

**REGULAR MEETING OF THE CITY COUNCIL  
COUNCIL CHAMBERS, CITY HALL  
MITCHELL, SOUTH DAKOTA**

**OCTOBER 5, 2009  
7:30 P.M.**

**PRESENT:** Dan Allen, Doug Backlund, Geri Beck, Travis Carpenter, Scott Houwman, Mel Olson, Jeffrey Smith

**ABSENT:** Marty Barington

**PRESIDING:** Mayor Lou Sebert

**AGENDA:**

Moved by Carpenter, seconded by Houwman, to approve the agenda as amended. Motion carried.

**MINUTES:**

Moved by Allen, seconded by Carpenter, to approve the minutes of the regular City Council meeting held on September 21, 2009. Motion carried.

**CITIZEN'S INPUT:**

Mayor Lou Sebert congratulated JoLynn Hanson, Operations Supervisor of Palace Transit, for receiving the 2009 South Dakota Dispatcher of the Year award.

**COMMITTEE REPORTS:**

**Public Health and Safety:**

The Public Health & Safety Committee met on October 5, 2009. The committee approved a request for a street light at Canal Circle.

**Finance Committee:**

The Finance Committee met on October 5, 2009. The committee heard a presentation on the Mitchell Convention & Visitors Bureau Marketing Plan. Hannah Walters reviewed the overall marketing strategies and ideas for the upcoming year.

Moved by Beck, seconded by Allen, to approve the committee reports. Motion carried.

**HEARING:**

It was advised that this is the date and time set for hearing on the application of Firesteel Links, LLC for a Temporary Liquor License for the Corn Palace for the Pheasant Country Banquet on October 16, 2009. Moved by Carpenter, seconded by Houwman, to approve said application. Backlund abstained.

Motion carried.

It was advised that this is the date and time set for hearing on the application of Palace City Lions Club for a Special Event Malt Beverage License for the Corn Palace and City Hall for a mixed martial arts fighting event on October 17, 2009. Moved by Houwman, seconded by Carpenter, to approve said application. Motion carried.

It was advised that this is the date and time set for hearing on the application of Palace City Lions Club for a Special Event Malt Beverage License for the Corn Palace and City Hall for a mixed martial arts fighting event on November 6, 2009 and for the Williams & Ree show on November 7, 2009. Moved by Houwman, seconded by Backlund, to approve said application. Motion carried.

**RESOLUTIONS:**

Moved by Houwman, seconded by Carpenter, to adopt Resolution #2775, Cancellation of Outstanding Checks, as follows:

**RESOLUTION #2775  
CANCELLATION OF OUTSTANDING CHECKS**

WHEREAS, the following checks are declared and reported as outstanding by the City of Mitchell and by statute must be approved for cancellation by the governing body:

	<b>CHECK NO.:</b>	<b>DATE:</b>	<b>ISSUED TO:</b>	<b>AMOUNT:</b>
Budgetary:	119092	09/03/08	Michelle Nowlin	\$14.00
	120601	12/16/08	Katie Lazenby	\$16.00
	122371	04/07/09	Stephanie Traversie	\$8.00
Payroll:	117214	04/11/08	Grant Rawlings	\$12.93

BE IT RESOLVED, that the outstanding checks are hereby approved for cancellation by the City of Mitchell for the budget year ending December 31, 2009.

Motion carried and resolution declared duly adopted.

Moved by Carpenter, seconded by Allen, to adopt Resolution #2777, Platting of City Property, as follows:

**RESOLUTION #2777  
PLATTING OF CITY PROPERTY**

WHEREAS, the City owns real property described as approximately 9.1 acres adjacent to North Harmon Drive and bound on the east by Airport Addition and on the north by National Guard Road; and

WHEREAS, said property cannot be legally described without platting the same; now therefore,

IT IS HEREBY RESOLVED BY THE CITY OF MITCHELL:

That said property may be platted and that the costs of platting shall be paid for by the City and that said costs, not to exceed \$2,000.00, are hereby authorized for said platting.

Motion carried and resolution declared duly adopted.

Moved by Houwman, seconded by Carpenter, to adopt Resolution #2778, Plat of Lot 19-A, a subdivision of previously platted Lot 19 of Maui Farms 2<sup>nd</sup> Addition, as follows:

**RESOLUTION #2778  
RESOLUTION OF CITY COUNCIL**

**WHEREAS**, it appears that the City Planning Commission of the City of Mitchell, South Dakota, did duly consider and did recommend the approval and adoption of the hereinafter described plat, at its meeting held on the 28<sup>th</sup> day of September, 2009; and

**WHEREAS**, it appears from an examination of the plat of LOT 19-A, A SUBDIVISION OF PREVIOUSLY PLATTED LOT 19 OF MAUI FARMS SECOND ADDITION, CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA; as prepared by Paul J. Reiland, a duly licensed Land Surveyor in and for the State of South Dakota, that said plat is in accordance with the system of streets and alleys set forth in the Master Plan adopted by the City Planning Commission of the City of Mitchell, South Dakota, and that such plat has been prepared according to law;

**THEREFORE**, be it resolved by the City Council of Mitchell, South Dakota, that the plat of LOT 19-A, A SUBDIVISION OF PREVIOUSLY PLATTED LOT 19 OF MAUI FARMS SECOND ADDITION, CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA; as prepared by Paul J. Reiland, be and the same is hereby approved and the description set forth therein and the accompanying surveyor's certificate shall prevail.

Motion carried and resolution declared duly adopted.

**ORDINANCES:**

Moved by Carpenter, seconded by Houwman, to place Ordinance #2312, Ordinance Amending Ordinance #1992 of the zoning code, on second reading. Motion carried. Moved by Allen, seconded by Houwman, to adopt Ordinance #2312, Ordinance Amending Ordinance #1992 of the zoning code, as follows:

**ORDINANCE NO. 2312  
AN ORDINANCE AMENDING ORDINANCE NO. 1992.**

BE IT ORDAINED BY THE CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA:

Section 1. That Ordinance No. 1992, Section 2, Paragraph B, subsection a. Permitted Uses , Numbers 6 and 11, be amended by deleting the following:

6. Multi-family dwellings of 24 units or less
11. A retail store(s), eating establishment(s) and health care facilities located on the campus.

Section 2. That Ordinance No. 1992, Section 2, Paragraph B, subsection a. Permitted Uses, Numbers 6 and 11, be amended by adding thereto the following:

6. Multi-family dwellings.
11. Retail store(s), eating establishment(s), and health care facilities.

Section 3. The City Finance Officer shall publish notice of this ordinance, and the same shall become effective 20 day after the completed publication thereof, unless the referendum shall be invoked as provided by law.

Motion carried and ordinance declared duly adopted.

Moved by Carpenter, seconded by Backlund, to place Ordinance #2313, Ordinance to Amend Provisions of City Code in reference to confiscation and impoundment of potentially dangerous dogs or animals, on second reading. Motion carried. Moved by Houwman, seconded by Carpenter, to adopt Ordinance #2313, Ordinance to Amend Provisions of City Code in reference to confiscation and impoundment of potentially dangerous dogs or animals, as follows:

### **ORDINANCE #2313**

#### **An Ordinance to amend provisions of the City Code of the City of Mitchell**

Preamble:

That the present version of the code does not provide for all alternatives that should be available to the animal control officer and/or the chief with reference to the handling of potentially dangerous dogs or animals now therefore be it ordained that

6-1A-3 C be amended as follows:

C. Confiscation And Impoundment: In the event that the owner of a potentially dangerous dog or animal violates any provisions of 6-1 et seq or 6-1A et seq of the City Code or any order of the chief of police, or pet control officer or designee, such owners dog or animal may be confiscated and impounded, or may be required to be maintained under such restrictions as required by the pet control officer or the chief of police or be disposed of in a manner as provided for the humane disposal of dangerous dogs or animals as provided in this article. Any dog or animal which bites a human being and causes injury thereby on more than one occasion, even though the injury may not be severe, shall be deemed a dangerous dog or animal and shall either be removed from the jurisdiction of the city by its owner, or the dog or animal shall be disposed of by humane euthanization, in accordance with the provisions of this article relating to dangerous dogs or animals.

Motion carried and ordinance declared duly adopted.

Moved by Allen, seconded by Carpenter, to place Ordinance #2314, Ordinance to Approve Drinking Water Facilities Improvements, Approve Issuance & Sale of Revenue Bond, Approve Loan Agreement and Revenue Bond and Pledging Project Revenues and Collateral to Secure Payment of Revenue Bond, on second reading. Motion carried. Moved by Carpenter, seconded by Allen, to adopt Ordinance #2314, Ordinance to Approve Drinking Water Facilities Improvements, Approve Issuance & Sale of Revenue Bond, Approve Loan Agreement and Revenue Bond and Pledging Project Revenues and Collateral to Secure Payment of Revenue Bond, as follows:

**ORDINANCE NO. 2314**

**ORDINANCE GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.**

**WHEREAS**, one of the purposes of SDCL Chapter 9-40 (the “Act”) as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system of waterworks for the purpose of providing water and water supply for domestic, municipal, together with extensions, additions, and necessary appurtenances; and,

**WHEREAS**, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned without pledging its credit and is authorized to pledge the net income or revenues from the improvements in accordance with Section 15 of the Act; and,

**WHEREAS**, the City of Mitchell (the “City”) currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its drinking water system; and,

**WHEREAS**, the City has determined to issue its revenue bonds to finance the improvements to its system of waterworks for the purpose of providing water and water supply for domestic, municipal, and industrial purposes (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Drinking Water State Revolving Fund Loan to finance the improvements;

**WHEREAS**, the City shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

**NOW THEREFORE BE IT ORDAINED** by the City as follows:

**SECTION 1. Definitions.** The terms when used in this Ordinance shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Ordinance which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

“**Act**” means South Dakota Codified Laws Chapter 9-40.

“**Loan**” means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“**Project**” means the City of Mitchell Elevated Water Reservoir.

“**Revenue Bond**” means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

“**System**” means the City’s system of waterworks used for the purpose of providing water and water supply for domestic, municipal, and industrial purposes.

**SECTION 2. Declaration of Necessity and Findings.**

**2.1. Declaration of Necessity.** The City hereby declares and determines it is necessary to construct and finance improvements to its drinking water facilities within its System described as the Project.

**2.2. Findings.** The City does hereby find as follows:

**2.2.1.** The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law.

**2.2.2.** Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-3A, and the federal Safe Drinking Water Act, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

**2.2.3.** The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, the only the net income from the Project financed by the Revenue Bond be pledged for its payment.

**SECTION 3. Authorization of Loan, Pledge of Revenue and Security.**

**3.1. Authorization of Loan.** The City hereby determines and declares it necessary to finance up to \$2,360,000 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the City. The City hereby

determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

**3.2. Approval of Loan Agreement.** The execution and delivery of the Revenue Obligation Loan Agreement (the “Loan Agreement”), the form of which is on file with the City Finance Officer (the “Finance Officer”) and open to public inspection, between the City as Borrower and the District, are hereby in all respects authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Ordinance is on file in the office of the Finance Officer and is available for inspection by any interested party.

**3.3. Approval of Revenue Bond.** The issuance of a revenue bond in a principal amount not to exceed \$2,360,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the “Revenue Bond”) shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

**3.4. Pledge of Revenues.** The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Ordinance shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise

contravene the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

**SECTION 4. Special Charge or Surcharge for Revenue Bond.**

**4.1.** The City does hereby create the Revenue Bond Special-Surcharge District (the “District”) which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

**4.2. Rates and collection.** The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

**4.3. Initial Surcharge.** The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of and interest and Administrative Surcharge on the Revenue Bond when due.

**4.4. Segregation.** The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue and surcharge.

**4.5. Periodic review.** The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement’s rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

**SECTION 5. Additional Bonds.** As permitted by Section 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no provision of this Ordinance shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

**SECTION 6. Project Fund Accounts.** For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

**6.1. Project Revenue Account.** There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the Ordinances and resolutions of the City of Mitchell, South Dakota (collectively the “Rate Ordinance”). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

**6.2. Project Debt Service Account.** Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25<sup>th</sup> day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City’s governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following January 15, April 15, July 15, or October 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

**6.3. Depreciation Account.** There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

**6.4. Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;

(b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:

(c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or

(d) To be used for any other authorized municipal purpose designated by the Common Council.

(e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

**SECTION 7. Approval of Paying Agent/Registrar.** The Revenue Bond shall be payable at the office of The First National Bank in Sioux Falls, Sioux Falls, South Dakota, hereby designated as paying agent and registrar.

**SECTION 8. Approval of Bond Counsel.** Meierhenry Sargent LLP are hereby retained as Bond Counsel with respect to the Revenue Bond.

**SECTION 9. Tax Matters.** The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (“the Code”) and applicable Treasury Regulations (the “Regulations”).

**SECTION 10. Covenants.** The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

**10.1.** The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Ordinance.

**10.2.** The City agrees and covenants that it will promptly construct the improvements included in the Project.

**10.3.** The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal and interest on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and

shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the City.

**10.4.** The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Ordinance and the Loan Agreement. The Revenue Bond shall refer expressly to this Ordinance and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Series 19 of the Act.

**SECTION 11. Depositories.** The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Ordinance; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

**SECTION 12. Consent to Appointment.** In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Section 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

**SECTION 13. Severability.** If any section, paragraph, clause or provision of this Ordinance, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance or said Loan Agreement, Revenue Bond, or any other Loan Document.

**SECTION 14. Repeal of Ordinance.** At such time as the Revenue Bond are defeased or paid in full, this ordinance and the special charge or surcharge shall automatically be repealed without any further action of the City.

**SECTION 15. Authorization of City Officials.** The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

**SECTION 16. Principal Forgiveness.** In order to qualify for up to 15% of the total principal amount of the Loan forgiven in an amount not to exceed \$354,000, the City officials are directed to cause the compliance with the following deadlines::

- (a) Submit complete plans and specifications for the Project to the Department on or before October 1, 2009;
- (b) Advertise for bids and open bids for the project in accordance with SDCL Chapter 5-18 on or before December 10, 2009;
- (c) Submit the bid of the apparent lowest bidder to the Department for review on or before December 21, 2009; and
- (d) Execute construction contracts on or before February 1, 2010.

Motion carried and ordinance declared duly adopted.

Moved by Houwman, seconded by Allen, to place Ordinance #2315, Supplemental Appropriations, on second reading. Motion carried. Moved by Beck, seconded by Allen, to adopt Ordinance #2315, Supplemental Appropriations, as follows:

**ORDINANCE NO. 2315  
SUPPLEMENTAL APPROPRIATION ORDINANCE  
AMENDING ORDINANCE NO. 2288  
CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA**

BE IT ORDAINED, BY THE CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA, that the following sums be appropriated to authorize certain expenditures and to meet certain obligations for the year 2009 according to statute:

**ENTERPRISE FUND  
WATER**

602-43340-43316	I-90 Water Tower Engineering	\$122,000.00
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The funding will come from SRF loan/bond proceeds.

**SPECIAL REVENUE FUND**  
**PARKS, RECREATION & FORESTRY**  
**CADWELL**

201-45160-43310                      Softball Field Improvements                      \$6,000.00

The funding will come from park fund cash balance.

Motion carried and ordinance declared duly adopted.

Moved by Backlund, seconded by Houwman, to place Ordinance #2316, Rezoning Property legally described as Lots 8 & 9, Block 19, Original Addition, known as 124 South Main, on second reading. Motion carried. Moved by Allen, seconded by Backlund, to adopt Ordinance #2316, Rezoning Property legally described as Lots 8 & 9, Block 19, Original Addition, known as 124 South Main, as follows:

**ORDINANCE NO. 2316**  
**REZONING PROPERTY**

AN ORDINANCE OF THE CITY OF MITCHELL, SOUTH DAKOTA, REZONING REAL PROPERTY LEGALLY DESCRIBED LOTS 8 & 9, BLOCK 19, ORIGINAL ADDITION, CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA FROM CENTRAL BUSINESS DISTRICT (CB) TO TRANSPORTATION, WAREHOUSING AND COMMERCIAL (TWC) AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF MITCHELL.

BE IT ORDAINED BY THE CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA:

Section 1. The real property legally described as Lots 8 & 9, Block 19, Original, City of Mitchell, Davison County, South Dakota is to be rezoned from Central Business District (CB) to Transportation, Warehousing and Commercial (TWC) and amend the Official Zoning Map of the City of Mitchell.

Section 2. The City Finance Officer shall publish notice of this ordinance, and the same shall be effective 20 days after the completed publication thereof, unless the referendum shall be invoked as provided by law.

Motion carried and ordinance declared duly adopted.

Moved by Houwman, seconded by Beck, to place Ordinance #2317, Supplemental Appropriations, on first reading. Motion carried.

**SET DATE:**

Moved by Carpenter, seconded by Allen, that the 19<sup>th</sup> day of October, 2009 at 7:30 p.m. in the Council Chambers of City Hall be the date and time set for hearing on the application Avera Queen of Peace Foundation for a Special Event Wine and Malt Beverage License for the Highland Mall for "A Splash of Spirits" on November 14, 2009. Motion carried.

Moved by Houwman, seconded by Beck, that the 19<sup>th</sup> day of October, 2009 at 7:30 p.m. in the Council Chambers of City Hall be the date and time set for hearing on the application to transfer Retail (On-Sale) Liquor License (RL-5758) from Fire Brand of Mitchell, LLC to Mitchell Steak Company, LLC dba Whiskey Creek. Motion carried.

**CONSIDER APPROVAL:**

Moved by Backlund, seconded by Beck, to approve an automatic supplement to the Special Revenue Fund – Parks, Recreation & Forestry, in the amount of \$13,500.00 for Cadwell sports complex softball field improvements from a donation of funds. Motion carried.

Moved by Beck, seconded by Backlund, to approve an automatic supplement to the Special Revenue Fund – Parks, Recreation & Forestry, in the amount of \$1,186.00 for parks and boulevards repair from vandal restitution. Motion carried.

Moved by Houwman, seconded by Backlund, to approve an automatic supplement to the Special Revenue Fund – Parks, Recreation & Forestry, in the amount of \$10,000.00 for the Pepsi-Cola Soccer Complex gazebo construction project from a donation of funds. Motion carried.

Moved by Beck, seconded by Houwman, to approve a request of My Fishing Pond, Inc. to conduct a raffle with the drawing to be held on October 28, 2009. Motion carried.

Moved by Carpenter, seconded by Beck, to approve a request of Corn Palace Shrine Club to conduct a raffle with the drawings to be held on April 23, 2010 and September 24, 2010. Motion carried.

Moved by Allen, seconded by Beck, to approve a request of American Legion Auxillary to conduct a raffle with the drawing to be held on December 5, 2009. Motion carried.

Moved by Carpenter, seconded by Allen, to approve a request of the American Legion to conduct a raffle with the drawing to be held on November 22, 2009. Motion carried.

**PAY ESTIMATES:**

Moved by Backlund, seconded by Beck, to approve the following pay estimates:

- pay estimate #4 in the amount of \$48,138.75 for Foster Street Lift Station Project #2008-2 contracted with Northern Plains Construction,
- pay estimate #6 in the amount of \$25,457.61 for Landfill Closure Project #2008-33 contracted with Schoenfelder Construction,
- pay estimate #6 in the amount of \$189,115.01 for New Landfill Expansion Project #2009-12 contracted with Louiseau Construction Inc.,
- pay estimate #4 in the amount of \$75,457.78 for Paving and Overlay Project #2009-15 contracted with Commercial Asphalt,

- pay estimate #3-Final in the amount of \$8,811.05 for MAC Dehumidifier Project #2009-25 contracted with Paulson Sheet Metal,
- pay estimate #1-Final in the amount of \$2,150.00 for MAC Dehumidifier Project #2009-25 contracted with Roby, Quintal & Everson,
- pay estimate #4 in the amount of \$100,789.27 for AIP '23 Airport Runway Rehabilitation contracted with Muth Electric Inc., and
- pay estimate #4 in the amount of \$2,135,781.02 for AIP '23 Airport Runway Rehabilitation contracted with Commercial Asphalt.

Members present voting aye: Allen, Backlund, Beck, Carpenter, Houwman. Members present voting nay: none. Motion carried.

**BILLS:**

Moved by Beck, seconded by Allen, to approve the following payroll expenditures, adjustments to payroll and accounts payable warrants:

**PAYROLL, SEPTEMBER 6, 2009 – SEPTEMBER 19, 2009:** City Council-\$2,440.24, Mayor-\$885.54, Attorney-\$1,986.55, Finance-\$9,778.78, Human Resources-\$2,698.24, Information Technology-\$1,329.12, Police-\$55,077.83, Traffic-\$3,322.66, Fire-\$33,120.53, Street-\$22,260.32, Public Works-\$14,776.38, Cemetery-\$3,290.54, Mosquito Control-\$736.00, Animal Control-\$1,275.11, Emergency Medical Services-\$9,990.66, Library-\$9,771.78, Playground & Athletics-\$4,649.42, Campground-\$1,840.00, Recreation Center-\$9,152.72, Cadwell-\$4,345.10, Soccer Complex-\$524.00, Park-\$9,840.64, Supervision-\$5,195.67, Forestry-\$2,636.07, E911-\$17,272.46, RSVP-\$3,237.22, Palace Transit-\$15,184.08, Nutrition-\$1,602.37, Water-\$7,207.20, Water Distribution-\$7,828.55, Sewer-\$9,545.10, Airport-\$1,666.96, Waste Collection-\$9,742.64, Landfill-\$6,795.20, Corn Palace Maintenance-\$8,800.44, Corn Palace Decorating-\$4,191.13, Corn Palace Shows-\$3,644.34, Corn Palace Concessions-\$2,228.79, Golf Course-\$6,044.33.

**SALARY ADJUSTMENTS (per hour rate):**

Police: Ryan Erickson-\$23.989

RSVP/Nutrition: Amy Hurt-\$13.424

Street: Steve Anderson-\$18.097

**NEW HIRES (per hour rate):**

Palace Transit: David Robinson-\$10.393

Playground & Athletics: Collin Berg-\$10.00; Jesse DeVries-\$9.00; Sarah Duff-\$12.50; Austin Emmett-\$8.00; Collin Gronseth-\$11.50; Ty Hamar-\$10.50; Robert Hanson-\$12.50; Katy Lazenby-\$8.00; Adam Meaney-\$11.00; Megan Roth-\$8.00; Natalie Roth-\$8.50; Carissa Scherschligt-\$9.00; Wendy Sivik-\$9.50; Kelsey Stern-\$10.00; Seth VandenHoek-\$8.00; Jordan Werner-\$10.00;

Recreation Center: Sarah Weidler-\$7.25

**WARRANTS:**

Members present voting aye: Allen, Backlund, Barington, Beck, Carpenter, Houwman. Members present voting nay: none. Motion carried.

Moved by Allen, seconded by Allen, to recess until 8:30 p.m. or until one more council member joins the meeting. Motion carried.

Moved by Carpenter, seconded by Backlund, to come out of recess. Motion carried.

Council member Mel Olson joined the meeting at 8:03 p.m. Council member Jeff Smith joined the meeting at 8:06 p.m.

**BOARD OF ADJUSTMENT:**

Moved by Houwman, seconded by Allen, for the City Council to adjourn and sit as the Board of Adjustment. Motion carried.

It was advised that this is the date and time set for hearing on the application of Stu and Connie Boughey for a variance to construct a garage, located at 900 East 7<sup>th</sup> Avenue, Lot 11, Block 1, F.M. Greene Addition, City of Mitchell, Davison County, South Dakota. Notice of hearing has been given according to statute and affidavit of publication is on file. The Planning Commission recommended approval of said application. Moved by Houwman, seconded by Allen, to approve said application. Motion carried.

It was advised that this is the date and time set for hearing on the application of Nicole Ehlers for a conditional use permit to operate a daycare center in her home located at 820 West 7<sup>th</sup> Avenue, Lot 6, Block 25, Rowley's 2<sup>nd</sup> Addition, City of Mitchell, Davison County, South Dakota. Notice of hearing has been given according to statute and affidavit of publication is on file. The Planning Commission recommended approval of said application. Moved by Houwman, seconded by Carpenter, to approve said application. Motion carried.

Moved by Carpenter, seconded by Backlund, that the 19<sup>th</sup> day of October, 2009 at 7:30 p.m. in the Council Chambers of City Hall be the date and time set for hearing on the application of Wayne Martinson for a variance to construct a 30 x 40 shed, located at 618 South Kimball Street, Lot 110, Overlook Addition and to direct the Finance Officer to give notice according to statute. Motion carried.

Moved by Allen, seconded by Backlund, that the 19<sup>th</sup> day of October, 2009 at 7:30 p.m. in the Council Chambers of City Hall be the date and time set for hearing on the application of William Wittstruck for a variance to construct a garage located at 301 East Hackberry, West 100' of North 158', Block 9, Weaver's Square and to direct the Finance Officer to give notice according to statute. Motion carried.

Moved by Beck, seconded by Backlund, that the 19<sup>th</sup> day of October, 2009 at 7:30 p.m. in the Council Chambers of City Hall be the date and time set for hearing on the application of Mitchell Wesleyan Church for a conditional use permit to construct a religious institution located at 601 North Sanborn Boulevard, Lots 4, 5 and B, Subdivision of Lot 6, and Lots 7 through 9 from West 7<sup>th</sup> Avenue, inclusive

of vacated alley between lots, Block 10, M.H. Rowley's 2<sup>nd</sup> Addition and to direct the Finance Officer to give notice according to statute. Motion carried.

Moved by Allen, seconded by Backlund, that the 19<sup>th</sup> day of October, 2009 at 7:30 p.m. in the Council Chambers of City Hall be the date and time set for hearing on the application of Mitchell Wesleyan Church for a height variance and a backyard setback, located at 601 North Sanborn Boulevard, Lots 4, 5 and B, Subdivision of Lot 6, and Lots 7 through 9 from West 7<sup>th</sup> Avenue, inclusive of vacated alley between lots, Block 10, M.H. Rowley's 2<sup>nd</sup> Addition and to direct the Finance Officer to give notice according to statute. Motion carried.

Moved by Carpenter, seconded by Allen, for the Board of Adjustment to adjourn and the City Council to reconvene in regular session. Motion carried.

**EXECUTIVE SESSION:**

Moved by Carpenter, seconded by Houwman to go into executive session as permitted by SDCL 1-25-2 (4) and as requested by City Attorney Randy Stiles. Motion carried. Moved by Houwman, seconded by Carpenter, to come out of executive session. Motion carried.

**ADJOURN:**

There being no further business to come before the meeting, it was moved by Olson and seconded by Allen to adjourn the meeting. Motion carried.

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Marilyn Wilson  
Finance Officer