

7:30 pm, Wednesday, June 17, 2020, the meeting of the Rolla City Council was called to order by Mayor John Hardy.

Council Members Present: Leonard Lange, Blake Gottbreht, Hovi Mitchell, Rebecca Albert, Kyle Hardy and Paula Wilkie.

Others present: Danielle Mickelson – JDA Director, John Rosinski – TM Star, Jim Olson – AE2S, Jason Strand – AE2S, Cliff Rush –Public Works Superintendent, Daryl Cameron – Police Chief, Carolyn Orey – City Auditor, Jady Juntunen – Rolla Boy Scouts, Chris Albertson, Sandra Olson, Tara Okerson, Hannah Neameyer, and Nathan Neameyer.

Absent: Leonard Lange

Consent Agenda

Council Member Gottbreht moved, Council Member Hardy seconded, to approve the Consent Agenda. All members on roll call voted “yes”. None voted “no”. Motion carried.

- Minutes: May 20, 2020 City Council meeting
- Minutes: June 9, 2020 Special Council meeting
- Financial Report – May 2020
- Building Permit: Kevin Juntunen – Deck
- Building Permit: Rhea DeCoteau – Shed
- Building Permit: Presentation Medical Center - Sidewalk
- Raffle Permit: American Legion Post #235

Reading of the Bills

INTERNAL REVENUE SERVICE \$4,446.19;ND PUB. EMPLOYEE RET. DEF. COM \$75.00; DACOTAH BANK \$1,316.05; ND PUBLIC FINANCE AUTHORITY \$109,125.00;INTERNAL REVENUE SERVICE \$4,543.24; ND CHILD SUPPORT DIVISION \$381.60; AFLAC \$255.74; ND PUB. EMPLOYEE RET. DEF. COM \$75.00; VERIZON WIRELESS \$388.24; ND PUBLIC EMPLOYEES RETIRMENT \$5,732.58; NORTHERN PLAINS ELECTRIC \$145.86; ND PUBLIC EMPLOYEES RET. INS \$11,611.48; STARION BANK \$4.00; PAYMENT SERVICE NETWORK \$105.45; ND CHILD SUPPORT DIVISION \$381.60;ROLETTE COUNTY TRANSIT \$7,000.00; RANDY ROGERS \$1,400.00; US POSTAL SERVICE \$142.50;ACME TOOLS \$488.81;ADVANCED ENGINEERING & ENVIRON \$14,797.02;CNH INDUSTRIAL CAPITAL-R.IMP \$111.90; CORE & MAIN \$256.32;CUISP SERVICE \$91.00; ENVIRONMENTAL PLANT SERVICES \$7,000.00; GALL S \$87.69;GOOSENECK IMPLEMENT \$121.79; GRAND FORKS UTILITY BILLING \$70.00;GUSTAFSON OIL \$1,511.99;HACH \$122.54;HAWKINS INC \$11,901.06; HEALTH CHEMISTRY LAB \$34.43;INFORMATION TECHNOLOGY DEPT- P \$92.00;JACK AND JILL \$12.55; LEGACY COOPERATIVE \$683.83; LIBRARYWORLD \$460.00; LIL PRAIRIE GREENHOUSE \$1,440.00; MARC \$327.14; MICROLAP TECHNOLOGIES \$19.10; MUNRO ACE HARDWARE \$192.84; ND SEWAGE PUMP & LIFT STATION \$1,581.25;ND STATE LIBRARY \$23.33; NORTH DAKOTA ONE CALL \$19.30;NORTHERN PLAINS ELECTRIC COOP \$77.66;NORTHWEST PIPE FITTINGS-MANDAN \$239.94; OTTERTAIL POWER CO \$6,122.38;PETTY CASH \$8.25;POWER PLAN OIB \$2,037.51;PREBLE MEDICAL SERVICES, INC. \$50.00; RANDY ROGERS \$1,400.00;ROLLA PARK BOARD \$10,800.00;ROLLA WELDING \$132.00;THEEL MOTORS \$31.06;TM STAR \$1,124.08;TUOMALA PLUMBING & HEATING \$380.03; VERIZON WIRELESS \$285.38;WESTSIDE CSTORE \$30.00;WM CORPORATE SERVICES, INC \$17,590.22; GIBBENS LAW OFFICE \$46,759.56; PREBLE MEDICAL SERVICES, INC. \$40.00;BANK OF NORTH DAKOTA \$31,349.92; CENEX FLEET CARD \$619.08; LEEVERS FOODS \$51.32; MEARS AUTO PARTS \$9.90;ND DEPT OF ENVIRON. QUALITY \$20.00;VISA \$124.03; STAPLES CREDIT PLAN \$69.98;TM COMMUNICATIONS \$623.33;CLIFF RUSH \$750.00;Semi Month - Hourly ACH \$14,864.04;Semi Monthly - Salary ACH \$18,004.75

Council Member Mitchell moved, Council Member Wilkie seconded, to pay bills as submitted. All members on roll call voted “yes”. None voted “no”. Motion carried.

Engineer Report:

City Wide Utility Improvement Project:

Discussion was held regarding funding for the City Wide Utility Improvement Project. Mayor Hardy asked for clarification on when the \$1,300 per year special assessments would begin.

Council Member Wilkie approved an election for the City Wide Improvement Project for \$15,236,000 net \$11.6 million, Council Member Mitchell seconded. All members on roll call voted “yes”. None voted “no”. Motion carried.

Council Member Wilkie made a motion to set the special election to Tuesday July 21, 2020 for the City Wide Improvement project, Council Member Mitchell seconded. All members on roll call voted “yes”. None voted “no”. Motion carried.

Old Business

Rolette County Property-211 2nd Ave SE

Discussion was held regarding the property at 211 2nd Avenue Southeast in Rolla. Council Member Albert moved, Council Member Hardy seconded, to remove specials and purchase the property from Rolette County for one dollar (\$1) in hopes of reselling the property in the near future. All members on roll call voted “yes”. None voted “no”. Motion carried.

Second Reading of Ordinance No.425 – An Amendment to Zoning Ordinance No. 310

An Ordinance of the City of Rolla amending in it’s entirety “Section II. General Provisions” of Ordinance No. 310, a Zoning and Subdivision Ordinance in regards to sub-section H. Conditionally Permitted Uses and “ Section V. Administration and Enforcement Subsection B. Planning and Zoning Commission and Subsection C. Board of Adjustments.

BE IT ORDAINED by the City Council of The City of Rolla, Rolette County, North Dakota:

Section II, (General Provisions) of Ordinance No. 310 adopted February 2, 1981, is hereby amended by replacing

sub-section H (Conditionally Permitted Uses) in its entirety with the following language:

Applications for approval of a conditional use shall be submitted to the Rolla Planning and Zoning Commission.

The Rolla Planning and Zoning Commission shall hold a public hearing before action is taken on the application for approval of a conditionally permitted use. Notice of said hearing shall be published in the official newspaper of general circulation at least two weeks prior to the hearing.

No application for a conditional use shall be granted unless the Planning and Zoning Commission shall find all of the following conditions present.

1. The conditional use will not be detrimental to or endanger the public health, safety of general welfare.
2. The existing permitted uses in the neighborhood will not be in any way substantially impaired or diminished by the establishment of the conditional use.
3. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or being provided.
5. The conditional use shall conform to all applicable regulations of the district in which it is isolated.
6. Based upon their findings of the above listed conditions, the Planning and Zoning Commission shall grant or deny a conditional use.

Section V (Administration) of Ordinance No. 310 adopted February 2, 1981, is hereby amended by replacing sub-section B (Planning and Zoning Commission) in its entirety with the following language:

B. Planning and Zoning Commission

1) Membership:

- a) The Planning and Zoning Commission shall consist of not more than ten members, of the ten members one member shall be a resident living in the one-half mile non-incorporated area. The executive officer, the engineer, and the attorney of the municipality shall be ex-officio members of the commission.

2) Duties Under This Code:

- a) Establish rules and procedures for administrating the Zoning Ordinance.
- b) Hold public hearings on all applications for subdivision plats, amending the "Zoning District Map" and the text of these regulations.
- c) Recommend approval, denial or modification of all applications for amendment after the public hearing to the City Council.
- d) Publish notice of the public hearings in the official municipal newspaper of general circulation at least two weeks prior to the said hearing.
- e) Initiate and review from time to time a study of the provisions of these regulations and make recommendations to the City Council.
- f) Review, update and implement the Rolla Comprehensive Plan.
- g) May issue a variance only as permitted in the Ordinance.
- h) May issue conditional use permits as permitted in this ordinance.

Section V (Administration) of Ordinance No. 310 adopted February 2, 1981, is hereby amended by replacing sub-section C (Board of Adjustment) in its entirety with the following language:

C. Board of Adjustment

1) Membership

- a) The Board of Adjustment consisting of five members shall be appointed by the City Council in accordance with the provisions of Chapter 40-47-07 of the North Dakota Century Code. The appointing authority may remove any member of the Board for cause after a hearing.

2) Duties Under This Code:

- a) Hear the appeal of any person, firm, or organization aggrieved by the decision or ruling of the code administrator. The code administrator shall transmit to the Board of Adjustment all records on which his decision was based.
- b) Fix a reasonable time for the hearing of the appeal and publish notice of said hearing in the official municipal newspaper of general circulation at least two week prior to the hearing.
- c) Hear and decide appeals where there is allegedly errors in the administration of the ordinances.
- d) Hear and decide on variance from these regulations as will not be contrary to the public interest, where the literal enforcement of the regulations will result in undue hardship to an individual, family or business. The concurring note of the majority shall uphold or reverse the order or decision of the Code Administrator. The Board shall record the grounds for its decision.

Section 1: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 2:Effective Date. This Ordinance shall be in full force and effect from and after final passage.

Council Member Mitchell accepted the second reading of Ordinance No. 425, Council Member Gottbreht seconded. All members on roll call voted "yes". None voted "no". Motion carried.

Committee Reports

Administrative

Council Member Albert moved, Council Member Gottbreht seconded, for Mayor Hardy to appoint a committee to review the proposed Chicken Ordinance and submit to full council for review. All members voted "yes". None voted "no". Motion carried.

Discuss regarding delinquent utility bills was held. Council Member Gottbreht proposed that the Public Works department remove the water meters from properties that are more than 90 days delinquent on their utility bills. Mayor Hardy asked Public Works Cliff Rush to work with City Auditor Carolynn Orey to determine the process moving forward.

Police Committee

Mayor Hardy stated that new vests and carriers for the officers will be shipped on June 14th.

Public Works Committee

Discussion was held regarding the street repairs. Mayor Hardy asked Public Works Cliff Rush to continue repairing the streets with tar while the City applies for a City Sales tax grant to cover the cost of repairs.

Council Member Gottbreht moved, Council Member Hardy seconded, to approve the committee reports. All members on roll call voted “yes”. Motion carried.

New Business

Liquor Licenses

Council Member Gottbreht moved, Council Member Mitchell seconded, to approve the renewal of the current liquor licenses (Main Street; Prairie Lanes; Dugan’s; Viking Inn; Bilmar Motel and the American Legion). All members on roll call voted “yes”. None voted “no”. Motion carried.

Auditor Bond Limit:

Resolution Setting Auditor Bond Limit

Be it resolved:

WHEREAS, the City of Rolla is covered by a blanket bond by the North Dakota State Bond Fund; and,

WHEREAS, the North Dakota State Bonding Fund provides fidelity bond coverage for city employees and public officials in dealing with public funds; and,

WHEREAS, the bond is fixed by the city governing body and set by resolution as outlined in NDCC §40-14-03; and,

WHEREAS, at the June 17, 2020 regular city council meeting of the Rolla City Council the current bond limits were reviewed and found to be sufficient.

NOW, THEREFORE, be it resolved by the City Council of the City of Rolla, North Dakota, that the Auditor Bond coverage by the State Bonding Fund in the amount of One Million Two Hundred Ninety-Three Thousand Dollars (\$ 1,293,000) has been reviewed and found sufficient.

APPROVED:

John Hardy, Mayor

ATTEST:

Carolynn Orey, City Auditor

The City Council of the City of Rolla acted on the foregoing resolution on June 17, 2020, as follows: Adoption moved by Councilmember Mitchell, Seconded by Councilmember Gottbreht.

Roll Call Vote

“AYE” Albert, Hardy, and Wilkie

“NAY” None

ABSENT : Lange

And after vote Mayor Hardy declared the resolution adopted.

First Reading of Ordinance No. 426 – An Ordinance Prohibiting Smoking in Public Places and Places on Employment within the City of Rolla

THE CITY COUNCIL OF THE CITY OF ROLLA DOES ORDAIN:

Section 1. Findings

WHEREAS, the 2006 U.S. Surgeon General's Report, the Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that: (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry; and

WHEREAS, according to the 2010 U.S. Surgeon General's Report, How Tobacco Smoke Causes Disease, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually; and

WHEREAS, The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen; and

WHEREAS, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

WHEREAS, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smoke-free in their entirety. In 2015, ASHRAE amended its ventilation Standard for Acceptable Indoor Air Quality (62.1) to include an environment that is completely free from marijuana smoke and emissions from electronic smoking devices.

WHEREAS, in reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smoke-free laws, the National Academies of Sciences, Engineering, and Medicine (the National Academies) concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smoke-free laws reduce heart attacks, and

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. The Americans with Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability; and

WHEREAS, the U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke. Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. The National Academies has found that there is conclusive evidence the e-cigarette use increases airborne concentrations of particulate matter and nicotine in indoor environments compared with background levels. The use of e-cigarettes in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially in smoke-free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke-free laws; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety; and

WHEREAS, there is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a duty to provide their workers with a workplace that is not unreasonably dangerous, and

WHEREAS, smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses; and

WHEREAS, the smoking of tobacco, hookahs, or marijuana and the use of electronic cigarettes are forms of air pollution and constitute both a danger to health and a material public nuisance;

NOW THEREFORE, the City of Rolla finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in all public places and places of employment; and (2) to guarantee the right of all people in Rolla to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section 2. - Definitions.

1. As used in this chapter, unless the context or subject matter otherwise requires:

- a. "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah.

- b. "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
- c. "Employer" means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
- d. "Enclosed area" means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 33 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- e. "Place of employment" means any area under the control of a public or private employer, including, but not limited to, work areas, private offices, restrooms, employee lounges, conference and meeting rooms, lobbies, and reception areas, hallways, employee cafeterias, construction site, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is licensed as a child care, adult day care, or health care facility.
- f. "Public place" means an area which the public is invited or in which the public may enter. Without limitation, some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities as defined in NDCC §12.1-28-01; child care and adult day care facilities subject to licensure by the department of human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels, including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semiprivate nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as town cars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores, including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.
- g. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigarette, cigar, pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. Smoking includes the use of an electronic smoking device which creates an aerosol or vapor in any manner or any form.

Section 2. Smoking prohibited in public places and places of employment

- (a) Smoking is prohibited in all enclosed public places and places of employment.
- (b) Smoking is prohibited within 20 feet of all enclosed public places and places of employment in which smoking is prohibited.
- (c) Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
- (d) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.
- (e) Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility or outdoor area may prohibit smoking in the entirety of the establishment, facility, or outdoor area.

Section 3. Other requirements and prohibitions

- (a) No employer or owner, operator, manager, or other person in control of any place where smoking is prohibited by this chapter shall knowingly permit smoking in an area where smoking is prohibited by this chapter or any other law.
- (b) Any employer, or owner, operator, manager, or other person in control of any place where smoking is prohibited by this chapter shall post a clear, conspicuous, and unambiguous "No Smoking" or "Smoke-free" sign in at every entrance to that place.
- (c) An employer, owner, operator, manager or any other person in control of any place where smoking is prohibited by the chapter shall direct a person who is smoking in violation of this chapter to extinguish or turn off the product being smoked. If the person does not stop smoking, employer, owner, operator, manager or any other person in control of any place where smoking is prohibited by the chapter shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the employer, owner, operator, manager or any other person in control of any place where smoking is prohibited by the chapter shall contact a law enforcement agency
- (d) Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.
- (e) In addition to the remedies provided by the provisions of this chapter, the City of Rolla or any person aggrieved by the failure of the employer, owner, operator, manager or any other person in control of any

place where smoking is prohibited by the chapter to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 4. Penalties and enforcement

- (a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or equity.
- (b) Each incidence of smoking in violation of this chapter is an infraction subject to a \$50 fine or otherwise punishable pursuant to this code. Enforcement of this chapter shall be the responsibility of City of Rolla. In addition, any peace officer or code enforcement official may also enforce this chapter.
- (c) Violations of this chapter are subject to a civil action brought by the City of Rolla, punishable by a civil fine of not less than \$100 and not exceeding \$500 per violation.
- (d) In addition to the other remedies provided by this chapter, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings and suits for injunctive relief.

Section 5. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 6. Liberal Construction

This chapter shall be liberally construed so as to further its purposes.

Section 7. Effective Date.

This ordinance shall take effect and be in full force from and after its passage, approval and publication of title and penalty clause.

Council Member Wilkie moved, Council Member Albert seconded, to approve the first reading of Ordinance No.426. All members on roll call voted "yes". None voted "no". Motion carried.

First Reading of Ordinance No. 427 – An Ordinance Regulating the Sale of Tobacco and Related Devices and Products within the City of Rolla, North Dakota

THE CITY COUNCIL OF THE CITY OF ROLLA DOES ORDAIN:

The Surgeon General has found that "e-cigarette use among youth and young adults has become a public health concern" and that "in 2014, current use of e-cigarettes by young adults 18-24 years of age surpassed that of adults 25 years of age and older, "there are other studies that show the negative public health effects of e-cigarette use in adults as well. Additionally, the recent surge in lung injuries and related death provides a solid public health basis for this ordinance's restriction of the sale of all e-cigarettes.

Section 1. - Definitions.

1. As used in this chapter, unless the context or subject matter otherwise requires:
 - a. "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
 - b. "Moveable place of business" means form of business that is operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
 - c. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association, however formed.
 - d. "Sale" or "sell" means any transfer of goods for money, trade, barter, or other consideration. Sale or sell applies to gifts, exchanges, and barter.
 - e. "Self-service display" means the open display of tobacco products in any manner where any person has access to the tobacco products without the assistance or intervention of the seller or the seller's employee.
 - f. "Tobacco product" means any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- g. "Tobacco retailer" means any person who sells, exchanges, or offers to sell or exchange tobacco for any form consideration.
- h. "Vending machine" means any mechanical, electric or electronic, or other type of device that dispenses tobacco products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase a tobacco product.

Section 2. Selling Tobacco Products.

License required. No person shall sell or offer to sell any tobacco product within the City of Rolla without first having obtained a license to do so from the State Attorney General pursuant to N.D. Cent. Code § 57-36-02.

Section 3. Prohibited Acts

- (A) It shall be unlawful for any person to sell an electronic smoking device, e-liquids and e-cigarette/vaping products within the City of Rolla.
- (B) No person shall sell or offer to sell any tobacco product by means of a vending machine within the City of Rolla.
- (C) No person may sell any tobacco product to any person under the age of 21 within the City of Rolla.
 - i. Sellers must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - ii. Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where tobacco products are offered for sale. The required signage, which will be provided to the retail establishment by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (D) No person shall allow the sale of tobacco products by any self-service displays where the customer may have access to those items without having to request the item from the seller or seller's employee and where there is not a physical exchange of the tobacco product from the seller or the seller's employee to the customer. All tobacco products must be stored behind the sales counter, in another area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.
- (E) No person shall sell tobacco products from a moveable place of business.

Section 4. Enforcement

- (A) Any violation of this ordinance is an infraction and shall be penalized as follows:
 - i. For the first violation, a fine of \$250;
 - ii. For the second violation within a 60-month period; a fine of \$500;
 - iii. For the third violation within a 60-month period, a fine of \$750;
 - iv. For a subsequent violation within a 60-month period, a fine of \$1,000.
- (B) Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (C) All tobacco retailers are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of tobacco products in the retail premises. The sale, offer to sell, or furnishing of any tobacco product by an employee shall be considered an act of the tobacco retailer.

Section 5. Severability. If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 6. Effective Date. This ordinance shall take effect and be in full force from and after its passage, approval and publication of title and penalty clause.

Council Member Albert moved, Council Member Wilkie seconded, to approve the first reading of Ordinance No.427. All members on roll call voted "yes". None voted "no". Motion carried.

Resignations of Jerry and Cyndy Sparrow from Forestry Committee: Mayor Hardy received a letter of resignation from Jerry and Cyndy Sparrow from the Forestry Committee. Mayor Hardy thanked Jerry and Cyndy Sparrow for their years of service.

There being no further business, Mayor Hardy adjourned the meeting at 10:10 p.m.

The next scheduled special meeting of the City Council is Tuesday, June 23, 2020 at 7:00 p.m.

John Hardy, Mayor

ATTEST:

Carolynn Orey, City Auditor
Dated 06/22/2020

