelgren and her assistant David Clark. We're going to meet with them again on the 17th of November for another working session. They are interested in coming to Mackay in the spring.

I'm working with Byron Pearson and Brian Patten at the Bureau of Idaho water resources. There's a \$2 million repair grant sitting out there for the dam. I've helped with the irrigation district to get that money in and to work on the mechanisms of the reservoir, the gates, the tower, spillway, etc. This is just a mechanism to speed things on that.

The Custer County career fair in Challis was successful. There were 25-30 businesses, Mackay High School and Challis high school were there, a lot of business interactions. This was the first annual career fair, next year we hope for more participation from Mackay.

Mayor Olsen asked, did they say anything about rotating the career fair, holding it and Mackay?

Mr. Evans replied, that's a good point to bring up Wayne. This was so big, we'd need a very large facility, we have a good working relationship with the director, I've been invited to their meetings, I'll bring that up. The Idaho Transportation Department was at the career fair, they had Cody Schmidt with a CDL driving simulator programs and narrative writing experience. We talked about the speed limit signs; he talked about the recent signs he put in Challis. They're ready and willing, there's quite a bit of latitude he has to work with you guys to get some signs out. Just call Cody, there would be some cost sharing. 4 or 5 thousand dollars, I think.

Mayor Olsen replied, I'll put that on our staff meeting agenda.

Mr. Evans continued, we also talked about the INL drone program that's coming up, in the spring. Mackay authorized the use of the airport. There were some questions about what they will be doing north of town flying around the reservoir, etc. So, we contacted Steve Smith, Custer County Commissioner. He said he anticipates questions from the public and he would like to hear more information on that. He's going to schedule to talk to the Custer County Commissioners, a little more specifics about what we found so we don't get issues with the residents.

Mr. Evans said, we had the Mackay barbecue 2022 post debriefing, to capture what went well and what didn't go so well, we're just trying to pull that in and make the next year even better.

In conclusion, Mr. Evans said, with this event resolution. LRED does support the community to have their opportunity for public input.

DISCUSS RESOLUTION 2022-14 EVENT FEES

Al Krause said, I want to apologize to the Mayor and the City Council, reading these statements, I read an article in a newspaper, and if I'd known better, it probably wouldn't have been published.

Mayor Olsen asked, are you saying you will publish a retraction to that?

Mr. Krause replied, No sir. I'm saying I will post an apology, saying that the meetings were open to the public, but what was being discussed was not properly put out. It was illegal

Mayor Olsen said, you're mistaken there, too, I'm sorry to say.

Mr. Krause stated, a lot of the community are concerned about the ordinance that was passed, I do not believe that proper public input was solicited. This is something that affects all fairs and events and is an event killer. These events are the fabric of the community. They help bring tourists in town at the market on summer. If these things are moved downtown or cancelled because of operational for the City Council, we will lose revenue to the city tax revenue. This is about money. If I understand you guys

correctly, you want to bring in revenue. The more activities we have with the summer market, we will have an antique fair downtown at the same time. The more tourists we're going to bring.

Mayor Olsen said, We're on the same page. We want people to come.

Mr. Krause said, I think we need to repeal it and go back to square one. Let's work together as a team. I do have copies of the petition. This is not a petition for recall, is merely a request that you repeal, it is signed by 50 something people.

Mayor Olsen asked, you're not submitting this to the Council as an official petition.

Mr. Krause said, I am not sure. It is merely a request that the public's backs and I could have got three times these signatures if I had more time to work on so thank you.

Jesse Cecil said, thank you everybody for coming out this evening and for the Council members to give us a chance to discuss information for our presentation. Our family organized the summer market this year and several vendors, up to 23 regular vendors have been at the market. On average, we saw around a 100 people in foot traffic every week, punctuated by a few weekends of around 200 folks. Having a substantial number of vendors at the market is crucial to encouraging more people to stop in and have a chance to look and browse around and spend money inside the City. We desire to see this event grow, it's a benefit to the City and residents and businesses in Mackay alike. This Resolution, however, will effectively end the summer market. Mr. Cecil went on to include a few examples of profit and loss with the resolution in place.

Mindy Cecil stated, the City of Mackay right now charges the summer market more than Challis, Ketchum, Haley, Arco and Stanley. We called and verified this information. Most of these places don't charge any fee at all, including the use of a park because they realize the benefits the city where they can get in. So in conclusion, how can we expect to draw any more vendors for any of them, besides the summer market or any of that, when other locations are so welcoming in business, we're not.

Mayor Olsen said I think we need to explain what's really going on here. There's a difference between a resolution and an ordinance. A resolution is just documenting what the Council is thinking and what they're saying. It is meeting minutes. This same resolution could have been written up in the minutes of a meeting. The reason it took us so long to discuss this is there are Ordinances on the books of the City of Mackay. Ordinance 425, published over seven years ago, use of City property. Anybody that wants to use City property, all they got to do is fill out a form. The City approves the use of that form. For instance, this one happens to be used in the rodeo grounds. That was used as the model for all the other fees that were charged. There's a \$200 cleanup fee that is charged for the use of any City property, the City does not charge a use fee. If the City charges a use fee, then they're liable for any accident that occurs on that property. Those cleaning deposits, to my recollection, have never been kept. The fees have always gone back to the organization because most of the organizations either make the place better than it was before, or they make it at least as good as it was. Ordinance 465 Vendor Fee's was put into place about five years ago, because the merchants in Mackay said it's not fair for me to have a business and have to pay Social Security for my employee. It's not fair for me to

have to pay insurance on my business. It's not fair for me to have to pay taxes to the county for my business when this truck rolls in, sets up in a corner across from my business and starts selling and taking business away from my business because they have none of those expenses. This vendor fee of \$50 per year was established. That's been on the books for over five years. Last year because we didn't know how we were going to work this out. And, you know, it was a lot of discussion on how we were going to comply with the laws of the State. We're not going to get into State laws, because you can look up the State laws of Idaho tax code. We passed an Ordinance establishing the City of Mackay resort tax of 3%. That 3% is on beds, occupancy tax, food and beverages. It's on recreational vehicles, recreational rental of a snow machines, rental of a golf clubs. It's on that type of rent. It's only on these things. There's no 3% tax on the jewelry that is sold at the Summer Market. There's no 3% tax on baked goods if somebody's selling at Christmas Bazaar. These three ordinances have been established so we treat everybody fairly. We've been charging the rodeo people, a \$200 deposit for cleaning for years. Why aren't we charging everybody else that wants to use t City property that fee? Why aren't we charging \$200 cleanup fee. The motorcycle group that comes in pays a \$200 cleanup fee. Now, this \$200 cleanup fee was waived for the rodeo after the barbecue because it was for a benefit. We didn't even go through the paperwork. We just didn't use it. That's where this resolution comes in. How are we going to implement these laws that are already on the books? There are rules on the books that are above and beyond the City of Mackay.

Councilman Foster said I think there's some confusion on intent. I get the feeling, and I've heard from folks that there's a feeling that the City Council and the mayor was trying to hinder the summer market. I think you folks have been to a couple of meetings, I recall at least two meetings, myself saying, I don't care what we do, but let's just be consistent. I believe it was the City's intent to simplify not only the summer market, but all the events, we tried to pull in as many events as we could under the coverage of the City. It's also apparent to me that there is real concern that we made a mistake regarding the farmer's market. The true intent was to simplify and encourage, not to make it more cumbersome and discouraging. I think we do need to get into the weeds and hear what the concerns are and then see if there's any issue with ordinance.

Mayor Olsen said we will take the information and we'll review that ordinance (Vendor License), and we'll have it as a discussion at another City Council meeting. The question I think Jesse asked was, What about the market? I hope the market goes, and the City in this Resolution said we're not going to have enforced state laws. But it behooves anybody that is going to have any event in the State of Idaho, not to dodge the Idaho State Tax Commission. Get an event number, and they will issue you a free temporary business license. And then it's up to you to do whatever you want to do with the taxes for that event. With the exception of collecting the 3% sales tax on these items. That has already been passed by the City. Not the City Council. It came up for a vote, passed by the citizens. One of the things that I found out in researching the Idaho State tax laws is that the sponsor of an event cannot collect a City resort sales tax, they can, and they are required to collect the State sales tax

Councilman Foster said, here's what I think needs to happen. I mean, obviously, there's a lot of confusion. There's some misinterpretation on both sides. And as you can tell, there's a lot of very clumsy State laws, and perhaps at least two City ordinances that we all need to take a look at. And what I would suggest, since it's already an hour into the meeting, is that we come back. And I think the

technical term is a working meeting. And we are including Mr. Cecil, and some other folks from the community that have strong feelings and knowledge, like you present it. And we work through this so that we come up with a product, like we tried to do that encouraged us not only the summer market, but all these activities that we have in Mackay, because I truly think that Council and the Mayor's intent was not to make it more difficult not to put people out of business, but to try to get some consistency.

I'm going to suggest to the Council that we take that comment in your consideration. And we asked that this group here, select representatives, and at least six or eight. And we will let you know when the work session is. And as was well pointed out, that's the way the meeting will be run. And that way, we will not be working on a resolution. But we will be working on an ordinance revision, because that's going to be the law.

KID'S CREEK BRIDGE ON CAPITOL AVE REPLACEMENT

Mayor Olsen stated, as the Council is aware, there's been a lot of money doled out because of COVID and because of build back better. Idaho Transportation Department did a survey of all the bridges in the State of Idaho, and we asked them to evaluate our bridge that's on Capitol that crosses Kids Creek down by the golf course, and that came up number two on their priority list. This is at no cost to the city; the bridge will be replaced. And the next week or so, LLHTAC has let out the contract for doing some ground drilling in soil testing and stuff like that. They have also hired Keller Engineers to design the bridge. And we will have some input into the design of that bridge. We're hoping that that will be accomplished before we get the summer traffic. I've talked with the individual today on the phone, they're moving ahead. That's where I got the information about the core drilling and the designing of the bridge, and I told him that we had no other access to areas on the rest of Capitol Ave.

Councilman Foster said, with that in mind and it sounds like it's the right time to maybe engage the folks on the other side of the bridge and hear what their concerns are because I believe there's obviously access concerns that that works going on. And possibly one of the comments I heard was, well that single lane bridge slows people down. Sometimes they go through there pretty quick. Let's engage them early on so that their concerns can be incorporated with the design, and I don't know how you'd want to do it?

Mayor Olsen replied, that would be in Deans realm. But I think we ought to just table it until we find out what Keller's design is. Because they said they were designing it so we could have the bridge put on and two segments and keep access so that we would have access some way or another without having to drive through the creek.

Councilman Wall asked, can we get a representative here to discuss this a little bit further? This a great opportunity, but I also don't want to start implementing this thing and they're delayed getting started, and they move in the first to June to build a bridge and we've got no access.

Mayor Olsen said right now they're still in the preliminary stages.

Councilman Foster added, I would suggest, that's the time to contact the people that might be affected while it's in the preliminary, so it doesn't come as a surprise.

Mayor Olsen replied, we can send a letter out to the people that live in that area and tell them what's going on, that the bridge is going to be replaced, and we'd like your comment, or know what their concerns are going to be. We'll try to get Keller Engineering firm here for that type of dialogue.

RESOLUTION 2022-16 PRIVATE SEWER LIFT STATIONS*

John Farish said you guys keep telling me that you're not going to maintain this lift station because it's a single-family dwelling station. My land was subdivided in 2002 for three or more lots. So, there's four lots on this property. I have a letter here from the people who installed it, Sherry and Kelly Webb, with all the agreements that they made with the City, all the agreements they made with the neighbors. I've got Idaho plumbing codes 721.1 You should probably look at that. I cannot maintain that lift station that is not on my property. I can get my sewer tie to it, but I cannot maintain it if it is not my property. I got some valid questions for this lift station. I know you told me you were going to look into it and see who actually owns it.

Mayor Olsen replied it's owned by Brandon and Tagen Baker

Mr. Farish replied in fact their names are in this letter from Kelly and Sherry Webb so there should be managed from 1996 on all this was made illegal and from there.

Mayor Olsen responded, we haven't been able to find anything about the lift station and we contacted the recorder in Challis and there's nothing recorded with the County.

Councilman Foster added, so I think that info is needed, I mean I think that's what we agreed to at the last meeting was going to gather all the information sit down go through it and then make a decision and I think it's important that you be at that meeting when we sit down and start reviewing that and in my opinion get this resolved as soon as we can but it's important that Greg be here since he's the person responsible for sewer and water.

Mayor Olsen called a recess for five minutes at 7:27 pm

Mayor Olsen called the meeting back to order at 7:32 pm

COUNCIL MEMBER REPORTS

Councilman Wall stated, I spent some part of Sunday at the business park I hope I got the rain gutters sealed on the clinic and LRED's building. I think they will last the year hopefully. I got all the heat cables in them. Everything's running. I got the lights switched over for daylight savings time it's a challenge I think the buildings are ready for winter. If the weather improves, I'm going to try to work on the gutter behind the fitness center. I needed a bigger ladder, so that's my next endeavor.

The next thing that I have, if there's any way, we can get this on your crew, we have a large hole on the corner of Cedar and College, it's getting deep there and it's starting to break the street away. It would handle a full load of material, and it still would accommodate some drainage. The second hole is at the

end of this alley right down here by the grocery store. It's huge, and It's probably going to take a couple loads. If there's any way before we get any more snow, to address them before it ruins the streets anymore.

Councilman Mangum asked Mayor Olsen, I'd like to ask you if you'd like to light the Christmas tree on Winterfest.

Mayor Olsen replied, I would be honored to light the Christmas tree. Thank you.

Councilman Mangum continued, Christmas tree ornaments decorations, do you know when those will go up?

Mayor Olsen replied, we're going to try and get those up next week. We'll have to wait for non windy, sunshiny day, without snow so they don't have to plow snow. They took them down very carefully last year and stored them nicely, so they're hoping that we don't have to do a lot of repairs.

CITY CLERK/TREASURER

Mayor Olsen stated, we are officially in the second month into the first quarter of FY 23.

Councilman Foster asked, at one time I saw the fund codes listed with the total, with the percentage spent today on the budget.

Councilman Wall said, I agree, especially on the business part because we I never know what when we got any anything of income.

Clerk Teninty said, I can do that.

Councilman Wall made a motion to approve the Treasurer's Report. Councilman Mangum seconded. Motion passed unanimous.

Councilman Wall made a motion to pay bills. Councilman Foster seconded. Motion passed unanimous.

Councilman Wall made a motion to approve the minutes of regular City Council meeting held on September 27. Councilman Foster seconded. Motion passed unanimous.

MAYOR REPORT

Mayor Olsen started, the long awaited jetter truck is here, and the guys tell me is a honey of a truck. It may be old, but it doesn't have a lot of miles on it and it's in great shape and the brakes were just redone on it because they went to bring it back a week or so ago and the brakes failed. The Shelly crew wouldn't let it out of the yard. The Shelley crew brought it to Mackey. Our crew is busy doing snowplow, snow removal and getting lagoons and stuff ready for winter and they haven't had a chance to test out the pumps and everything, but they say it's got a Cummins diesel that drives the pumps on that truck.

Chardon and Dwayne to order another 1000 gallons of diesel to put in the tank. Okay, so that's been ordered. The broom for the front of the Cat has been on order is now in Idaho Falls. Dean about lamppost.

Councilman Wall replied, I got a contractor working on it. He thinks he can fix everything that's there. He was looking for the new base and I give him directions where it's at. So yeah, it's in the works to be repaired soon.

Mayor Olsen continued, I was told that Pitney Bowes mail machine has cut down on the time it takes to stamp our mailings and should also cut down on the cost of the mailings. The other problem that we're having is, with our water, billing software, sewer and water, it's not giving the reports that our clerks feel that they need. So, I've asked Michelle and Vicki to look into a different system. They're checking around with other cities to see what they use. It's going to be an expense. But it will go right hand in hand with the new meters that we've got.

Clerk Teninty added, right now Vicki's entering payments twice. She enters them in the old system so we can get good reports.

Councilman Mangum made a motion to adjourn the meeting Councilman Wall seconded. Motion approved unanimously.

Meeting adjourned at 7:55pm.

Wayne Olsen
Mayor Olsen

M. Teninty
Clerk Teninty

1/10/23

