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February 14, 2022

Regular meeting of the City Council of the City of Two Harbors, Minnesota, held on Monday, February 15, 2022, at 6:00 p.m.

The meeting was called to order by President Redden.

Members present, Councilors: Woodruff, Glaser, Rennwald, Swanson, Passe, Erickson, Redden. 7.

Others present: Interim Administrator/Finance Director, Pietila
City Clerk, Nordean
Community Development/Planner, Sterbenz
City Attorney, Costley.

Council President Redden reported that the Councilors have been asked to disregard a communication from Sara Wisdorf, Lake Superior Realtor Association as it was expressed that the letter was a blanket letter sent to all communities considering moratoriums and that the opinions expressed in the letter are not the same as the local realtors.

Clerk Nordean requested that the following Consent Agenda Items be moved to New Business: #16. Authorizing payment to Bolton & Menk in the amount of \$651 for professional services for the 2021 and 2022 Street & Alley Improvement Project; #18. Authorizing the Mayor and City Clerk to execute and deliver a Memorandum of Agreement for the Rustic Creek Gully Stabilization and Erosion Control Plan Funding between Lake County Soil and Water Conservation District, by and through the Soil and Water Conservation District Board of Supervisors, the City of Two Harbors and Rustic Creek Townhomes; and the addition of Consent Agenda Item No. 29. A communication from Sarah Wisdorf, Membership and Operations Manager, Lake Superior Area Realtors, moving Consent Agenda Items 5. A communication from Mark S. Johnson, indicating his concern with a potential conflict of interest involving solicitation of funds by Mayor Swanson for the Two Harbors Performing Arts Center through Garage Starts; 6. A communication from Nichole Bjornrud, Special Investigations, Office of the State Auditor, requesting assistance and cooperation in obtaining information concerning any disbursements which may have been made by the City to the following entities: Burlington Station LLC, First Day Events, Garage Starts, LLC, Life Garage Holdings, LLC, Life Garage LLC, PureDriven, LLC, Vibrant Two Harbors, and Callie's Sweets; 22. Accepting the recommendation of the Personnel Committee to work with Flaherty & Hood on the hiring of a consultant to provide interim Administrator services for a period of 1-2 years; 23. Accepting the recommendation of the Personnel Committee to refer to the City Attorney, a proposal for residency requirements for membership on certain City boards and commissions; 24. Accepting the recommendation of the Personnel Committee to refer to the City Attorney, a review of the process of making citizen appointments to City boards and commissions; 25. Accepting the recommendation of the Personnel Committee to refer to the City Attorney, a proposal to amend the City Code to not allow the appointment of Council members as citizen

members on City boards and commissions; 26. Accepting the recommendation of the Personnel Committee that an annual review of the city's Conflict of Interest Policy, Code of Conduct, Communications Policy, Respectful Workplace Policy and all pertinent documents be conducted with the City Council, that the Council be provided with copies of these policies and requested to sign an acknowledgement that these documents have been reviewed annually; and 28. Accepting the recommendation of Mayor Swanson to appoint Phil Arnold to the City HRA; from the Consent Agenda to New Business.

Councilor Glaser requested that the communications from Mark Johnson and Nichole Bjornrud, Special Investigations, Office of the State Auditor, be referred to the City Attorney.

Motion by Rennwald and Swanson approving the agenda with the changes recommended. Carried by a unanimous yea vote of all members present on roll call.

Appearances:

Dan Cruikshank, Cedar Development, LLC and SpokeNGear GBC, was present and addressed the Council regarding his intentions to expand his business to nearly triple the existing space and create an additional twenty jobs. He requested that the City submit an application for IRRR Infrastructure Development Grant to provide funding assistance for the SpokeNGear/Cedar Development Expansion Project, for an amount not to exceed \$350,000. Motion by Swanson and Rennwald that **RESOLUTION NO. 2-43-22 AUTHORIZING STAFF TO SUBMIT AN APPLICATION FOR AN IRRR INFRASTRUCTURE DEVELOPMENT PROGRAM GRANT TO PROVIDE FUNDING ASSISTANCE FOR THE SPOKENGear/CEDAR DEVELOPMENT EXPANSION PROJECT FOR AN AMOUNT NOT TO EXCEED \$350,000** be adopted as read. Carried by a unanimous yea vote of all members present on roll call.

John Ramos, Duluth Monitor, was present and addressed the Council expressing concerns with the proposed underwater hotel project, a lack of transparency and involvement with the mysterious Mr. O, the reclusive billionaire. He pointed out that he believes that at this time, the chief investor in the project is Joe Swanson, who is the Mayor's brother. He expressed his belief that the mayor is pushing a project that is essentially going to benefit his brother and his opinion that this is a blatant conflict of interest.

Administrative Reports:

Miranda Pietila, Interim Administrator, was present and addressed the Council providing a review of items that staff has been working on including a software upgrade project, which is expected to take 8-12 months, sharing that Karrie Seeber is leading this project which includes an update to the city's utility billing software and she has done an excellent job. She explained that she is working on funding for the Wastewater Treatment Plant Project and that staff has been in contact with the City's natural gas consultants who are providing them with continuous updates of our natural gas purchasing during this extremely cold weather. She also talked about an unexpected water leak which was discovered and reported that there will be service disruptions in the area of the leak as repairs are made to the damaged line.

Tim Costley, City Attorney, was present and addressed the Council providing a presentation on the Attorney General Opinion received on February 22 regarding the Mr. O Podcast, the Vibrant Two Harbors website, Twitter post and New York Times Article. He reported that the Attorney General stated that Minn. Stat. Sec. 471.87 does not apply because there were no contracts proposed to the City and there was no evidence of personal financial interest of the Mayor. They also stated that the City Attorney is the appropriate official to analyze the factors that have to be considered in analyzing questions of City charter, ordinance or resolutions. He also noted that a letter from Mark Johnson has also been received, and if he was asked, he would analyze that under the same provisions.

He provided the Council with options for moving forward. Those options are as follows: 1. Do nothing; 2. Discuss and resolve among themselves; 3. Retain special counsel to render a written opinion; or 4. Ask him to render a written opinion.

He also addressed a potential conflict of interest associated with the Tall Ships Festival as addressed in a recent article in the Duluth News Tribune. He reported that the City has been asked to pull a DNR permit for the event. He expressed liability concerns with the City pulling the permit, noting that a contractual agreement would be necessary if the City was to pull the permit. He stated that his understanding that First Day Events would be the event planner. After reviewing an article in the Duluth News Tribune, he has confirmed through the Secretary of State's office that the articles of incorporation for First Day Events show Ashleigh Swanson as the incorporator, who he understands to be the Mayor's daughter, the registered office is 719 Third Avenue, which he understands to be the Mayor's residence and the articles of incorporation are signed by Sarah Koster, who is the Executive Administrator for Garage Starts and Pure Driven, at an address of 629 Seventh Avenue, which is the same address, he believes as Garage Starts and Pure Driven, for which the Mayor serves as CEO. He indicated that this is a potential conflict of interest.

He asked the Council to look at the provisions in the City Charter that talks about City contracts, officers not to be interested in City Code, Chapter 2, Section 2.61, Subd. 2. Conflicts of Interest and MN Stat. 471.87. Public Officers, Interest in Contract; Penalty, which he read aloud for them. He explained that it is important to know that all three rules state absolute prohibition of any contract or transaction that directly or indirectly benefits an elected official. Abstention from voting doesn't solve the problem. Is the nature of the interest such that it could reasonably influence voting. The City must assume until learning otherwise that each councilmember acting ethically and disclosing an interest. The request from the State Auditor seeking information about First Day Events should cause the Council to exercise caution. The League of MN Cities provides that conduct is not clearly prohibited still may seem inappropriate. This appearance of impropriety can damage a councilmember's image (as well as the city's reputation), making it worthy of consideration. He encouraged councilors to be transparent always and to consider those factors moving forward and always try to error on the side of not crossing the line.

Mayor Swanson reported that originally, it wasn't the intention for the City to pull the permit. He asked that the record reflect that he has requested that there be a review of the City Code of Conduct because it has been a concern of his for some time. He also reported that he was very clear that Sarah Koster was his admin and worked for him. He stated that he didn't understand a lot of it. He thought that he could just abstain from a vote.

Attorney Costley stated that he wanted to make it perfectly clear that there is an absolute bar on any elected official directly or indirectly benefitting from any contract with the City, noting that it doesn't matter if you disclose it, it doesn't matter if you abstain, it is a complete bar. He further clarified that this is stated in the Code, the Charter and State Statute.

Swanson reported that his counsel has shared with him that, particularly in small communities, people will have conflicts of interest. His understanding is that he should be transparent, but that people can have contracts as long as they disclose them.

Attorney Costley replied that in his opinion it is an absolute bar.

Trees & Trails Commission:

Councilor Passe reported that the Trees & Trails Commission met on January 26 and welcomed two new members, discussed trail realignment with Highway 61, the Odegard Park Trail Project, and the 2022 Work Plan for Trees and Trails. He reported that there is no funding for paving the Agate Bay Trail and noted that the location isn't on City property.

Edna G. Commission:

Councilor Woodruff reported that the Edna G. Commission has installed bubblers near the tug, then found out that a permit was required to do so, the bubblers have now been removed and application for a permit is in process.

Utilities Committee:

President Redden reported on a recent meeting of the Utilities Committee where they discussed natural gas pricing, water treatment project and the roadway and trail around the Water Plant.

Public Safety Committee:

Councilor Rennwald reported that traffic for the Tall Ships Festival was discussed at the last safety committee meeting.

HRA:

Vice President Glaser reviewed items discussed at the last meeting including benefits for their employees, security cameras for the facility and membership issues.

Personnel Committee:

Vice President Glaser reported that the committee met and discussed the City Administrator position, the Public Works Specialist position, and agenda items listed on the agenda pertaining to committees and commissions.

President Redden announced that he is assigning himself and Councilor Woodruff to the Ad Hoc Committee on Vetting Ethical Concerns.

Motion by Woodruff and Glaser that the following consent agenda items:

1. Approving minutes from the January 20 Special and January 24, 2022 Regular City Council meeting.
2. **RESOLUTION NO. 2-44-22 ALLOWING CLAIMS AGAINST THE CITY OF TWO HARBORS IN THE AMOUNT OF \$2,724,318.19.**
3. Approving payroll for the second half of January, 2022, in the amount of \$239,087.44.
4. A memorandum from Joe Rhein, Bolton & Menk, providing an update of City Engineering Projects.
7. A communication from the MN Department of Agriculture regarding the Gypsy Moth management program.
8. Authorizing a letter of request to MNDOT for 2025 Highway 61 Project Lighting.
9. **RESOLUTION NO. 2-45-22 ACCEPTING THE PROPOSAL OF MCCOY CONSTRUCTION & FORESTRY FOR THE PURCHASE OF A NEW JOHN DEERE 320G SKID STEER WITH NEW SNOW BLOWER FOR AN AMOUNT OF \$56,350 LESS TRADE-IN FOR THE 2000 BOBCAT 73 SKID STEER AND BLOWER FOR AN AMOUNT OF (\$10,500) AND PLUS OPTIONAL TIRES/WHEELS FOR AN AMOUNT OF \$2,300, FOR A TOTAL AMOUNT OF \$48,150.**
11. **RESOLUTION NO. 2-46-22 AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER A REVISED GOLF CART LEASE WITH CLUB CAR LLC FOR THE 2023 – 2027 GOLF SEASONS.**
12. **RESOLUTION NO. 2-47-22 ACCEPTING THE PROPOSAL OF JIM PERRAULT CONSTRUCTION FOR REPLACEMENT OF CERTAIN WINDOWS AND THE FRONT DOOR AT THE COMMUNITY CENTER FOR AN AMOUNT OF \$42,750.**
13. **RESOLUTION NO. 2-48-22 AUTHORIZING PAYMENT TO LAKEHEAD CONSTRUCTORS IN THE AMOUNT OF \$282,909.83 FOR PAY APPLICATION NO. 3 FOR THE WASTEWATER TREATMENT PLANT PROJECT.**
14. **RESOLUTION NO. 2-49-22 AUTHORIZING PAYMENT TO BOLTON & MENK IN THE AMOUNT OF \$2,994 FOR GENERAL ENGINEERING SERVICES FROM NOVEMBER 27 – DECEMBER 24, 2021.**
15. **RESOLUTION NO. 2-50-22 AUTHORIZING PAYMENT TO BOLTON & MENK IN THE AMOUNT OF \$806 FOR PROFESSIONAL SERVICES FOR THE 2019 STREET & ALLEY IMPROVEMENT PROJECT.**
17. **RESOLUTION NO. 2-51-22 DESIGNATING 517 OLD ELECTRICAL METERS AS DISCARDED EQUIPMENT AND AUTHORIZING THE ELECTRICAL SUPERINTENDENT TO DISCARD OR RECYCLE THEM.**

19. Authorizing expenses for the Mayor or councilors who may wish to attend Capital Days in St. Paul.
20. Authorizing the establishment of a temporary committee, to be appointed by the Council President, consisting of councilors and staff for the purpose of considering options and making recommendations to the council regarding a proposed Liquor Store Project.
21. Authorizing the establishment of a temporary committee, to be appointed by the Council President, consisting of councilors and staff for the purpose of considering options and making recommendations to the City Council regarding the RFP for Strategic a Plan.
27. Approving the request of the Electrical Superintendent to allow he and Evan Sandretsky to attend the MMUA 2022 Meter School Training in Marshall, MN.
29. **RESOLUTION NO. 2-52-22 AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER A JOINT POWERS AGREEMENT BETWEEN THE CITY OF TWO HARBORS AND LAKE COUNTY FOR ODEGARD PARK TRAIL CONSTRUCTION.**

be adopted as read. Carried by a unanimous yea vote of all members present on roll call.

Unfinished Business:

Motion by Woodruff and Glaser that **RESOLUTION NO. 2-53-22 DECLARING THIRD AND FINAL READING OF ORDINANCE NO. 125, SECOND SERIES, AN ORDINANCE OF THE CITY OF TWO HARBORS, MINNESOTA AMENDING SECTION 4.42 OF THE TWO HARBORS CITY CODE CONCERNING SHORT TERM RENTALS FOR THE PURPOSE OF ESTABLISHING A MORATORIUM ON ALL SHORT-TERM RENTAL PERMITS RECEIVED AS OF THE ADOPTION OF THIS ORDINANCE TO END NO LATER THAN MAY 15, 2022** be adopted as read. Carried by a unanimous yea vote of all members present on roll call.

Motion by Woodruff and Passe referring to the City for review, the recommendation of THEDA to approve certain amendments to their by-laws. Carried.

Motion by Passe and Erickson to table the directing of staff whether or not to make application for a DNR permit for the use of DNR property near Agate Bay for the tall ships Festival was carried by the following vote: Yeas: Woodruff, Glaser, Rennwald, Erickson, Redden. Nays: Passe. Abstain: Swanson. 1.

New Business:

Motion by Erickson and Woodruff that **RESOLUTION NO. 2-54-22 AUTHORIZING PAYMENT TO BOLTON & MENK IN THE AMOUNT OF \$651 FOR PROFESSIONAL SERVICES FOR THE 2021 AND 2022 STREET & ALLEY IMPROVEMENT PROJECT** be adopted as read. Carried by a unanimous yea vote of all members present on roll call.

Councilor Passe left the room.

Motion by Woodruff and Rennwald that **RESOLUTION NO. 2-55-22 AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER A MEMORANDUM OF**

AGREEMENT FOR THE RUSTIC CREEK GULLY STABILIZATION AND EROSION CONTROL PLAN FUNDING BETWEEN LAKE COUNTY SOIL AND WATER CONSERVATION DISTRICT, BY AND THROUGH THE SOIL AND WATER CONSERVATION DISTRICT BOARD OF SUPERVISORS, THE CITY OF TWO HARBORS AND RUSTIC CREEK TOWNHOMES CONTINGENT UPON A REVIEW BY THE CITY ATTORNEY be adopted as read. Carried by a unanimous yea vote of all members present on roll call.

Councilor Passe returned to the meeting.

Motion by Swanson and Glaser, referring to the City Attorney and Ad Hoc Committee, a communication from Mark S. Johnson, indicating his concern with a potential conflict of interest involving solicitation of funds by Mayor Swanson for the Two Harbors Performing Arts Center through Garage Starts. Carried.

Motion by Swanson and Passe, referring to the City Attorney, a communication from Nichole Bjornrud, Special Investigations, Office of the State Auditor, requesting assistance and cooperation in obtaining information concerning any disbursements which may have been made by the City to the following entities: Burlington Station LLC, First Day Events, Garage Starts, LLC, Life Garage Holdings, LLC, Life Garage LLC, PureDriven, LLC, Vibrant Two Harbors, and Callie's Sweets. Carried.

Motion by Glaser and Swanson accepting the recommendation of the Personnel Committee to work with Flaherty & Hood on the hiring of a consultant to provide interim Administrator services for a period of 1-2 years. Carried.

Motion by Glaser and Erickson accepting the recommendation of the Personnel Committee to refer to the City Attorney, a proposal for residency requirements for membership on certain City boards and commissions. Carried.

Motion by Erickson and Glaser accepting the recommendation of the Personnel Committee to refer to the City Attorney, a review of the process of making citizen appointments to City boards and commissions. Carried.

Motion by Glaser and Erickson accepting the recommendation of the Personnel Committee to refer to the City Attorney, a proposal to amend the City Code to not allow the appointment of Council members as citizen members on City boards and commissions.

Motion by Erickson and Glaser accepting the recommendation of the Personnel Committee that an annual review of the city's Conflict of Interest Policy, Code of Conduct, Communications Policy, Respectful Workplace Policy and all pertinent documents be conducted with the City Council, that the Council be provided with copies of these policies and requested to sign an acknowledgement that these documents have been reviewed annually. Carried by a unanimous yea vote of all members present on roll call.

Motion by Glaser and Rennwald that **RESOLUTION NO. 2-56-22 ACCEPTING THE RECOMMENDATION OF MAYOR SWANSON TO APPOINT PHIL ARNOLD TO THE CITY HRA** be adopted as read. Carried by a unanimous yea vote of all members present on roll call.

Announcements:

Mayor Swanson expressed appreciation to the Winter Frolic and City staff who worked to make the festival a success and congratulated the Lake County Board on their win in the annual curling match against the City Council. He expressed thanks to Dan Cruikshank for investing in the community and thanked the staff and the City of Duluth for their assistance with repairing the water leak.

Councilor Passe expressed appreciation to those in attendance at the meeting and being involved in the community.

Motion by Erickson and Glaser that the meeting adjourn. Carried.

Ben Redden, City Council President

Patricia D. Nordean, City Clerk