



City of Grand Island

Tuesday, June 10, 2014

Council Session

Item I-4

#2014-165 – Consideration of Approving Maintenance Agreement for N. Wheeler Avenue with the Downtown Business Improvement District 2013

Staff Contact: Robert Sivick

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: June 10, 2014

Subject: Consideration of Approving Maintenance Agreement

Item #'s: I-4

Presenter(s): Robert J. Sivick, City Attorney

Background

Earlier this year the City of Grand Island (City) Legal Department received an inquiry from the Downtown Business Improvement District 2013 (BID) regarding the legality of placing a statue in the park like area located at the intersection of Third Street and N. Wheeler Avenue in Downtown Grand Island. The Legal Department responded it would provide an answer once the relevant documents were examined. Those documents would consist of the Ordinance vacating the street where the park like area is located and the agreement regarding the maintenance of the park like area by the BID.

After an exhaustive search it was determined no written maintenance agreement existed between the City and the BID and the portion of N. Wheeler Avenue where the park like area is located meaning it was never vacated. The only evidence of any official action consisted of a Resolution approved by the Grand Island City Council (Council) on April 10, 1989 directing “[t]he City of Grand Island shall take appropriate steps to close Wheeler Street between South Front Street and Third Street for development of the Wheeler Street Project, including a pedestrian mall and parking area.” No further subsequent action was taken by the Council to vacate N. Wheeler Avenue between Third and W. South Front Streets but at some point the pedestrian mall and parking area were developed.

For a number of years the BID has maintained the park like area at the intersection of Third Street and N. Wheeler Avenue. Since the BID has done an exemplary job in maintaining the area no complaints have ever been received by the Legal Department.

Discussion

Approving the proposed Maintenance Agreement is necessary to legitimize the existing situation. The Resolution before you for consideration this evening does so. Particular noteworthy terms are as follows:

1. The term of the Agreement coincides with the present authorized term of existence of the BID with both expiring on September 30, 2018.
2. The BID may use the park like area for events benefitting the community with the following exceptions:
 - A. Political activities or events;
 - B. Religious activities or events excluding weddings or commitment ceremonies;
 - C. Commercial activities excluding commerce that takes place as part of an event benefitting the community.
3. Political, religious, or commercial activities may still take place in the park like area but approval of such is reserved to the City as part of its standard permit process. This ensures such activities are regulated and approved on a content neutral basis to minimize legal or constitutional issues.
4. The BID is permitted to install appropriate permanent fixtures and landscaping in the park like area.
5. The BID will maintain the park like area by mowing grass, maintaining vegetation, removing snow, ice, litter and debris, and maintaining permanent fixtures.
6. The BID will obtain and maintain insurance covering damage, destruction, or theft of any statuary it installs in the park like area.
7. Either the City or BID may terminate the Agreement upon providing the other party thirty days written notice.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve.
2. Refer the issue to a Committee.
3. Postpone the issue to a future date.
4. Take no action on the issue.

Recommendation

The City Administration recommends the Council approve the proposed Maintenance Agreement with the Downtown Business Improvement District 2013 and authorizing the Mayor to execute the same on behalf of the City.

Sample Motion

Move to approve Resolution 2014-165 and authorizing the Mayor to execute the Maintenance Agreement with the Downtown Business Improvement District 2013 on behalf of the City.

THIRD AND WHEELER STREETS PLAZA MAINTENANCE AGREEMENT

This Agreement by and between the City of Grand Island, a Nebraska Municipal Corporation (City) and the Downtown Business Improvement District 2013 (Downtown BID), an entity formed pursuant to Article 40, Chapter 19 of the Nebraska Revised Statutes and Article I, Chapter 13 of the Grand Island City Code, witnesseth:

That in consideration for the City vacating the portion of Wheeler Street between Third Street and South Front Street and dedicating the South one hundred and thirty-two (132) feet of said street (Plaza) for the purpose of a park like plaza area to be used to enhance the livability and commercial viability of the Downtown area, the Downtown BID agrees to maintain said vacated park like plaza area as follows:

I.

The terms of this Agreement shall take effect retroactively from May 1, 2014 and remain in effect through September 30, 2018.

II.

The Downtown BID agrees the City retains ownership of the Plaza and acknowledges the Downtown BID has no property rights not specifically delineated in this Agreement.

III.

- A. The Downtown BID may use the Plaza for events benefitting Downtown Grand Island or the Grand Island community. The Downtown BID is prohibited from using the Plaza for the following:
1. Political activities or events;
 2. Religious activities or events with the exception of weddings or commitment ceremonies;
 3. Purely commercial activities or events with the exception of commerce that occurs as part of an event benefitting Downtown Grand Island or the Grand Island community.
- B. Any proposed use of the Plaza for the reasons listed in paragraph II A of this Agreement must be referred to the City for its standard permit process for such activities or

events.

IV.

The Downtown BID is permitted to install permanent fixtures and landscaping in the Plaza appropriate for its use as a park like setting.

V.

The Downtown BID agrees to maintain the Plaza to include mowing grass and maintaining vegetation, removing snow, ice, litter and debris, and maintaining permanent fixtures for utilitarian and aesthetic purposes.

VI.

The Downtown BID agrees to expend necessary funds to maintain a policy insuring any statuary it may erect in the Plaza against damage, destruction, or theft with the City named as the insured party.

VII.

In carrying out the terms of this Agreement, the Downtown BID agrees not to engage in discrimination against any protected class of persons as recognized under Nebraska or United States law.

VIII.

Both the City and the Downtown BID have the right to terminate this Agreement for any reason or no reason at all upon providing the other party at least thirty (30) days written notice of such termination.

IX.

If any provision of this Agreement is declared void or illegal by a Court of law, all other unaffected provisions shall remain in full force and effect.


X.

This document constitutes the entirety of the terms and conditions of this Agreement. This Agreement shall not be

altered or modified in any way unless agreed to by all parties thereto, memorialized in writing, and executed by the parties.

Dated this 15 day of May, 2014

DOWNTOWN BUSINESS IMPROVEMENT DISTRICT
2013

 Chairperson BID
Downtown

Dated this _____ day of _____, 2014

THE CITY OF GRAND ISLAND

Jay Vavricek, Mayor

RESOLUTION 2014-165

WHEREAS, on June 10, 2014 the Grand Island City Council approved Ordinance 9492 vacating that portion of N. Wheeler Avenue between Third Street and W. South Front Street in the City of Grand Island; and

WHEREAS, Ordinance 9492 designated a particular portion of the aforementioned vacated portion of N. Wheeler Avenue for use as a park like area; and

WHEREAS, the Downtown Business Improvement District 2013 has been maintaining the park like area for a number of years and agrees to continue to do so.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City approve the Third Street and N. Wheeler Avenue Plaza Maintenance Agreement with the Downtown Business Improvement District 2013 and authorize the Mayor to execute the same on behalf of the City.

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Adopted by the City Council of the City of Grand Island, Nebraska, June 10, 2014.

Jay Vavricek, Mayor

ATTEST:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
June 6, 2014	☒ City Attorney