

Brookings City Council
December 13, 2022

The Brookings City Council held a meeting on Tuesday, December 13, 2022 at 5:30 PM, at the Brookings City & County Government Center, Chambers, with the following City Council members present: Mayor Oepke Niemeyer, Council Members Nick Wendell, Joey Collins, Holly Tilton Byrne, Wayne Avery, Brianna Doran, and Bonny Specker. City Manager Paul Briseno, City Attorney Steve Britzman, and City Clerk Bonnie Foster were also present.

Agenda. A motion was made by Council Member Wendell, seconded by Council Member Specker, that the agenda be approved. The motion carried by the following vote: Yes: 6 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker; Absent: 1 – Tilton Byrne.

(Council Member Tilton Byrne arrived at 5:31 p.m.)

Executive Session. A motion was made by Council Member Specker, seconded by Council Member Wendell, to enter into Executive Session at 5:31 p.m., pursuant to SDCL 1-25-2.1, for the purpose of discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor. Present: City Council and Human Resources Director Susan Rotert. The motion carried by a unanimous vote. A motion was made by Council Member Specker, seconded by Council Member Doran, to exit Executive Session at 6:39 p.m. The motion carried by a unanimous vote.

Open Forum. Jeff Streuwe expressed ongoing concerns with the COVID vaccines. Jeanette Gibbons shared information about COVID vaccines. Cole Sartell thanked the council for their continued openness in the community and the signing of the Same-Sex Marriage Bill by President Biden.

Consent Agenda. A motion was made by Council Member Wendell, seconded by Council Member Collins, to approve the Consent Agenda. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

A. Action to approve the 11/22/2022 City Council Minutes.

B. Action on Resolution 22-093, a Resolution authorizing the City Manager to sign an On-Sale Liquor Operating Agreement renewal for Jesse Davis, LLC, dba Craft Fusion, Jesse Davis, owner, 610 Medary Avenue, Brookings, South Dakota.

Legal description: Lots 3-4-5, Randi Peterson Addition.

Resolution 22-093 - On-Sale Liquor Operating Agreement – 5-year mid-term renewal
Jesse Davis LLC, dba Craft Fusion

Be It Resolved by the City of Brookings, South Dakota, that the City Council hereby approves a Lease Agreement renewal for the On-Sale Operating Alcohol Management Agreement for Liquor between the City of Brookings and Jesse Davis LLC, Jesse Davis,

owner, dba Craft Fusion, for the purpose of a liquor manager to operate the on-sale establishment or business for and on behalf of the City of Brookings at 610 Medary Avenue. Legal description: Lots 3-4-5, Randi Peterson Addition.

Now, Therefore, Be It Further Resolved that the City Manager be authorized to execute the Agreement renewal on behalf of the City, which shall be for a period of five (5) years.

Ex-Officio Reports. A Brookings Municipal Utility Board report was given by Council Members Avery and Specker. A Brookings Health Systems Board of Trustees report was given by Council Members Collins and Doran.

Council Member provided an update on the first citizens and Council Community Office Hours.

2023 City Attorney Contract. A motion was made by Council Member Specker, seconded by Council Member Wendell, that a Legal Services Agreement between the City of Brookings and Steven J. Britzman, Attorney at Law, for a one-year contract (01/01/2023 - 12/31/2023), be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Legal Services Agreement

The City of Brookings and Steven J. Britzman, Attorney at Law, agree that the City of Brookings has appointed Steven J. Britzman to serve as City Attorney for a one (1) year period, commencing January 1, 2023 and ending December 31, 2023, unless extended by mutual agreement of the parties, in writing. The City of Brookings and Steven J. Britzman desire to set forth the terms of their Agreement concerning the provision of legal services by Steven J. Britzman as City Attorney as follows:

1. Performance of Legal Services

Steven J. Britzman will perform all legal services as provided in the "Scope of Services for City Attorney for City of Brookings" (the "Scope of Services"). A copy of the Scope of Services for City Attorney is attached hereto. Steven J. Britzman will perform all legal services which include representing the City in Magistrate Court in the enforcement of City Ordinances.

2. Insurance Coverage

Steven J. Britzman will maintain Attorneys Professional Liability coverage in the amount of One (1) million dollars (\$1,000,000) per claim and One million dollars (\$1,000,000) aggregate during the term of this agreement. Steven J. Britzman will be responsible to pay any deductible amount under the foregoing coverage.

3. Conflicts of Interest

The parties to this Agreement understand that actual or perceived conflicts of interest are defined in great detail in the South Dakota Rules of Professional Responsibility

which govern attorneys and which are a part of the statutes of South Dakota. Accordingly, Steven J. Britzman will follow the South Dakota Rules of Professional Responsibility, immediately disclose to the City Council and City Manager any conflict or the appearance of a potential conflict, and resolve the issue to the satisfaction of the City of Brookings and the client.

4. Compensation for Legal Services

Steven J. Britzman agrees to provide all of the legal services provided in the Scope of Services, for a monthly sum from January 1, 2023 through December 31, 2023 up to Nine Thousand Eighteen and 62/100 (\$9,018.62) Dollars for the first Fifty (50) hours of legal services performed each month, payable on the last day of the month.

For all services provided in excess of Fifty (50) hours per month, Steven J. Britzman shall be compensated at a rate of a Two Hundred and no/100 (\$200.00) Dollars per hour, up to a maximum of Seventy (70) hours per month, payable on the last day of the month. If the City Attorney performs more than Seventy (70) hours of service per month, there will be no further compensation paid to the City Attorney for services in excess of Seventy (70) hours, unless the services are specifically contracted because they are outside the Scope of Services. The hourly rate for other legal services, including those set forth in Item 15 of the Scope of Services is \$200.00 during the term of this Agreement.

The legal services provided by Steven J. Britzman will be performed as an independent contractor and Steven J. Britzman shall therefore pay all payroll and business expenses incurred in providing legal services to the City.

5. Expense Reimbursements, Meetings and Conferences

In addition to the compensation for legal services during each year of this Agreement, the City will provide Four Thousand Dollars (\$4,000.00) per year for membership in the International Municipal Attorneys Association (IMLA) (currently \$625.00 per year) and for Conference registration, travel and lodging for the Annual Meeting of the IMLA and South Dakota Municipal League which includes approximately nineteen hours of continuing legal education.

The City Attorney will also be reimbursed for out-of-pocket expenses when required to travel outside the City of Brookings to other meetings or to perform legal services, provided such travel is approved by the City Manager in advance of travel.

6. Legal Services not within the Scope of Services

Steven J. Britzman shall first obtain approval of the City to perform any legal services excluded from the Scope of Services, however Steven J. Britzman and the City agree that it is appropriate for the City Attorney to be responsive to residents of the city, the media, other municipal attorneys, the municipal league and other public officials where communication or an appropriate measure of assistance is in the best interest of the City.

7. Appointment and Compensation of Assistant City Attorney

It is further understood and agreed that Eric Rasmussen be appointed as Assistant City Attorney, based upon the recommendation of the City Manager and City Attorney. The term of office of the Assistant City Attorney shall coincide with the City Attorney's term of office and the scope of services shall be as set forth in this Legal Services Agreement. The compensation for the Assistant City Attorney shall be paid in the following manner:

- a) If the City Attorney performs Fifty (50) or fewer hours of service per month, the City Attorney will pay all of the compensation for the Assistant City Attorney.
- b) If the City Attorney performs more than Fifty (50) hours of service per month, then the City will reimburse the City Attorney for all of the fees paid by the City Attorney to the Assistant City Attorney for the month.

SCOPE OF SERVICES FOR CITY ATTORNEY FOR THE CITY OF BROOKINGS

The City Attorney shall perform the following services:

1. The City Attorney will attend all City Council meetings as the legal advisor for the Brookings City Council, unless the absence is due to vacation or illness or the subject matter does not require the assistance of counsel. If the City Attorney is unable to attend, then the Assistant City Attorney shall attend.
2. Provide all necessary legal consultation services, including oral and written opinions and research as requested by the Brookings City Council and the City Manager.
3. Provide legal assistance to the City's Boards and Commissions, except the Utility Board and Hospital Board, as requested by the City Manager and City Council.
4. Provide legal representation to the City in litigation initiated against the City and by the City in circumstances where the City is not represented by legal counsel assigned by its insurance company. Legal representation in litigation must be authorized in each instance by the City Council and compensation will be in addition to the monthly compensation as provided in Section 15 of this Scope of Services.
5. Assist in the preparation and review of all contract agreements, resolutions, ordinances and other legal documents considered, adopted or endorsed by the City.
6. To maintain a working knowledge of Municipal Law on both the State and Federal level.
7. Provide legal representation for the City before administrative bodies upon special request by the City Council.
8. As requested, review all claims made against the City.
9. The City Manager will be notified when the City Attorney's hours of legal services reach forty (40) for the month to allow the City Manager to manage the total hours for the remainder of the month.
10. Confer with colleagues who specialize in areas of law to establish and verify a basis for legal proceedings; serve as a liaison between outside legal counsel and City Officials on specialized legal issues.
11. Prepare a monthly written report to the City Manager of legal services performed which includes a description of the service and the time required to perform the service.
12. Assist the City Clerk and the private sector firm in Ordinance Codification.

13. The City Attorney will be an advisor to the labor negotiating staff and will review labor contracts as required or requested.
14. Maintain professional awareness of current literature and changes in law and attend continuing legal education to ensure the most efficient, cost-effective, and accurate operation of the City Attorney's Office.
15. Review proposed state legislation affecting the City and prepare or supervise the preparation of state legislation relating to municipal and city government matters as directed by the City Manager or City Council. Consult with City Council, the City Manager and department heads in regard to such legislation and testify before legislative boards as requested.
16. The City Attorney's basic fee does not include the following services:
 - a. Litigation
 - b. Recodification of substantially all of the City Ordinances.All services with the exception of litigation and recodification of the City Ordinances will be compensated pursuant to the City Attorney's basic fee. Fees for services in a. and b. above will be as negotiated and agreed upon by the parties.
17. The Assistant City Attorney shall perform all services set forth in this Scope of Services as directed by the City Attorney.

FIRST READING – Ordinance 22-041. An introduction and first reading was held on Ordinance 22-041, an Ordinance Amending Ordinance Section 82-521, and Pertaining to Maximum Duration of Parking in Public Parking Lots in the City of Brookings. Second Reading: December 20, 2022.

Ordinance 22-039. A motion was made by Council Member Specker, seconded by Council Member Wendell, that Ordinance 22-039, an Ordinance Authorizing Budget Amendment No. 10 to the 2022 Budget, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Ordinance 22-040. A public hearing was held on Ordinance 22-040, an Ordinance to amend Chapter 94, Zoning of the City of Brookings pertaining to Sections 94-131, 94-132, 94-133, 94-134, 94-135, 94-135.5, 94-136, 94-137, 94-161, and 94-399.1 for the purposes of Amending the Maximum Allowable Heights in the B-1, B-2, B-2A, B-3, B-4, B-5, I-1, I-1R and I-2 Districts and Associated Bufferyard Requirements. A motion was made by Council Member Specker, seconded by Council Member Collins, that Ordinance 22-040 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Medical Cannabis Dispensary location change. A motion was made by Council Member Collins, seconded by Council Member Wendell, that the change of location for Shangri-la SD, LLC, Shangri-La Medical Cannabis Dispensary, from 129 and 133 Main Avenue South to 1010 6th street, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Executive Session. A motion was made by Council Member Wendell, seconded by Council Member Doran, to enter into Executive Session at 7:10 p.m., pursuant to SDCL 1-25-2.1, for the purpose of discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor. Present: City Council, City Manager Paul Briseno, and Human Resources Director Susan Rotert. The motion carried by a unanimous vote. A motion was made by Council Member Doran, seconded by Council Member Wendell, to exit Executive Session at 7:59 p.m. The motion carried by a unanimous vote.

Resolution 22-096. A motion was made by Council Member Avery, seconded by Council Member Doran, that Resolution 22-096, a Resolution Amending the City Manager's Contract for 2023, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Resolution 22-096 - Resolution Amending the City Manager's Contract for 2023

Whereas, the purpose of this Resolution is to adjust the City Manager's Contract for 2023; and

Whereas, the position of the City Manager is a position appointed by the City Council; and

Whereas; the City Council has determined it is appropriate to increase the City Manager's salary 5%, resulting in a total annual salary of \$170,107.43; and

Whereas, the City Council has determined it is appropriate to amend Section 12 (Retirement) of the City Manager's contract as follows:

Section 12. Retirement

The City Manager participates in the South Dakota Retirement System (SDRS). The City Manager participates monthly in SDRS with a 6% deduction, and the City of Brookings will participate with a 6% match. In addition, the City shall also contribute 9% of the City Manager's compensation to a deferred compensation plan selected by the City Manager.

The City agrees to transfer ownership of City Manager's SDRS account to City Manager's future employer in the event of City Manager's resignation or discharge.

Now, Therefore, It Is Hereby Resolved by the City Council of the City of Brookings, South Dakota, as follows:

- 1) That the City Manger's salary shall increase by 5% for 2023, resulting in a total annual salary of \$170,107.43; and
- 2) That Section 12 of the City Manager's Contract shall be amended to include the following provision:

Section 12. Retirement

The City Manager participates in the South Dakota Retirement System (SDRS). The City Manager participates monthly in SDRS with a 6% deduction, and the City of Brookings will participate with a 6% match. In addition, the City shall also contribute 9% of the City Manager's compensation to a deferred compensation plan selected by the City Manager.

The City agrees to transfer ownership of City Manager's SDRS account to City Manager's future employer in the event of City Manager's resignation or discharge.

Adjourn. A motion was made by Council Member Specker, seconded by Council Member Doran, that this meeting be adjourned at 8:03 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS, SD

Oepke G. Niemeyer, Mayor

ATTEST:

Bonnie Foster, City Clerk