

CITY OF FENTON, MISSOURI
625 NEW SMIZER MILL ROAD, FENTON, MO 63026
MINUTES OF THE SPECIAL MEETING OF THE BOARD OF ALDERMEN
WEDNESDAY, MARCH 16, 2022
7:00 P.M.

CALL TO ORDER

Mayor Bob Brasses called the Board of Aldermen Meeting of the City of Fenton, St. Louis County, Missouri to order at 7:00 p.m. on Wednesday, March 16, 2022. The meeting was held at Fenton City Hall and via Zoom Videoconference (RSMo 610.015).

PLEDGE OF ALLEGIANCE - Mayor Brasses led the Pledge of Allegiance.

ROLL CALL

City Clerk Jane Hungler called the roll:

Alderman Ralph Cruets - <i>Absent</i>	Alderman Chris Clauss - <i>Present</i>
Alderman Brian Wisbrock - <i>Present</i>	Alderman Robin Huels - <i>Present</i>
Alderman Joe Maurath - <i>Present</i>	Alderman Tom Heard - <i>Present</i>
Alderman Kevin Yarbrough - <i>Present</i>	Alderman Susan Jokerst - <i>Absent</i>

Six Aldermen were present at the opening of the meeting.

CITY OFFICIALS PRESENT:

Mayor Bob Brasses
City Attorney Erin Seele, Esq.
City Administrator Andrea N. Finkbiner
City Clerk Jane Hungler
Public Works Director Dan Howard - *via video conference*
St. Louis County Police Precinct Captain Kevin Lawson

Alderman Maurath recognized and noted for the record Parks and Recreation member Lynn Hughes and Alderman Candidate Ward 4 Scott Maserang were in attendance.

Mayor Brasses stated that he called this Special Meeting for:

Discussion regarding a Facilities Operating and Cooperative Agreement between the City of Fenton, Missouri, and the Gateway Region Young Men's Christian Association (YMCA) for the management of RiverChase.

Tim Helm, President and CEO, Jared Beard, Chief Operating Officer, and Judy Abrams, Chief Executive Officer, 2815 Scott Avenue, St. Louis MO 63103 were in attendance.

Jared Beard gave an overview of the key issues that have been discussed for resolution for the draft agreement (see attached presentation as part of these minutes).

4.2 Operation of Facility, defined area of the facility responsibilities, City would be responsible for outside of the Facility, such as landscaping and snow removal and the YMCA would be responsible for day-to-day operations inside of the Facility, including the pool areas.

6.3 Administrative Services Fee, clarified will be included in City operating expenses and funded through City subsidy and will pay an "Administrative Services Fee" equal to twelve and half percent (12.5%) of Facility Revenues for providing accounting, information technology, human resources, management, program innovation, marketing services, and senior administrative management expertise to operate the Facility.

8.1 Resident Rates for Memberships, the YMCA shall offer residents of Fenton membership rates in the Facility, the YMCA will develop a multi-year membership pricing strategy that includes resident, non-resident, and outdoor pool options. The YMCA shall give at least ten (10) business days' advance written notice to the City Administrator prior to initiating any change to the rates to be charged residents of the City for membership dues at the Facility.

13.6 Indemnification And 16.1 Property, the YMCA agrees to indemnify and hold harmless the City, from and against any and all liabilities, damages, losses, claims, or suits, as a result of any default or breach of any representation made by the YMCA. The YMCA agrees to defend with counsel selected by the City (except insofar as the YMCA's insurance carrier may engage counsel). Also, Sovereign Immunity of City is protected and the City will maintain proper insurance sufficient to cover repairs and replacement of the building if needed.

25.1 City Access, the City and its authorized representatives shall with prior notice of 48-hours have full access to enter the Facility during normal business hours for any purpose related to this Agreement.

25.2 City Use, the City shall have the right to use the Facility, the outdoor pool, or both, for events conducted by the City on twelve (12) days per year, after reasonable prior notice to the YMCA.

Exhibits A and B are site plans and description to be provided by the City.

Areas under Spirit of Cooperation

4.2 Operation of Facility, the YMCA will provide rules and regulations of the facility. The YMCA will work cooperatively with the City to review any rule the City feels is interfering with the purpose of the Agreement.

17.4 Cooperation, in the event of severe damage to the building, the City and the YMCA shall cooperate fully to achieve desired outcome of repairs, replacement, and demolition.

3.1 Equipment, the YMCA and City will work together to determine needs for additional equipment prior to commencement and annually thereafter. The City will provide the YMCA a description of Initial Equipment and non-fitness equipment. The City and the YMCA will work collaboratively to determine whether additional or future equipment will be purchased or leased on an annual basis thereafter. The YMCA typically leases equipment and places on a schedule for replacement.

Alderman Wisbrock clarified the YMCA leases equipment at their other facilities. Jared Beard replied yes, they lease most equipment in other facilities as it helps maintain an effective replacement schedule. Alderman Huels inquired on benefit to the City to lease vs purchase. Jared Beard replied their evaluation is volume based, typically four (4) years on cardio equipment and five to six (5-6) year on strength equipment and believes it is more cost effective. City Administrator Nikki Finkbiner shared annually through the budget the YMCA would present lease or purchase consideration to the Board for review for mutual agreement and approval.

19.2 By the City, capital improvements to the building are the City's financial obligations but the YMCA helps with the design and approval of the annual capital improvements.

Matt Clark has been working with City Administrator Nikki Finkbiner on Staff transitioning.

There were no public comments.

Alderman Maurath inquired on explanation of:

7.1 Covenant of Title. City Attorney Erin Seele explained it is a standard term in lease/rental contracts, it states the City owns the property, has the right to lease, and when providing lease to the YMCA, the City will not interfere with the YMCA's usage authorized by the contract.

17.1 Whole Taking and 17.2 Partial Taking. City Attorney Erin Seele explained as governmental authorities have right to condemn properties for public usage. I.E., partial taking, if County condemned a portion of the

property, the City would work together with the YMCA if they could still use facilities, if not they would have right to terminate the contract. A whole taking would be all the property would be condemned, as there would no longer be a facility, the YMCA would have the right to terminate the contract. And contract states the City and YMCA would work cooperatively to receive any interests of the City and/or the YMCA in any such condemnation award.. This is a standard lease term.

18.3 Tax Statements and 18.4 Contest of Taxes. City Attorney Erin Seele explained City does not pay taxes, this is a provision if taxes would be assessed after the commencement of the contract, the City would be responsible for those taxes. City Attorney Erin Seele shared she did object to the clause as the City has owned and operated it since the facility's inception, if taxes would be assessed now, it would be due to the YMCA. The YMCA agreed to remove that provision.

21.2 Frustration of Purpose. City Attorney Erin Seele explained if situation occurs beyond either party's control and results in YMCA not being able to carry out the purpose of the agreement, they are allowed to terminate. I.E., if City demanded really low rates and refused to provide funds to support it, that could frustrate their purpose and prevent them from breaking even or condemnation.

Alderman Clauss inquired on explanation of:

19.1 By the YMCA. City Attorney Erin Seele explained allows YMCA to make some changes or alterations to the facility. However, any changes or alterations become a fixture to the facility and becomes the City's property. Alderman Yarbrough inquired if the fifteen (15) day notice was sufficient time. City Administrator Nikki Finkbiner suggested amendment to terms, if minor changes to require administrative approval, and major changes require "City" board approval requiring additional time. Jared Beard stated amendments could be made.

22 Right of first refusal to use facility. City Attorney Erin Seele explained if agreement terminated for any reason, if City would desire to enter in agreement with another entity for the same management services, the City has to negotiate the agreement with that entity and provide the YMCA a copy of the negotiated agreement. The YMCA would have the right to sign the negotiated agreement in place of the third party. City Attorney Erin Seele shared this terminology is in the telecom agreement but a downside to provision is a third party may not want to negotiate, as the current party may sign the negotiated agreement. The original term was five (5) years, the YMCA voluntarily reduced it the three (3) years.

Alderman Huels inquired on explanation of:

Start Up Cost, and who would decide on name and the design of the rebranding. Jared Beard replied the YMCA will draft designs and options and present them to the Board for review for a mutual agreement.

Alderman Heard inquired on explanation of:

22 Right of first refusal to use facility. if the provision repeats with each renewal. City Attorney Erin Seele explained it is at termination of agreement not renewal then after three years, then the City could contact any third party under any terms and would not be required to include YMCA. Alderman Heard expressed he was not in favor of the provision. Jared Beard stated they are confident in their performance and agree to omit from the agreement.

Facility revenue, if other facilities revenue would affect Fenton's revenue calculations, i.e., United Way allocations or other functions that would drive revenue to Fenton not included in revenue line items. Jared Beard explained if a YMCA member would attend the Fenton YMCA rather than their home branch more than 50% of the time, their revenue would be allocated to the Fenton YMCA. The United Way allocations can be distributed for inclusion services and summer camps if provided at facility. Additional funding may also include contributions or plan giving program donation.

Operating subsidy – capped at \$1.4 million and how the subsidy is calculated. City Administrator Nikki Finkbiner replied it is based on City's 2022 budget for operating cost to operate the facility and payments will be based on actual expenses submitted. Jared Beard shared examples of shortages or overages based on actual revenues vs expenses, overages will fund reserves defined in the agreement, shortages will be

reimbursed. Each year an audit will be conducted to review anticipated operating subsidy for the budget. The administrative 12.5% is a separate line item in the operating expenses.

8.1 Resident Rates for Memberships. Alderman Heard shared he feels the City residents should receive a discount for membership, such as only pay 75% of YMCA standard rate. Alderman Wisbrock commented currently facility is offering subpar product. Alderman Heard agreed. Alderman Wisbrock expressed residents are paying a subpar rate for a subpar product. If YMCA is the operating manager offering top line product, should the resident still pay a subpar rate. Alderman Heard stated residents have supported throughout the years, he expressed he does not feel current rates should remain, but residents should receive a discount. Jared Beard stated there would be residency and non-residency rates. City Administrator Nikki Finkbinder shared the goal for the YMCA is to break even, but the City has the ability to subsidize the resident rates based on budget and agreed on by both parties.

Lynn Hughes, 405 Courtney Estates Drive, Fenton MO – shared the RiverChase membership has drastically reduced. She feels with so few residential members currently participating, if a higher quality product is offered at a higher rate, she feels the price is worth the product.

Alderman Heard clarified he is not suggesting that rates remain the same, but rather resident rates need to be treated differently than non-residents. Jared Beard shared that option is offered at Carondelet and O'Fallon YMCA facilities.

Alderman Maurath noted for the record that Planning and Zoning Commission member Deb Abbott and Parks and Recreation member Mike Abbott were also in attendance of the meeting via Zoom. Alderman Huels recognized Parks and Recreation member Gary Johnson.

Alderman Maurath expressed the comments reflect the citizens have not subsidized, the City is trying to correct that issue as each year the deficit increases. The YMCA has the background to manage these types of facilities. He believes Board is trying to give more to residents and excited to get this rolling and put something out for residents. Jared Beard stated they are excited for the partnership with the City and their goal is to have the residents feel that partnership.

Alderman Yarbrough shared he was a former YMCA member, and it was a great experience and expressed appreciation of the review/presentation of the partnership.

Alderman Clauss inquired on not forming community group board. Judy Abrams shared the YMCA branches do have Community Boards, and a Fenton Community Board would be formed, however at this point they did not want to specifically address it in the contract as it had not been created yet. City Attorney Erin Seele expressed it can be added in agreement that it will need to be formed. Jared Beard agreed.

City Administrator Nikki Finkbinder noted under 8.1 Resident Rates reads prior to the Commencement Date, the YMCA will develop a multi-year membership pricing strategy that includes resident, non-resident, and outdoor pool options, and suggested to add as “mutually agreed”, before opening day.

Alderman Huels thanked the YMCA for their offer to purchase one of the pool chemtrols.

Alderman Maurath shared the contract has been reviewed with a few minor changes and inquired if the Board feels that residents have been given proper time, advisement, and information regarding the YMCA agreement before moving forward. Alderman Wisbrock stated as there were no public comments, would there be enough time to make amendments and bring back to the March Board of Aldermen meeting for consideration. Tim Helm expressed they are comfortable with amendments suggested. City Attorney Erin Seele asked for clarification on certain City officials right to act vs City Administrator rights for minor changes, such as time changes for temporary opening and closing. City Administrator Nikki Finkbinder suggested allowing inclement weather changes to the YMCA. City Attorney Erin Seele referred to Article 30 Authorized Representatives:

Until such time as such Party shall appoint an alternative representative or representatives, the following named persons shall be deemed an authorized representative for such Party with respect

to this Agreement and the development or promotion of the Facility and the other Party shall be entitled to rely on the actions and communications of said person(s) to be those of such Party so long as the same are within the scope of this Agreement:

City: [City Administrator, others?]

City Attorney Erin Seele suggested defining what should be City Administrator and what should be Board authority. City Attorney Erin Seele suggested City to mean Board of Aldermen and Administrative means City Administrator. Alderman Clauss suggested to make clarification of the Community Board also. There were no objections.

City Attorney Erin Seele inquired if twelve (12) events were enough for the City. There were no objections. City Administrator Nikki Finkbinder noted the RiverChase facility is polling place for elections that will need to be noted in agreement.

City Attorney Erin Seele shared there will be a redline revision in Board packet on Friday for review before the Board meeting. After discussion, it will be introduced at the March 24th meeting and a second reading at the April 28th Board of Aldermen meeting to allow time for public comments and employee discussions.

Alderman Maurath noted for the record typically most legislation the Board waives the rule for a second reading on the same night, however with this situation he feels more comfortable not waiving the rule to give residents every available opportunity to review and not fast tracked.

Tim Helm shared if second reading and passage took place in April, as there is a sixty (60) day transition period built into the agreement, after approval the conversations with employee would formally take place and would anticipate a July 1st commencement.

There were no objections.

EXECUTIVE SESSION

There was no executive session held.

ADJOURNMENT

At 8:01 p.m. with no other business before the Board, Alderman Huels made a motion to adjourn. The motion was seconded by Alderman Wisbrock. Upon a vote being taken, it was announced that the motion was passed unanimously by the Board of Aldermen.

Respectfully submitted,

Jane Hungler
City Clerk
City of Fenton