

City of Mercer Council Minutes

November 9, 2023, at 7pm

Interim Mayor Ken Thomsen called the meeting to order with council members Barb Stute, Gary Volochenko, Erika Lorenz, Randy Zinke and Tonya Wellington-Auditor all present.

Ken Thomsen led the Pledge of Allegiance.

Ken Thomsen read the minutes from October 12, 2023. Erika Lorenz made the motion to approve, and Randy Zinke seconded. Barb Stute, Gary Volochenko, Erika Lorenz, and Randy voted Aye. Motion carried.

Financial Report: Randy Zinke made the motion to approve the Financial Report and Barb Stute seconded. Barb Stute, Gary Volochenko, Erika Lorenz, and Randy Zinke voted Aye. Motion carried.

Bills: Gary Volochenko made the motion to approve the bill for the month and Erika Lorenz seconded. Barb Stute, Gary Volochenko, Erika Lorenz, and Randy Zinke voted Aye. Motion carried.

Water Bills: Council members discussed account #59. Council members have been provided with print out for this resident for the last six months. The residents had water readings lately that were 7,800 gallons of water usage for 2 months. The resident's average is around 1500 gallons of water usage per month. Erika Lorenz made a motion to credit back the resident the late fees back to May of 2023 and grant a credit for 16,700 gallons of water usage. The understanding is that the meter needs to be replaced and the resident will be responsible for the cost of the installation. Randy Zinke seconded the motion. Barb Stute, Gary Volochenko, Erika Lorenz, and Randy Zinke voted Aye. Motion carried.

Council members asked to have letters sent to accounts 11 and 51 after the 15th if not paid.

Park Minutes: Erika Lorenz stated no minutes as this time. Park electric was \$43.10, and the water was \$53.00 which has been paid. The park board is going to be meeting on November 21, at 7pm.

Old Business:

Ken Thomsen Interim Mayor and Tonya Wellington signed the purchase agreement for Christopher and Kira Blair to purchase property from the City of Mercer. Erika Lorenz notarized purchase agreement.

Tonya Wellington will send the purchase agreement to Lindell Law Firm, and they will file the paperwork with McLean County.

Ken Thomsen read an opinion from the City's attorney on the proposed water ordinance from James Wilson with Wilson Law, P.C.

James Wilson has carefully reviewed the proposed water and sewer ordinance being considered by the City Council. The Council specifically wanted to know whether it is legal for the City to charge a base rate for water to every property with a curb stop installed. In researching this issue, Mr. Wilson reviewed relevant sections for the North Dakota Century Code and a pertinent Attorney General's Opinion. Mr. Wilson stated that based on his analysis, it appears that the proposed water and sewer ordinance is consistent with the powers granted to the City under North Dakota Law.

According to Section 40-05-01 of the North Dakota Century Code, the governing body of a municipality such as the City of Mercer, has the power to enact or adopt all such ordinances and regulations as may be necessary to carry into effect the powers granted to the municipality. This includes the power to manage and maintain any system of waterworks and to fix and regulate the rates, use, and sale of water. The proposed water and sewer ordinance aligns with this legal authority by establishing base rates for water and sewer services.

Section 40-33-16 of the North Dakota Century Code, allows a municipality to contract to purchase water wholesale for distributions, and pursuant to such a contract, the municipality may establish rates and charges for supplying water to its inhabitants. The proposed ordinance is within the scope of this statutory provision as it establishes rates for water and sewer services provided by the City of Mercer.

Furthermore, the Attorney General's Opinion supports the legality for minimum customer charges. The opinion explains that a customer charge is a fee intended to defray part of the costs of bringing basic service to the consumer, specifically those costs that do not change with the amount of the consumer's usage. The purpose of a customer charge is to provide a partial recovery of fixed costs incurred in providing service to a customer merely by reason of their connection to the utility's system. The opinion concludes that minimum customer charges are not inherently unlawful. The proposed ordinance mandates that every property with a sewer and/or a curb stop for water must pay the base rates the City of Mercer has established, regardless of whether the property owner lives in the City of Mercer on a full-time basis, permanent basis or whether the service is on. This approach is not unprecedented.

Therefore, it appears that the City of Mercer, under its powers to fix and regulate the use and sale of water, can legally charge a base rate for water to every property with a curb stop installed.

Ken Thomsen stated per City attorney we are within our legal rights. The ordinance has been read once but the Council wanted to make sure the new water and sewer ordinance is legal.

Erika Lorenz has concerns that there are four property owners that have come to the City Council and stated that there were agreements that were made with them that are not being honored in this ordinance. One resident has the documentation what was said to him and what was agreed to. Erika Lorenz suggested that those four properties should be exempt from the new ordinance until they change ownership and/or change hands.

Ken Thomsen stated that our old ordinance did not address disconnection for past due payments, what defines a service or the fees to hook to the system. Also, the payments for the three loans were added. Residents need to know what this payment has to cover and when it matures.

Ken Thomsen opened it to the public for comment. Valerie Thomsen believes there have been some exceptions memorialized in writing and others were verbal. She believes properties granted exemptions should be those in writing or in the minutes to be fair.

Jason Meidinger stated that he was there through every step. He signed the paperwork that he did not want a curb stop. He said when it was going in and he tried to stop it, but it was a little too late. He wanted the contractor to dig it up but was told he needed to talk to the city and then had to wait till the next meeting. He has documentation of those meetings.

Ken Thomsen called for motion. Erika Lorenz made a motion that we do due diligence to find the documentation for the people who should be exempt, Barb Stute seconded.

Barb Stute, Erika Lorenz, and Randy Zinke voted Aye. Gary Volochenko voted No. Motion carried.

New Business:

Erika Lorenz is doing some research on Waste Management bills. Erika Lorenz got the numbers from Tonya Wellington. The contract with Waste Management ends November 30, 2024. Our increase is 3 percent per year through the term of the contract. The city is paying \$1,065.17 per month and it is not collecting enough to cover that bill. The average shortage each month is between \$100.00 and \$150.00 for the past 3 years. \$150.00 and divided by forty-two users is \$3.57 per month. Our rate with Waste Management increases another 3 percent on December 1, 2023. Erika Lorenz proposed that garbage rates be increased to \$4.50 per user for both residential and commercial. That should cover the deficit until the end of our contract. Gary Volochenko made a motion to raise the garbage rate by \$5.00 per user for residents and commercial properties. Residential properties will be \$30.75 per month. Erika Lorenz seconded the motion. Barb Stute, Gary Volochenko and Erika Lorenz voted Aye. Randy Zinke voted no. Motion carried.

Tonya Wellington will send letters to residents by December 1, 2023, informing them the new rate for garbage, starting January 1, 2024, will be \$30.75.

Adjourn Meeting:

Gary Volochenko made the motion to adjourn the meeting and Barb Stute seconded. Motion carried.

Next meeting is December 14, 2023, at 7 pm.