

Brookings City Council
July 9, 2019

The Brookings City Council held a meeting on Tuesday, July 9, 2019 at 5:000 PM, at City Hall with the following City Council members present:, Mayor Keith Corbett, Council Members Patty Bacon, Leah Brink, Holly Tilton Byrne, Dan Hanse, Nick Wendell, and Ope Niemeyer. City Manager Paul Briseno, City Attorney Steve Britzman, and Acting City Clerk Bonnie Foster were also present.

6:00 PM REGULAR MEETING

Consent Agenda: A motion was made by Council Member Wendell, seconded by Council Member Bacon, to approve the Consent Agenda. The motion carried by the following vote: **Yes:** 7 - Corbett, Niemeyer, Hansen, Brink, Bacon, Wendell, and Tilton Byrne

3.A. Action to approve the agenda.

3.B. Action to approve the June 25, 2019 City Council Minutes.

3.C. Action on Resolution 19-054, a Resolution approving the Public Arts Guidelines.

Resolution 19-054 - Resolution Approving the Public Art Guidelines

Whereas, public art enhances the built environment and enriches the lives of citizens;
and

Whereas, the City of Brookings established the Dedicated Public Art Fund in February 2016 through the passage of Ordinance 16-005; and

Whereas, the City of Brookings created the Public Arts Commission in February 2016 through the passage of Ordinance 16-006; and

Whereas, the Public Arts Commission is tasked with developing Public Art Guidelines to be approved by the Brookings City Council.

Now, Therefore, Be It Resolved, that the City of Brookings hereby approves the Public Art Guidelines.

Proclamation.

A Proclamation was presented to Mark Sternhagen and Brenna Doran, members of the Brookings Committee for People who have Disabilities. Disabilities Awareness Day to be held July 26, 2019.

Mayoral Proclamation
City of Brookings, South Dakota

Whereas, individuals whose disabilities occur during their developmental years frequently have severe disabilities that are likely to continue indefinitely; and,

Whereas, disability is a natural part of the human experience that does not diminish the right of individuals with disabilities to enjoy the opportunity to live independently, enjoy self-determination, make choices, contribute to society, and experience full integration and inclusion in the economic, political, social, cultural, and educational mainstream with necessary services and supports; and,

Whereas, family members, friends, and members of the community can play an important role in enhancing the lives of individuals with disabilities, especially when the family and community are provided with necessary services and supports; and

Whereas, the goals of the nation, state and community properly include the goal of providing individuals with disabilities with the opportunities and support to achieve full integration and inclusion in society, in an individualized manner, consistent with unique strengths, resources, priorities, concerns, abilities, and capabilities of each individual; and

Whereas, through increased community, state and national awareness of programs and activities, the public will better understand the potential and needs of individuals with disabilities.

Now, Therefore, I Keith W. Corbett, Mayor of the City of Brookings, South Dakota, do hereby proclaim July 26, 2019, as Disabilities Awareness Day and call upon the people of Brookings to join their fellow citizens and community organizations in recognizing this special observance.

Temporary Alcohol Application – Volunteer Fire Assoc. A public hearing was held on a Temporary Alcohol Application from the Brookings Cubs Baseball Group for a temporary alcohol license to operate within the City of Brookings, South Dakota for the Brookings Cubs Baseball Games to be held on July 12, 18, 26, and August 9, 10, 11, 2019 at Bob Sheldon Field, 530 Elm Avenue. A motion was made by Council Member Niemeyer, seconded by Council Member Tilton Byrne, that the Temporary Alcohol Application be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Brink, Bacon, Wendell, and Tilton Byrne.

Resolution 19-043. A public hearing was held on Resolution 19-043, a Resolution Determining the Necessity of Repairing or Installing Sidewalks in the City of Brookings at the Expense of Abutting property owners; 2019-01SWR Concrete Maintenance Project. A motion was made by Council Member Bacon, seconded by Council Member Wendell, that Resolution 19-043 be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Brink, Bacon, Wendell, and Tilton Byrne.

Resolution 19-043 - Resolution Determining the Necessity of Repairing or Installing Sidewalks in the City of Brookings at the Expense of Abutting Property Owners; 2019-01SWR Concrete Maintenance Project

Be It Resolved by the City Council of the City of Brookings, South Dakota, as follows:

1. It is hereby determined that sidewalk repairs or installation is necessary abutting the parcels and lots of land in the City described in the Notice to Property Owners attached to this Resolution and marked as 2019-01SWR Concrete Maintenance Project.

2. Such sidewalks shall be installed to the width and of the materials prescribed by Chapter 74, "Streets, Sidewalks and other Public Places" and Article V. "Sidewalks", and to the grade and in accordance with the Plans and Specifications prepared in the office of the City Engineer.

3. The method of apportionment of benefits is as follows: such assessments, unless paid within thirty (30) days after the date of mailing of a statement of account by the City, shall be collected by the City in accordance with the procedure for Plan One in Section 9-43-102, South Dakota Compiled Laws of 1967, as amended, with interest of 10% on the unpaid balance. Assessments amounting to less than \$300.00 shall be paid in one payment.

4. The City has caused a copy of the Resolution.

Ordinance 19-006. A second reading was held on Ordinance 19-006, an Ordinance amending Chapter 2 of the Code of Ordinances of the City of Brookings, and pertaining to the Brookings Public Arts Commission. A motion was made by Council Member Bacon, seconded by Council Member Tilton Byrne, that Ordinance 19-006 be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Brink, Bacon, Wendell, and Tilton Byrne.

Ordinance 19-007. A second reading was held on Ordinance 19-007, an Ordinance amending Chapter 2 of the Code of Ordinances of the City of Brookings, and pertaining to the Dedicated Public Art Fund. A motion was made by Council Member Brink, seconded by Council Member Wendell, that Ordinance 19-007 be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Brink, Bacon, Wendell, and Tilton Byrne.

Resolution 19-055. A motion was made by Council Member Tilton Byrne, seconded by Council Member Brink, that Resolution 19-055, a Resolution Addressing Application of the International Building Code with Respect to the Proposed Detention Center Expansion by Brookings County, be approved. Public Comment: Janet Merriman and Doug Smith. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Brink, Bacon, Wendell, and Tilton Byrne.

Resolution 19-055 - A Resolution Addressing Application of the International Building Code with Respect to the Proposed Detention Center Expansion by Brookings County

Whereas, the County of Brookings is proposing to construct an expansion of the Brookings County Detention Center in the City of Brookings upon the site of the current detention center; and

Whereas, the County of Brookings has not applied for a building permit for the proposed construction and has expressed its position that a building permit is not required for this County construction project; and

Whereas, the City of Brookings in 2015 adopted by ordinance a building code as published by the International Code Council to promote public safety and the general welfare; and

Whereas, a building permit is required under the International Building Code for any project of the size and nature of the proposed expansion of the County Detention Center; and

Whereas, the City of Brookings on the advice of counsel has determined that neither State law nor city ordinance provide an exception for a County building project to the City's requirement that a building permit is required for new construction within the city limits of the City of Brookings; and

Whereas, Brookings County has previously applied to the City of Brookings for a building permit in connection with renovation at the Brookings County Courthouse, and the City has previously issued a building permit for that project under a previous version of the International Building Code.

Now, Therefore, Be It Resolved: (1) that by this Resolution the City of Brookings gives notice to Brookings County that its construction plans for the Brookings County Detention Center require a building permit before construction may begin; and (2) that the City authorizes the retention of outside legal counsel for the purpose of taking necessary legal action to enforce the City's building code.

Resolution 19-053. A motion was made by Council Member Wendell, seconded by Council Member Brink, that Resolution 19-053, a Resolution Adopting Written Findings by the Brookings City Council Disapproving a Proposal of the Brookings County Commission to Expand its Current Detention Center, be approved. Public Comment: Janet Merriman and Anthony Teesdale. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Brink, Bacon, Wendell, and Tilton Byrne.

Resolution 19-053 - A Resolution Adopting Written Findings by the Brookings City Council Disapproving a Proposal of the Brookings County Commission to Expand its Current Detention Center

Whereas, a meeting was held to consider the proposal of the Brookings County Commission to expand its current detention center before the City Council at its normal meeting time on July 9, 2019; and

Whereas, the City conducted a public meeting, gave notice as required by law, and gave consideration to all relevant factors; and

Whereas, the Brookings City Manager authorized the Brookings City Attorney's Office to prepare proposed written findings consistent with the decision of the Brookings Historic Preservation Commission in preparation for the public hearing;

Now, Therefore, Be It Resolved by the City Council that the recitals above are adopted as findings, and in addition, the following findings are adopted:

Findings:

1. The proposal of the Brookings County Commission to expand the current detention center shall hereinafter be referred to as the "Proposal."
2. The Proposal impacts the Brookings County Courthouse which is listed on the National Register of Historic Places.
3. The Proposal was reviewed by the Brookings Historic Preservation Commission ("BHPC") on February 8, 2018, and again on June 14, 2018, when the Commission determined that the proposal, if approved, would have an adverse effect on the Brookings County Courthouse. Under SDCL § 1-19A-11.1, the BHPC sent official comments dated July 31, 2018, to the State Historic Preservation Office (SHPO).
4. On August 29, 2018, SHPO sent a letter to Shari Thornes, Brookings City Clerk, that contained a determination that the Proposal to expand the Brookings County Detention Center upon the grounds of the Brookings County Courthouse would encroach upon, damage, or destroy historic property that is listed in the National or State Register of Historic Places; and that alternatives to the project had not been adequately considered and should be further explored.
5. The Brookings County Commission adopted its own written determination under SDCL § 1-19A-11.1 on November 6, 2018.
6. The City Council set this meeting to make a final determination on the Proposal under SDCL § 1-19A-11.1.
7. Brookings County had the burden to show the absence of feasible and prudent alternatives.
8. The City Council heard testimony and presentations from City staff, Brookings County, and proponents and opponents of the Proposal.
9. The City Council's review and consideration included, but was not limited to, the above-referenced testimony and presentation; South Dakota Codified Law 1-19A-11.1; Summary of SDCL 1-19A-11.1 Review Process and the following:
 - a. Application from BKV Group, November 13, 2017
 - b. City's Notification to SHPO of proposed project, November 14, 2017
 - c. State Historic Preservation Office response requesting case report, November 16, 2017
 - d. Case Report Submittal, dated January 19, 2018, received by the City on January 22, 2018
 - e. BHPC Minutes/public comments (approved) February 8, 2018
 - f. Case Report Addendum, no date, received May 26, 2018
 - g. BHPC Minutes/public comments (unapproved) June 14, 2018

- h. Office of the Attorney General Memorandum Opinion on SDCL 11.1 Reviews, dated 12/17/2013.
 - i. National Register of Historic Places Inventory Nomination Form for the Brookings County Courthouse, 1976
 - j. Official comment of the Brookings Historic Preservation Commission pursuant to SDCL 1-19A-11.1 dated July 31, 2018
 - k. Letter of South Dakota Historical Society (SHPO) dated August 29, 2018
 - l. Resolution No. 18-44, Brookings County Commission's Written Determination Concerning the Current Detention Center Expansion Project Pursuant to SDCL 1-19 A11.1(1)
10. Upon review of the information provided, the Brookings City Council determines that the proposal does not meet the Secretary of the Interior's Treatment of Historic Properties, specifically the Standards for Rehabilitation, as required by ARSD 24:52:07:02 and ARDS 24:52:07:04. Specifically, the proposal does not meet the following Standards for Rehabilitation:
- Standard #1: "A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment." [Emphasis added]
 - Standard #9: "New additions, exterior alternations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the integrity of the property and its environment." [Emphasis added]
11. The overall design of the proposed addition is compatible with the design and materials of the existing courthouse, however the size of the proposed addition is incompatible with the existing courthouse. The footprint of the proposed expansion is substantially larger than the footprint of the original courthouse, rendering the addition incompatible in size and scale with the existing courthouse, as per Standard #9.
12. The west wall of the proposed expansion will essentially be flush with the front (west) wall of the courthouse, making it highly visible rather than subordinate to the existing courthouse. As a result, the size and placement of the proposed addition on the courthouse square will negatively impact the courthouse's symmetrical design and its site and environment.
13. In addition, the Proposal does not satisfy subdivision 1 of ARSD 24:52:07:04, regarding compatibility of design, because the massing, size, and scale of the new construction are not compatible with the historic courthouse. The overall visual appearance of the new construction would dominate the surrounding historic landscape and would infill a significant portion of the historically important civic green space surrounding the courthouse.
14. The Proposal does not satisfy subdivision 10 of ARDS 24:52:07:04, regarding the setting, because the relationship of the new construction to the existing courthouse would not maintain the traditional placement of the historic courthouse in the block and would disrupt the symmetry and balance of the site.

15. Brookings County has identified feasible and prudent alternatives to the proposal, such as constructing a new Detention Center in a different location. While the County concludes that an alternative site would be more expensive and would require the transportation of prisoners to the courthouse, those considerations do not mean that the alternatives are not feasible and prudent.
16. The Brookings City Council is persuaded by the BHPC's official comment dated July 31, 2018, and adopts its findings and conclusions.
17. The Proposal, if approved, would have an adverse effect on the Brookings County Courthouse.
18. Based upon consideration of all relevant factors, there are feasible and prudent alternatives to the Proposal, and the Proposal has not included all possible planning to minimize harm to the historic property resulting from such use.
19. The recorded minutes, video, supporting materials, and testimony on this matter are incorporated herein in support of any and all findings made herein.

City Council member introduction of topics for future discussion.

A motion was made by Council Member Bacon, seconded by Mayor Corbett, that a Special Council Meeting be held on Tuesday, July 16th at 6:00 p.m. for discussion on the City Clerk search process. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Brink, Bacon, Wendell, and Tilton Byrne.

Adjourn. A motion was made by Council Member Hansen, seconded by Council Member Wendell, that this meeting be adjourned at 6:40 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS

Keith W. Corbett, Mayor

ATTEST:

Bonnie Foster, Acting City Clerk