

## WORK SESSION

The City Council and City staff of the City of Norfolk, Nebraska met on Monday, August 8, 2022, beginning at 4:00 p.m. in the City Council Chambers, 309 N 5th Street, Norfolk, Nebraska.

The following elected officials were present: Councilmembers Frank Arens, Shane Clausen, Corey Granquist, Kory Hildebrand, Gary L. Jackson, Andrew McCarthy, Thad Murren and Rob Merrill. Absent: Mayor Josh Moenning.

Staff members present were City Administrator Andy Colvin, City Attorney Danielle Myers-Noelle, Assistant City Administrator Scott Cordes, City Clerk Brianna Duerst, Economic Developer Candice Alder, City Engineer Steven Rames, Assistant City Engineer Anna Allen, Communications Manager Nick Stevenson, Parks and Recreation Director Nathan Powell, Facilities Manager PJ Evans, Administrative Assistant Kylee Soderberg, Administrative Assistant Stacey Hansen, Director of Planning and Development Val Grimes, Police Chief Don Miller and Director of Administrative Services Lyle Lutt. Also present was Gerry Guenther with Norfolk Daily News.

Notice of the meeting was given in advance by publication in the Norfolk Daily News, the designated method of giving notice, as shown by affidavit of publication, and notice of the meeting was given to the Mayor and all members of the Council prior to the meeting.

The Council President presided and the City Clerk recorded the proceedings.

The Council President informed the public about the location of the current copy of the Open Meetings Act accessible to members of the public.

Prior to discussion on items on the agenda, Council President Merrill stated there was a citizen that would like to address the Council.

Jim McKenzie, 1412 Longhorn, Norfolk, NE, said continuation of the meeting would be a violation of open meeting act. McKenzie said there are no meeting minutes from the August 1, 2022 Work Session available for inspection on the city's website. Nebraska State Statute Section 84-1413 (5) states, *Minutes shall be written or kept as an electronic record and shall be available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier.* Nebraska Statute Section 84-1413(6) states, *Beginning July 31, 2022, the governing body of a natural resources district, the city council of a city of the metropolitan class, the city council of a city of the primary class, the city council of a city of the first class, the county board of a county with a population greater than twenty-five thousand inhabitants, and the school board of a school district shall make available on such entity's public website the agenda and minutes of any meeting of the governing body. The agenda shall be placed on the website at least twenty-four hours before the meeting of the governing body. Minutes shall be placed on the website at such time as the minutes are available for inspection as provided in subsection (5) of this section. This information shall be available on the public website for at least six months.* McKenzie said there was a great deal of discussion at the last meeting and none of that information from that discussion is available for public inspection in accordance with the requirements of the open meeting act.

Secondly, the agenda item is titled, "Budget discussion for November ballot initiative."

McKenzie said that is invalid in accordance with Nebraska Constitution Article III, Section 1, which states, *The legislative authority of the state shall be vested in a Legislature consisting of one chamber. The people reserve for themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls, independent of the Legislature, which power shall be called the power of initiative.* McKenzie said a ballot initiative is by petition. This agenda is not regarding a ballot initiative.

Thirdly, the agenda item does not contain sufficient detail. Nebraska Statute Section 84-1411 (1)(e) states, *Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.* McKenzie said this agenda item concerns a possible \$70 million expense, of which is mostly recreation projects, to be paid with a half-cent sales tax over 20 years. Nothing in the agenda would give the public any idea as to the enormity of what is being considered. McKenzie said that stating that no action will be taken on items discussed is not an allowable reason for violation of this provision of the Nebraska open meetings act.

Lastly, Nebraska Statute Section 84-1414 (4) states, *Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.* McKenzie said Council members need to be aware of these violations.

Danielle Myers-Noelle, City Attorney, said Mr. McKenzie is correct that we are required to follow open meetings act. Noelle said it is her opinion that there is nothing rising to level necessitating us to do a motion to adjourn the meeting. Noelle said this work session was born out of an honest and good will intention to have an open conversation about what is all going into the project for November and further educate the public. There is a good faith effort to comply with the open meetings act.

Myers-Noelle said the goal of the open meetings act when putting things on an agenda, is so that a reasonable person can understand what will be discussed. A reasonable person would understand that we are talking about projects that the Council may or may not put on the November ballot.

Councilmember Jackson said the projects to be discussed was, in part, a result of a survey that was done in 2017. If the public does not want the projects to be completed, they can vote against it.

Myers-Noelle said she cannot speak to the results of the survey that was completed. Under State Statute, in order for the ballot question to go before the public for a vote on the sales tax increase and bond issue related thereto, the first step is the City Council.

Myers-Noelle said this is a really hot topic and the Council has made it clear their desire for all the information to move forward. The goals in that regard have been in good faith. Myers-Noelle said that it is her opinion, as it pertains to the open meeting act, that we have complied in a good

faith effort. A reasonable person would be able to understand what this meeting is about and the topics to be discussed. If the Council is okay with moving forward, Myers-Noelle is comfortable moving forward as well. If Council uncomfortable with moving forward, based on the information that Mr. McKenzie has provided, we would be looking at a motion to adjourn. There would be no discussion, just a majority vote.

There is nothing here that is aiming to subvert the will of the open meetings act. There are no decisions to be made at this meeting. The goal of this meeting is to advise and to give the public a chance learn more as the Council does, since the Council will be asked later this month to move forward the bond issuing and sales tax increase.

Granquist asked about the requirement of the minutes being posted on the website. Myers-Noelle said we are not perfectly in compliance with this portion of the open meetings act. Good faith efforts are being made to comply.

Councilmember Clausen said if the conversation is only going to be around the legality of the meeting, time is being wasted.

Councilmember Merrill said he feels a reasonable person would be able to understand the purpose of the meeting. It would be the Council's prerogative to cancel the meeting. No action needed to continue.

Arens asked if this should be discussed in closed session due to allegations of criminal misconduct. Merrill said that he does not believe that would be proper course as there are only allegations at this time.

Arens said if there is a violation, he does not see where we move forward.

Granquist moved, seconded by McCarthy to adjourn the meeting. Roll call: Ayes: Granquist, Arens, McCarthy, Murren, Clausen and Hildebrand. Nays: Merrill and Jackson. Absent: None. Motion approved 6-2.

The meeting was adjourned at 4:21.

---

Josh Moenning  
Mayor

ATTEST:

---

Brianna Duerst  
City Clerk  
( S E A L )