

CITY COUNCIL PROCEEDINGS
PUBLISHED SUBJECT TO THE GOVERNING BODY'S REVIEW AND REVISION

A regular meeting of the Beach City Council was called to order by Mayor Walter Losinski at 7:00 pm June 17, 2013. Present when the meeting was called to order was Council Tim Marman, Mark Benes, Jeanne Larson, Wade Walworth, PWS Dell Beach, City Auditor Kimberly Nunberg, City Engineer Jon Wilczek, and guests Jacob Zettel, Kevin Steen, Robin Jandt, Mike Braden, Janie Rathbun, Vanessa Ueckert, Jack Andrews, John Sokoloski, Gene Hamilton, Jim Wosepka, Patricia Lynch and Larry Jandt.

Public Participation:

Park Board Members Mike Braden and Robin Jandt informed the Council a new playground structure has been ordered for the swimming pool park. The new structure cost approximately \$45,000 and half of the cost is being paid for with grant funds. Braden requested the city consider paying for the installation of the structure and when the Park Board receives the grant reimbursement the Park Board will return those funds to the City. Benes moved to approve the request using City Sales Tax Funds to pay for the installation, second by Walworth. Motion carried unanimously. Vanessa Ueckert gave a brief presentation on Vision West and a schematic plan of the Golden Valley County Medical Complex & Wellness Center.

Employees Meeting:

PWS Beach reported the driver feedback signs have both been installed and the North water tower is being filled. Nunberg reviewed the financial statement for the month of May. Benes moved to approve the financial statement, second by Larson. Motion carried unanimously. Nunberg reviewed her written report.

Committee Report:

Mayor Losinski appointed the following committees:

Street, Sewer & Water – Benes and Marman

Police – Benes and Walworth

Garbage & Recycling – Larson and Walworth

Community Liaison – Gerving and Lautenschlager

Park Board – Larson and Marman

City & County Zoning – Larson and Marman

Airport – Lautenschlager

Health Board – Gerving, Larson, Lautenschlager, and Marman

City Auditor - Kimberly Nunberg

City Engineer - Jon Wilczek, Kadrmas, Lee & Jackson

City Attorney - Nathan Bouray, Ebeltoft, Sickler, Kolling, Bouray, PLLC

Unfinished Business:

Engineer Jon Wilczek presented a map of the street improvement area in the NW & SE areas of the city. At the next meeting, Wilczek will present an opinion of cost based on three (3) options for the project. The RR Quiet Zone Project will be completed on Wednesday. A special meeting will need to be held later in the week to approve final bills associated with the project.

New Business:

James Wosepka, CPA presented the Audit Report for the fiscal year ending December 31, 2012. Walworth moved to approve the 2012 Audit Report, second by Larson. Motion carried unanimously. The Second and Final Reading of Ordinance 376 was presented.

ORDINANCE NO. 376

AN ORDINANCE GRANTING A LIMITED FRANCHISE TO GOLDENWEST ELECTRIC COOPERATIVE, INC., A MONTANA ELECTRIC COOPERATIVE CORPORATION, ITS SUCCESSORS AND ASSIGNS, WITH PERMISSION TO ERECT, CONSTRUCT, INSTALL, AND MAINTAIN WITHIN THE CITY OF BEACH, AN ELECTRIC POWER DISTRIBUTION SYSTEM AND TO OPERATE THE SAME AND TO INSTALL CONDUITS, POLES, WIRES, UNDERGROUND FACILITIES, PIPES, AND OTHER FIXTURES IN, UPON, AND UNDER THE STREETS, ALLEYS, BRIDGES, AND PUBLIC GROUNDS OF THE CITY FOR THE PURPOSE OF FURNISHING ELECTRICITY TO THE CITY AND THE INHABITANTS THEREOF.

BE IT ORDAINED, by the City Council of the City of BEACH, hereinafter called City:

Section 1. FRANCHISE

Subject to the limitations, conditions, and requirements hereinafter set forth, there is hereby granted a limited Franchise to GOLDENWEST Electric Cooperative, Inc., a Montana electric cooperative corporation, its successors and assigns (hereinafter, the "Grantee). Such Franchise shall be for a period of twenty (20) years from and after the date of final passage of this Ordinance. During the time of such Franchise, the Grantee shall have permission to construct, install, and maintain an electric power distribution system and to transmit electricity to and from other points for the purpose of furnishing such electricity, and to erect, construct, install, and maintain conduits, poles, wires, underground facilities, pipes, and other necessary fixtures and attachments upon and under the streets, alleys, bridges, and public grounds of the City for the purpose of furnishing and selling electricity for all purposes; which electricity may be used by any customers desiring such service. Notwithstanding anything to the contrary, this franchise shall be limited to extend only to existing customers of Grantee that were receiving utility services from Grantee prior to those customers being located within the city limits of the City of Beach.

The rights herein granted to Grantee shall further be subject to all valid laws, rules and regulations now or hereafter adopted and promulgated by any State or Federal authority having jurisdiction over Grantee and which may expand or limit Grantee's right to serve pursuant to this Franchise.

This Franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys, and public grounds of the City for like purposes.

Section 2. STREETS AND ALLEYS

The Grantee shall use poles, wires, crossarms, equipment, and devices in conformance with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce. Any apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of the City or to endanger persons or property or to hinder or to obstruct the use of avenues, streets, and alleys or public places by the inhabitants of the City, or by the public in general, or to interfere with any street, sidewalk, curb, gutter, park improvements, or other public place of the City.

All conduits, poles, wires, and pipes installed by virtue of this Franchise shall be erected in such places and in such manner as to not unnecessarily encroach upon streets, alleys, bridges, or public grounds of the City and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon and the erection thereof shall be subject to the reasonable supervision and direction of the City. Whenever practicable, all poles shall be set in alleys.

All poles where set in alleys shall be set at or near the boundary line thereof and where set in streets shall be located at such distances as shall be directed by the City from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers, or drains or the flow of water therefrom, which has been or may be placed by authority of the City. In the event that the Grantee shall make any unnecessary obstructions of the streets, alleys, public grounds, or places not designated by the City, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

During the construction, maintenance, or enlargement of any part of the electric power distribution system, the Grantee shall not unnecessarily impede or block travel in the streets and highways in the City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes, and public places and all grounds disturbed by the construction in good condition upon the completion of the work. All signing and traffic regulation shall conform to the Manual on Uniform Traffic Control Devices.

The City reserves all its rights, under its police power or otherwise, to control or regulate the use of streets, alleys, and public grounds by the Grantee. The City may make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to, such reasonable regulations of a police nature, as the City may deem necessary for its own best interests; but the City will not, by any such regulations or by acts of its own or agents, unreasonably prevent or interfere with the Grantee carrying on its business in accordance with the Franchise hereby granted.

Section 3. OPERATION AND MAINTENANCE

Whenever the Grantee, in erecting, constructing, and maintaining the lines or poles, shall take up any of the pavements, sidewalks, crossing, or curbs on any of the avenues, streets, and alleys, or public places in the City or shall make any excavations thereon, such excavations shall, at the Grantee's own cost and expense and in a manner approved by the City, be repaired and the sidewalk, crossing, or curb replaced under the direction of the City; and any excavation so made shall be properly lighted at night during the construction; and in case of the failure to so repair, replace, or light on the part of the Grantee, then the City may do the same at the expense of the Grantee and the Grantee agrees to pay the City for the reasonable cost or value of the work. Prior to the disturbance of any street, sidewalk, alley, public way or paved area, Grantee shall obtain a permit from the City at least two (2) days prior to the disturbance.

The Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the City caused by the Grantee, or its agents, servants, or employees in erecting, operating, and maintaining the electric system within the City and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating, or maintaining the electric systems.

Section 4. TRIMMING TREES

There is granted to the Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets, and public grounds of the City so as to remove all parts of the trees interfering with the proper erection, maintenance, and operation of poles, cables, wires, masts, or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Section 5. ASSIGNMENT

With prior notice to the City, the Grantee shall have full right and authority to assign to any person, persons, firm, or corporation all the rights that are given it by this Ordinance, provided that the assignee of such rights, by accepting such assignment, shall become subject to the terms and conditions of this Ordinance.

Section 6. LIABILITY

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt the Grantee from liability for negligence.

Section 7. REGULATORY LAWS

This contract shall be subject to any present or future laws of a regulatory nature applicable to Grantee and enacted by the State of North Dakota, or any amendment or addition to such laws.

Section 8. APPROVAL AND ACCEPTANCE

This Ordinance shall take effect and be in full force from and after its passage and approval. The Grantee shall specify its acceptance of this Franchise in writing, to be filed with the auditor within thirty (30) days of final passage of this Ordinance, and in no event shall this Ordinance be binding on the Grantee until the filing of such acceptance.

Section 9. PROTECTION OF PUBLIC IMPROVEMENTS

Grantee, at its expense, shall protect, support, temporarily disconnect, relocate along, under, or over any street, alley, or public place, or remove from any street, alley, or public place, any equipment or facilities when required by the City by reason or traffic conditions, public safety, street excavation, street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power lines or tracks, or any other type of structures or improvements by City or other public agencies when acting in as governmental or in a proprietary capacity, or for any public improvement, not limited to the foregoing of any character whatever.

Section 10. FRANCHISE FEE

The City reserves the right, if not prohibited by Federal law or the laws of the State of North Dakota, to charge a fee to the Grantee for this franchise, which fee or charge shall be subject to change by the Beach City Council. Prior to the imposition of any franchise charge or fee, or change to an existing franchise charge or fee, the City shall provide the Grantee thirty (30) days written notice of its intent and shall hold a public hearing thereon.

Section 11. INDEMNITY

Grantee shall indemnify and save and hold the City harmless from any loss or damage due to the construction, installation, and maintenance of its distribution systems, and its use of the streets, alleys, and public grounds of the City.

Section 12. REPEAL OF ORDINANCES IN CONFLICT

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 13. SEVERABILITY

In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 14. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after final passage.

APPROVED: CITY OF BEACH

Mayor, City of Beach, North Dakota

ATTEST:

Kimberly Nunberg, City Auditor

First Reading: June 3, 2013

Second Reading: June 17, 2013

Final Passage: June 17, 2013

Benes moved to change the expiration of the franchise to July 19, 2019 which is the same time that MDU's franchise expires. Motion died for lack of second. John Sokolski, Goldenwest Electric asked for clarification of the Ordinance which states "this franchise shall be limited to extend only to existing customers". Nunberg will contact the City Attorney for clarification.

Marman moved to approve the Second and Final Reading of Ordinance 376, second by Walworth. Motion carried unanimously. There was a Public Hearing at 8 pm for comment on a request to rezone a Tract of land in the N ½ of Section 23-140-106 & 24-140-106 from Agriculture to Highway Commercial. No public comment was given. Marman moved to approve the request for rezoning from Agriculture to Highway Commercial, second by Larson. Motion carried unanimously. Jack Andrews was present to review the Master Development Agreement for Golden Valley Acres and Hathaway Industrial Park. Discussion. Benes moved to approve the First Reading of the Master Development Agreement, Second by Larson. Motion carried unanimously. An Application for Raffle submitted by Spirit of the West was reviewed.

Walworth moved to approve the raffle, second by Benes. Motion carried unanimously. Nunberg reviewed the ND DOT Cost Participation and Maintenance Agreement for the ADA Curb Ramp Improvement Project SS-9-999(291). Walworth moved to approve the Cost Participation and

Maintenance Agreement, second by Larson. Motion carried unanimously. Applications for Beer & Liquor License were reviewed. La Playa is applying for a 3 month license only. Benes moved to approve On/Off Sale Beer & Liquor License for La Playa, The Backyard, and Legion Club, Inc. and Off Sale Beer & Liquor License for Cedar Liquors, second by Larson. Walworth abstained. Motion carried. A request was read from Golden Valley County Fair Association for permission to hold a fireworks display during the fair. Walworth moved to approve the request, second by Benes. Motion carried unanimously. The Annual Water Quality Report from Southwest Water Authority was reviewed. An Application for Special Events on August 3rd submitted by the Legion was reviewed. Walworth moved to approve the request for Special Events, second by Benes. Motion carried unanimously.

No other business was brought forward. Walworth moved to adjourn, second by Larson. Motion carried unanimously. Meeting adjourned at 9:00 p.m.

ATTEST:

Walter Losinski, Mayor

Kimberly Nunberg, City Auditor