

July 9, 2020

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, July 9, 2020, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

Mayor Casper explained the seating arrangement and limitations for the Council Chambers and the overflow room (the City Annex Conference Room) due to the Center for Disease and Control (CDC) guidelines for social distancing due to the Coronavirus (COVID-19). She also stated there were several individuals outside of the building who were able to have dialogue amongst themselves as they were not able to personally attend the meeting. Mayor Casper indicated it was suggested that this meeting be held in The Civic Center for the Performing Arts (The Civic) facility, however, she explained that State requires this meeting be noticed at a minimum of 48-hours in advance. At the time of this meeting posting, it was unknown of the attendance of this meeting.

Call to Order:

There were present:

Mayor Rebecca L. Noah Casper
Councilmember Michelle Ziel-Dingman
Councilmember John Radford (by WebEx)
Councilmember Thomas Hally
Councilmember Jim Freeman (by WebEx)
Councilmember Jim Francis
Councilmember Shelly Smede

Also present:

All available Department Directors
Randy Fife, City Attorney
Kathy Hampton, City Clerk

Pledge of Allegiance:

Mayor Casper requested Councilmember Michelle Ziel-Dingman to lead those present in the Pledge of Allegiance.

Public Comment:

Mayor Casper requested any public comment not related to items currently listed on the agenda or not related to a pending matter.

Dennis Marsden appeared. Mr. Marsden stated he respects everyone's rights – those that are afraid and those that are afraid of having their rights violated. He indicated he previously sent emails (in May) to each member of the City Council, the mayor, and, the governor. This email included a statement that mandates which are unconstitutional are not law and they place people who invoke such mandates beyond the protection of the law and they become personally liable for their acts under the color of law. Mr. Marsden stated if the City were to invoke an ordinance in violation of rights, he would ignore it and would do so publicly with the intention of being sited, arrested, or, jailed. He would also fight this including going to court to test the laws that are constitutionally founded and those which are not. Mr. Marsden believes there is nationally gross violation of what's going on. His heart breaks for families and what is going on in the Country. He reiterated if he were to be sited, arrested, or, jailed he would assert his rights and would counter-sue. Mr. Marsden encouraged those with similar sentiments to voice their opinions. He expressed his appreciation to those who serve the community.

Jay Brewer appeared. Mr. Brewer stated the item that cannot be spoken about has been a matter of public discussion in the previous 3-4 days. He believes Mayor Casper would be interested in the number of people that share the same sentiments as Mr. Marsden. Mr. Brewer agrees with Mr. Marsden and is willing to occur any of the risks Mr. Marsden mentioned to protect the rights for freedom of speech, freedom of expression, and, not having the right to voice opinion of laws that may or may not be levied by the body. He also expressed his appreciation to those who serve as

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he truly believes it is a thankless job, just as thankless as being a policeman or a soldier. Mr. Brewer stated when a mandate that is shared the way that this has been shared in this instance, as in similar instances in the past, he promised himself he would be here. He also stated is not ready for Idaho to become a liberal state.

Jacob Grove, Rexburg, Idaho appeared. Mr. Grove stated the things that happen in Idaho Falls have a large effect on the surrounding towns. In studying what's going on in the Country, Mr. Grove picked up a military manual as the nation is under attack and insurgency. Mr. Grove read the definition of insurgency from this manual. He stated the violence and fear monger that is currently being witnessed in our Country are the tools of insurgency and a direct attack on freedom. The founders of this nation understood that the Creator has endowed us individually with certain unalienable rights, which include life, liberty, and, the pursuit of happiness. Mr. Grove stated the deception surrounding COVID-19 and the violent riots are purposely created to weaken our free will as individuals and take power from people – this is insurgency. He stated when this began happening in his town, he would not stand by and let the rights of his future family be taken away. Mr. Grove stated he will do what it takes to make sure that their right to live peacefully and to pursue happiness is guaranteed.

Brett Skidmore, Idaho Falls, appeared. Mr. Skidmore expressed his appreciation to the elected officials for their service. He believes the time that has been dedicated to safety is under appreciated. The amount of time he has put into his business, the organization he is president of, and, his approximate 80 tenants, was unsurpassable. He reiterated his appreciation. Mr. Skidmore requested to use God in all decisions, take His guidance and take consideration of not just Mr. Skidmore's tenants but also all essential businesses, including hair dressers. He believes every business in the community is essential. Mr. Skidmore reiterated to use wisdom and God.

Chip Schwarze, on behalf of the Greater Idaho Falls Chamber of Commerce, appeared. Mr. Schwarze reminded the Council that a lot of businesses have been struggling over the previous 3-4 months. He encouraged the Council to thoughtfully and carefully consider any actions that might be taken as many of these businesses are close to failing and never opening their doors again. These businesses employ our families and residents and the impact of losing one (1) business will spread to the community for many years. Mr. Schwarze expressed his appreciation to the elected officials.

Rich Parks, Idaho Falls, appeared. Mr. Parks expressed his appreciation to the elected officials. He stated when the City puts a restriction on their own City, it's one thing if the City does it to City-owned congested business locations (the zoo) or City offices or if private businesses choose to do it for themselves. But, to make everyone do this across the board will chase the economies to Ammon or other cities. Mr. Parks stated the death rate has decreased and, it is the government's job to protect the Constitution, not our health.

It was then moved by Councilmember Radford, seconded by Councilmember Francis, to remove agenda item A.1 with the good faith reason that the Federal Government changed the process and the City needs to change their approach in a different meeting. Roll call as follows: Aye – Councilmembers Freeman, Radford, Smede, Francis, Dingman, Hally. Nay – none. Motion carried.

Consent Agenda:

Municipal Services requested approval of the Treasurer's Report for the month of May, 2020; minutes from the June 15, 2020 City Council Work Session; June 18, 2020 City Council Meeting; June 22, 2020 City Council Work Session and Executive Session; and, June 25, 2020 City Council Meeting; and, license applications, all carrying the required approvals.

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to approve, accept, or receive all items on the Consent Agenda according to the recommendations presented. Roll call as follows: Aye – Councilmembers Hally, Francis, Radford, Dingman, Smede, Freeman. Nay – none. Motion carried.

Regular Agenda:

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Municipal Services

Subject: Transfer of Fire Equipment to Raft River Fire Protection District

In 2018 and 2019, the Idaho Falls Fire Department (IFFD) acquired through the Department of Defense (DOD) Fire Fighter Program (FFP) the two vehicles to assist in the wildland urban interface areas in Bonneville County as well as to provide additional resources for mutual aid and assist the Idaho Department of Lands. Due to the acquisition of more efficient water tenders, the department has not utilized this equipment and does not plan to in the future. Through the DOD FFP there is no cost to the municipal fire departments to receive such equipment.

Councilmember Smede stated the only expense for the items was payment for registration. She stated this will save the IFFD annual operating and storage costs and will be an asset to another community

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to approve transfer of City property of one tan Eastern Technologies XM-1098 tank semitrailer and one BAE Tactical Systems M1088 all-wheel drive tractor truck to Raft River Fire Protection District. Roll call as follows: Aye – Councilmembers Freeman, Francis, Hally, Radford, Smede, Dingman. Nay – none. Motion carried.

Subject: IF-20-23, Underground Fiber Project Phase II – Electric and Fiber

This contract will provide underground conduit and handhole installation services for electric and residential fiber. The project scope is estimated to be 80% electrical and 20% fiber.

Councilmember Smede stated Idaho Falls Power is making this request to be proactive for dependable fiber services in the City. Councilmember Radford expressed his appreciation to an innovative City utility that found solutions for customers and made the grid more resilient.

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to accept and approve the bid from the lowest responsive and responsible bidder, Bluelake Utility Services, LLC of Meridian, Idaho for a total contract amount of \$354,700.00. Roll call as follows: Aye – Councilmembers Dingman, Radford, Francis, Smede, Hally, Freeman. Nay – none. Motion carried.

Idaho Falls Power

Subject: Construction Agreement for Fiber Optic Cable Splicing

Approval of these three contracts will allow Idaho Falls Power/Fiber (IFP/IFF) to contract for services on an as-needed basis and obtain the best pricing for fiber optic cable splicing as part of the City of Idaho Falls Fiber Expansion Project, which was approved by the Idaho Falls City Council on October 17, 2019. IFF will use the lowest cost available contractor for each specific splicing project.

Councilmember Radford stated he is in the latest growth and became a customer of IFF and, he is thrilled with the service and options of technology. He also stated this agreement is the ability to get fiber services in the most cost-effective way moving forward. He noted more than one (1) contractor was selected as there is a need for more than one (1) group to progressively move forward in the community. The hope is to have all the community linked in 3-4 years. Director Prairie noted the total amount of \$100,000 is not to be exceeded between all three (3) groups. He noted there are different specialties within each company. Mayor Casper stated the pandemic has proven there is great value in service at home. She noted fiber optic can make it possible for kids to more effectively attend school and for people to more effectively work from home. She stated there is a sense of pride in the ability to provide the utility for the citizens. Every step taken moves hundreds of homes into the utility. Director Prairie stated that the community can visit the website to learn about the network and sign up for services.

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It was moved by Councilmember Radford, seconded by Councilmember Freeman, to approve the Construction Agreements with Advanced Cable Technology, LLC., Cook Cabling, and Spligitty for fiber optic cable splicing at a not-to-exceed total amount of \$100,000 and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Radford, Freeman, Smede, Francis, Dingman, Hally. Nay – none. Motion carried.

Public Works

Subject: Bid Award – Wastewater Treatment Plant Secondary Clarifier 2 Mechanism Reconstruction

On Tuesday, June 30, 2020, bids were received and opened for the Wastewater Treatment Plant Secondary Clarifier 2 Mechanism Reconstruction project. The purpose of the proposed bid award is to enter into contract with the bidder to furnish all tools, labor, equipment, and materials necessary to install the drive mechanism, reconstruct the collection arms, tower and center pier for final clarifier 2.

Councilmember Freeman stated this item was discussed at the May 28 Council Work Session. He also stated it is important to get this item resolved quickly as there currently is only one (1) backup. Director Fredericksen stated there were five (5) potential bidders and of those only one (1) responsive bid was received. He also stated this item was not on the Consent Agenda due to it being an unbudgeted project. He noted there are cost savings in other areas of the treatment plant so there is not a funding concern.

It was moved by Councilmember Freeman, seconded by Councilmember Radford, to approve the plans and specifications, award to the sole bidder, Quality Steel, Inc., an amount of \$145,607.94, and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Hally, Smede, Dingman, Freeman, Francis, Radford. Nay – none. Motion carried.

Subject: Approval of the State/Local Agreement with the Idaho Transportation Department for the Holmes Avenue Safety Audit

For consideration is a State/Local Agreement and Resolution with the Idaho Transportation Department (ITD) for the development of the Holmes Avenue Safety Audit. The safety audit is intended to study Holmes Avenue from Northgate Mile, south to York Road and will help identify safety concerns on this corridor and potential remedies to address them.

Councilmember Freeman stated this is a busy corridor and is close to five (5) miles. He noted the City’s share of the cost is 7.34%, or \$4,404.00.

It was moved by Councilmember Freeman, seconded by Councilmember Radford, to approve the State/Local Agreement for the Holmes Avenue Safety Audit, and the accompanying Resolution, and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Smede, Hally, Radford, Dingman, Freeman, Francis. Nay – none. Motion carried.

RESOLUTION 2020-13

WHEREAS, THE IDAHO TRANSPORTATION DEPARTMENT, HEREAFTER CALLED THE STATE, HAS SUBMITTED AN AGREEMENT STATING OBLIGATIONS OF THE STATE AND THE CITY OF IDAHO FALLS, HEREAFTER CALLED THE CITY, FOR DEVELOPMENT OF HOLMES AVENUE SAFETY AUDIT.

Subject: Approval of a Resolution providing for Right-of-Way Acquisitions necessary for the 17th Street and Woodruff Avenue Intersection Improvement Project

The purpose of the resolution is to establish an approval process for the procurement of sixteen (16) parcels of property at or near the intersection of 17th Street and Woodruff Avenue. Conditions of this resolution include

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authorization for the Mayor to approve all purchases up to a value of \$75,000.00. Acquisitions exceeding \$75,000.00 shall be presented to City Council for approval. Additionally, Chris Fredericksen, Public Works Director, will be granted the authority to sign all closing documents for required parcels.

Councilmember Freeman stated this item has been on the radar for quite some time as it is a very busy intersection. Councilmember Hally stated this intersection would be similar to the 17th Street and Hitt Road intersection. He also stated ITD will award Idaho Falls approximately 93% of the costs.

It was moved by Councilmember Freeman, seconded by Councilmember Radford, to approve the Resolution providing for the purchase of Right-of-Ways and Easements required for the 17th Street and Woodruff Avenue Intersection Improvement Project. Roll call as follows: Aye – Councilmembers Dingman, Smede, Francis, Freeman, Hally, Radford. Nay – none. Motion carried.

RESOLUTION 2020-14

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AUTHORIZING THE CITY TO NEGOTIATE AND PROCURE RIGHT-OF-WAY FOR A CONSTRUCTION IMPROVEMENT PROJECT ON 17TH STREET AND WOODRUFF, AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

Coronavirus (COVID-19) Update:

Mayor Casper believes her comments from the July 6 Work Session may have created confusion and misperception. She stated the Council would receive a report and there would be discussion and the possibility the Council would give direction. Mr. Fife stated the agenda is noticed that a vote could occur due to 'or other actions in response to the COVID-19 pandemic'. Mayor Casper stated it is not her intention to take action and it would not be fair to the public. She stated State code is clear and is taken seriously with regard to the agenda. Mayor Casper reviewed the weekly totals for the State, Bonneville County, and, Channel 8. She noted most of the models are seen on a rolling average, not a single day, to reflect a broader picture of what's happening. The State-wide cases of 30-40 per day are gone, numbers are now reaching into the hundreds which have caused a new level of concern and worry. Bonneville County data showed several low days but have now reached double digits. Idaho has not yet achieved the incident rates that move Idaho out of 'yellow' zone per Harvard national-level ranking. Eastern Idaho Public Health (EIHP) is also using color coding, the area's health district is in the green zone. Mayor Casper stated public officials have stated using a face mask is a good intervention, they can easily be implemented, and, is one (1) of the best things to mitigate the spread. She reiterated that any pandemic-related decisions that she stands behind on behalf of the City will be guided from information provided from recognized public health sources, namely the CDC, Idaho Department of Health and Welfare (IDHW), and, EIPH. She stated with the innumerable amount of sources and opinions she trusts the public resources as they are trained to identify things for our area. She noted the management of the pandemic is evolving as information changes and the City must evolve to address the pandemic in our area. Mayor Casper stated the public health profession she suggests the City rely on considers hygiene, epidemiology, and, disease prevention. In Idaho State Code, Idaho cities are given statutory authority to do four (4) things, three (3) of which are currently relevant: pass all ordinances and make regulations necessary to preserve the public health; prevent the introduction of contagious diseases into the City; and, make quarantine laws and to enforce the quarantine laws within five (5) miles of the City. Mayor Casper stated the challenge is to make good use of those powers given by the State to promote general health and welfare. She believes stay home orders should only be used when the threat is extreme or significant. She recognizes the significant impact of stay home orders on the economy and on education. She stated keeping citizens healthy, keeping the economy healthy, and, keeping schools healthy are her three (3) big objectives. She wants to avoid a stay home order. Mayor Casper reviewed guidelines previously presented to help stop the spread. She believes masks are an inexpensive way to limit the spread. She stated her staff compiled information from recent summaries that are not scientifically derived but for discussion purposes only. Mayor Casper reviewed the staff's collection of news stories with comments and shares from East Idaho News, the Post Register, and, the Pocatello story. She shared the tallied calls and emails received in the Mayor's office with the results as 152 yay, 206 nay. She

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also stated Mr. Schwarze did a flash poll of Chamber of Commerce Members and in less than 24 hours 319 people had responded. Mayor Casper reviewed the seven (7) pages of the flash poll questions. She stated each data point gives appreciation for the landscape when making decisions regarding the public health as well as being aware of the demonstrations happening and the Facebook messages received. She does not believe those pieces of data should serve to dictate the decisions made. She believes very strongly it is the responsibility of elected officials to take the public's trust to make decisions based on the best wishes from the public. She stated any decisions made will be based on data and facts, not emotions. She also stated she took her concerns to the EIPH Director who has been working on a plan. The Board has yet to formally adopt this plan until the following week. Mayor Casper reviewed the plan's criteria, variables, and, indicators. She noted that even though the plan is not yet adopted it is important that there is a plan so everyone is aware of the expectations and guidelines. She encouraged the Council to wait until the plan can be studied and applied to make a decision for the City, she also asked that the plan be considered as the City standard. She reviewed EIPH's data dashboard and updated case numbers. She also reviewed the criteria in order to take action. She stated other cities are adopting masking orders by way of an ordinance, another option would be a resolution. Mayor Casper stated a mask is a way to slow the virus so there is quality of care available for those that need it. Councilmember Dingman believes the EIPH Board meeting was informative. She stated she is not in support of mask wearing at this time. She would like to see the metrics and hear from the EIPH board. Councilmember Francis questioned developing a policy rather than an ordinance or resolution which would include a plan. Mayor Casper stated if a plan is adopted, it would follow the EIPH plan. Councilmember Francis does not believe it would state what the local government would do. He believes the City should consider circumstances and a process, a blanket for the entire community is impossible, and, he is not in favor of ordinances that cannot be enforced. Councilmember Dingman believes very direct and detailed discussion should occur by the Council but not until the plan and options of mandates from EIPH is released. She noted the Board discussion touched on penalties but not enforcement. She would prefer to see the plan and know what the Board will do as it is their responsibility for implementing public health measures. Mayor Casper stated if the EIPH Board adopts the plan the City would be under the orders and would not have to enact anything alone. Councilmember Dingman reiterated she does not believe the City can act until there is more information provided by EIPH. Councilmember Francis agrees. He believes there should be cooperation with the local government and health board. He noted the local government will need to enforce. Mayor Casper stated the governor gave orders although local police were not sent in for enforcement of businesses that opened because the City is aimed at education. She also stated the Idaho Falls Police Department (IFPD) is already under duress and scrutiny and lacking staff to answer calls. She doesn't believe calls should be pushed aside to enforce someone not wearing a mask. Councilmember Freeman believes masks are an inconvenience but some are seeing them as a political statement. He read an excerpt from a letter he received and responded by saying that all the Council is doing is trying to protect people's health. He stated it is unfortunate there is a distrust in government right now. He believes the mandate might cause more wide-spread noncompliance. He does not believe a mandate is a good idea at this time. He agrees to use EIPH and the State for guidance. He stated if the numbers rapidly increase he would not be against a mask mandate. Councilmember Hally believes there are a lot of emotions when the data conflicts with personal bias. He also believes many would wear a mask if it was encouraged instead of being told to under penalty. He stated he recently visited a business where no one was wearing a mask and he told the business they should change their policy. He believes it would be safer if employees wore them. He also believes the virus, the vaccines, and, the political mix changes data and emotions daily. He stated education is important but education won't happen if teachers are sick. He expressed his concern about a concrete plan with the data changing daily. He believes if a plan is too rigid it could create a bias that is not flexible. He hopes that members of the public would look at the data and believe wearing a mask is safe. Councilmember Hally reiterated encouragement. He does not see reason to impose mask wearing at this time. Councilmember Smede stated her husband has an incurable disorder so she will wear a mask when she will come too close to individuals. She shared an experience when she was a child where she decided to wear a helmet. She stated she has respect for those who wear a mask as no one knows what is going on in that individuals' life. She was taught to respect every individual. She hopes to maintain that respect and give each other needed space. Councilmember Radford questioned why a mask mandate does not violate constitutional rights. Mr. Fife stated in general, cities have been delegated constitutional authority including Police powers. When there are pandemics and other disasters those powers tend to grant to the Mayor or the Council or the City in general greater powers than when those things aren't present. When there is a disruption that creates problems that doesn't allow the government to react in a quick or decisive way, those temporarily set aside the normal City process. Mr. Fife stated in this case, the Mayor has the authority to declare a local disaster emergency with the Council having the authority

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to extend or modify it if needed. Exceptions can be made with imminent danger to health or property or people. Although people are concerned with government overreach, Mr. Fife believes the City is within its rights regarding a pandemic. That is true as well with the governor as well. The Governor's order are carried out by the public health officials pursuant to the Constitution. As part of the State's rights and constitutional rights, individuals can go to the courts for confirmation or over-ruling. Mr. Fife stated those rights have not been taken away. Councilmember Radford questioned if previous pandemic mitigations have been upheld. Mr. Fife confirmed. Councilmember Radford stated it is tough being told they are taking away freedoms. He also stated he might agree with those statements if it were not an emergency. He believes these individuals are highly trained and are acting within their rights. He noted that it is important to remember so people don't give ill intent. He stated that whatever decision is made would be for the best interest of the citizens, with the intent that they are obeying the law, that they are being transparent, and, within their rights. He is disappointed there is no mandate. He wants data and EIPH involved as the decision that's best for the community is made. He stated the Country has a reputation throughout its history of patriotism and to tackle problems as a group. He doesn't believe there is anyone to blame but somehow the Country is so divided. He expressed his gratitude for not having to go through World War II with this current Country because back then people gave up their rights and ability to buy food to survive but some are not willing to put on a mask and he is disappointed. Chief Nelson believes it's a wise choice to look at the data from public health officials as they spend endless hours looking at the information. He also believes the data should drive the decision as it is so emotionally-charged. He stated it's currently a challenge to maintain safety for the community that seems to be working against them right now. He understands the emotions, the political frustrations, and, economic difficulties although compliance is needed. Chief Nelson requested public compliance to boost the percentages, to help drop the curve, and, to solve the problem together. This is not just about local needs, it is also about the outlying hospitals that don't have capacities. There needs to be the community's support, Chief Nelson believes this community has the capability of that support. He again requested compliance. Councilmember Francis suggested waiting for the health department's data, statements, and, mitigations which could be in the form of formally encouraging masks. He stated the founding ideas of the U.S. and the government responsibility is to protect. In the same paragraph of the declaration the government's responsibly is to also protect the safety and happiness of the society and finally, to achieve that ground requires sacrifice of people. He stated this Council and all government agencies are trying to make that a reality. He believes any decision needs to consider individual liberties, balance with the Council's responsibility to protect, and, the willingness to make a sacrifice. He stated that should be the foundation or the boundary lines of any decision. Mayor Casper noted budget meetings will occur in the next two (2) weeks and the Council may need to discuss other considerations. Following brief discussion, this item will tentatively be discussed at the July 22 Work Session. To the response of Mayor Casper, Mr. Fife stated the ordinance has the force of law and comes with penalties of that law. A resolution is a statement of policy which could be internal and, it would be unusual to have penalties. There was consensus to wait for a resolution.

Announcements:

Mayor Casper stated her commitment to the community is to do the right thing and defining what the right thing is hard. She reiterated Councilmember Radford's comments that the Council is trying to make good decisions for the community as they care for the community and intend to serve and protect it well. She also reiterated there is a desire to find balance.

Adjournment:

There being no further business, the meeting adjourned at 9:38 p.m.

s/ Kathy Hampton

CITY CLERK

s/ Rebecca L. Noah Casper

MAYOR