

City of Gary, South Dakota  
Regular Council Meeting  
Monday, May 6, 2024 at 7:30 pm at Gary City Hall

The Gary City Council met in regular session on Monday, May 6, 2024, at 7:30 pm in the City Hall. Alderman Darwyn Engesser, Mike Nosbush, Jay Grabow, Doug Nelson, Bob Stee, & Albert Bekaert were present. Mayor Larry Stoks presided. Present also were Joni Kjelden, Jesse Jenson, Koyla Kruse, Neil Schumacher, Carol Barger, Angel Oeltjenbruns, Mel Borg, Judy Heth, Melvin Pieper, Melinda Jenson, and Laura Swoboda.

Motion by Engesser, second by Nosbush to approve the agenda as written. All voting aye; motion carried.

Motion by Bekaert, second by Stee to approve the minutes of the April 1<sup>st</sup> and 10<sup>th</sup> meetings. All voting aye; motion carried.

**GENERAL-APRIL 2024 BILLS**

Finance Office-2,207.54;Library-748.20;Streets-5,887.40;Parks-754.22;Water-1,056.92;Sewer-1,056.90;AFLAC-March premium-153.39;American Legion State Headquarters-5 flags-150.00;AT&T-data connect-44.07;Bjerke Sanitation-garbage-2,521.43;Bobcat of Brookings-bobcat maintenance-1,280.24;Brookings-Deuel Rural Water-540,000 gallons-1,727.00;Canby Auto Parts-supplies-19.72;Carol Barger-election worker-150.00;City of Clear Lake-1.58 hrs-158.00;City of Gary-wsg-firehall-44.20,city hall-garbage-17.00;Clear Lake Courier-city notices/proceedings-228.71;Deuel County Conservation District-trees-545.71;Deuel County Sheriff's Office-law enforcement-571.20;Deuel County Farmers Union-monthly fuel charges-858.01;EFTPS/941 tax-FWT-1,274.59,OASI-1,993.22;First Bank & Trust-credit card charges-347.41;Gary Community Club-July 3<sup>rd</sup> donation-3,000.00;Gary Post Office-stamps-106.00;Gate City General-supplies-183.50;HD Electric-cemetery electricity-36.50;Hendricks Farmers Lumber-supplies-119.95;Helms & Associates-wastewater structure design-8,332.90;Helsper, McCarty & Rasmussen, PC-attorney fees-175.00;ITC-phone, internet, fax, alarm loop-101.96, Library-DSL, static IP-51.45;Jesse Jenson-cell phone, mileage-213.91;Judy Heth-election worker-150.00;Kobe Wyman-water deposit refund-80.00;Larry Stoks-422 miles @ .51-215.22;Menards-supplies-215.78;Office Peeps-toner-97.66;Ottetail Power Co.-electricity-912.92;Phil Trieb-election worker-150.00;Runnings-supplies-231.88;SD One call-Jan-March messages-1.05;SD DOH-coliform test-15.00;SD DOR-March and April garbage tax-297.90;SDRS-April contribution-1,268.28;Wellmark BCBS-May premium-1,369.26.

**LIQUOR-APRIL 2024 BILLS**

Municipal Liquor-12,734.97;AFLAC-March premium-482.86;Canby Print Shop-punch cards-44.81;Cash Wa Distributing-supplies, food-732.02;Chesterman-pop-417.90;City of Gary-wsg-197.70;Culligan Water-monthly rent-27.50;Dakota Blues Band-4/27/24 entertainment-400.00;Dan's Refrigeration-ice machine repair-845.00;EFTPS/941 tax-FWT-628.55,OASI-1,580.62;Ellwein Bros-beer-10,394.70;First Bank & Trust-credit card charges-125.31;Gate City General-food,supplies-28.43;Harry's Pizza-pizza-177.00;Hendricks Farmers Lumber-supplies-103.92;Henry's Foods-tobacco, food, supplies-1,159.80;ITC-phone,DSL,TV-250.16;Johnson Bros-liquor-4,940.30;Kayla Daniels Band-4/6/24 entertainment-400.00;Nathan Pester-4/13/24 entertainment-325.00;Old Dutch Foods-chips-166.71;Ottetail Power Co.electricity-551.13;Pepsi-Cola-pop-225.50;Porter Dist-beer,wine/coolers-585.90;Robin Lanners-cell phone-25.00;Southern Glazers-liquor-463.16;SD DOR-April liquor tax-2,893.40;SDRS-April contribution-1,188.66;Star Laundry-rugs, towels-125.46;Technicolor Screen Print-apparel-2,562.00;Wellmark BCBS-May premium-4,107.79.

Motion by Engesser, second by Nosbush to approve the verified claims and issue warrants in payment thereof. All voting aye; motion carried.

A question from the public regarding the gun range on the West side of town was asked.

Employee contribution, committee & ward reports were heard.

The second reading and adoption of Ordinance 336-19, to rezone Lot 2 in Block 3 of Gate City Development subdivision from Industrial District to Residential (R1) District was approved with a motion by Nosbush, second by Grabow. Roll call vote; motion passed.

A first reading updating the Water System Ordinance 2024-382 was read.

Mayor Stoks declared adjournment of the current council to re-convene for re-organization.

Oath of Office was read by Larry Stoks, Mayor, 2-year term, Darwyn Engesser, Alderman Ward I, 2-year term, Jay Grabow, Alderman Ward II, 2-year term, Bob Stee, Alderman Ward II, 1-year term, Mike Nosbush, Alderman Ward III, 2-year term. Returning Council members are Albert Bekaert, Alderman Ward I, and Doug Nelson, Alderman Ward III.

Election of officers and committee appointments were held. Bekaert nominated Nelson for President, second by Grabow. Stee motioned to cease nominations, second by Grabow. President is Doug Nelson. Nosbush nominated Bekaert for Vice-President, second by Grabow. Stee motioned to cease nominations, second by Engesser. Vice President is Albert Bekaert.

Committees appointed by Mayor Stoks: Streets and Alleys: Jay Grabow, Cemetery: Albert Bekaert, Liquor: Bob Stee & Larry Stoks, Parks: Bob Stee & Doug Nelson, Golf Course: Doug Nelson, Sanitary: Mike Nosbush, Library: Mike Nosbush, Law Enforcement: Darwyn Engesser, Water and Sewer: Darwyn Engesser.

Laura Swoboda and Melinda Jenson talked to the Council about the girls and boys summer ball program sponsored by the Peden-Cole American Post 109 and Legion Auxiliary. There is a need for new equipment, money to pay entry fees and coaches. Motion by Grabow, second by Nosbush to give \$1,500 to American Legion & \$1,500 to Legion Auxiliary to support the program and help with costs. All voting aye; motion carried.

An application to rezone Lot 1, Block 3 of Gate City Development subdivision from Industrial District to Planned Unit Development (PUD) was submitted. Their plan is for housing only. Motion by Gabow, second by Nosbush to set a public hearing for June 3, 2024 at 7:30. All voting aye; motion carried.

An application for a Variance request to relax the front yard set back at 707 Coteau St. was submitted. Motion by Nosbush, second by Engesser to set a public hearing for June 3, 2024 at 7:30. All voting aye; motion carried.

In March the Board of Water and Natural Resources approved the City of Gary for a \$2,015,822 Clean Water State Revolving Fund (SRF) loan with \$815,000 in principal forgiveness for the Wastewater Improvement project. Motion by Grabow, second by Stee to have Mayor Stoks sign resolution 2024-03 that approves the financing for the project. Resolution 2024-03 is as follows:

**RESOLUTION NO. 2024-03**

**RESOLUTION GIVING APPROVAL TO CERTAIN SEWER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.**

**WHEREAS**, one of the purposes of SDCL Chapter 9-40 (the “Act”) as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system for the collection, treatment and disposal of sewage and other domestic, commercial, and industrial wastes; or any system for the control of floods and drainage; or any combination thereof, together with extensions, additions, and necessary appurtenances; and,

**WHEREAS**, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

**WHEREAS**, the City of Gary (the “City”) currently operates a sewer system for the collection, treatment and disposal of sewage and other domestic, commercial, and industrial wastes; and for the control of floods and drainage and has determined that improvements to the sewer facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension, or addition to its sewer system; and,

**WHEREAS**, the City has determined to issue its revenue bonds to finance the improvements to its sewer system for the purpose of collecting, treating, and disposing of sewage and other domestic, commercial, and industrial wastes (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Clean Water State Revolving Fund Loan to finance the improvements;

**WHEREAS**, the City shall adopt special rates or surcharges for the improvements to be pledged, segregated, and used for the payment of the Bonds.

**NOW THEREFORE BE IT RESOLVED** by the City as follows:

**SECTION 1. Definitions.** The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

“**Act**” means South Dakota Codified Laws Chapter 9-40.

“**Loan**” means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“**Project**” means the City of Gary Wastewater Improvements Project.

**“Revenue Bond”** means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

**“System”** means the City’s system of collecting, treating, and disposing of sewage and other domestic, commercial, and industrial wastes.

## **SECTION 2. Declaration of Necessity and Findings.**

**2.1.1. Declaration of Necessity.** The City hereby determines and declares it is necessary to construct and finance improvements to its System described as the Project.

**2.2. Findings.** The City does hereby find as follows:

**2.2.1.** The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants and will make the City unable to comply with state and federal law.

**2.2.2.** Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-2, and the federal Clean Water Act, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all its users within the meaning of Sections 15 and 17 of the Act.

**2.2.3.** The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, only the net income from the Project financed by the Revenue Bond be pledged for its payment.

## **SECTION 3. Authorization of Loan, Pledge of Revenue and Security.**

**3.1. Authorization of Loan.** The City hereby determines and declares it necessary to finance up to \$2,015,822 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

**3.2. Approval of Loan Agreement.** The execution and delivery of the Revenue Obligation Loan Agreement (the “Loan Agreement”), the form of which is on file with the Finance Officer (the “Finance Officer”) and open to public inspection, between the City as Borrower and the District, is hereby in all respects authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

**3.3. Approval of Revenue Bond.** The issuance of a revenue bond in a principal amount not to exceed \$2,015,822 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the “Revenue Bond”) shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

**3.4. Pledge of Revenues.** The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate

Resolution shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair, and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge, or otherwise contravene the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

#### **SECTION 4. Special Charge or Surcharge for Revenue Bond.**

**4.1.** The City does hereby create the Revenue Bond Special-Surcharge District (the “Surcharge District”) which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements, and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

**4.2. Rates and collection.** The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

**4.3. Initial Surcharge.** The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due.

**4.4. Segregation.** The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges, and surcharges.

**4.5. Periodic review.** The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement’s rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

**SECTION 5. Additional Bonds.** As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions, or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

**SECTION 6. Project Fund Accounts.** For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the sewer system account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

**6.1. Project Revenue Account.** There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the City of Gary, South Dakota (collectively the “Rate Resolution”). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

**6.2. Project Debt Service Account.** Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25<sup>th</sup> day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City’s governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15, or November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

**6.3. Depreciation Account.** There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

**6.4. Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- (b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:
- (c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
- (d) To be used for any other authorized municipal purpose designated by the Common Council.
- (e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

**SECTION 7. Approval of Paying Agent/Registrar.** The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

**SECTION 8. Approval of Bond Counsel.** Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

**SECTION 9. Tax Matters.** The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (“the Code”) and applicable Treasury Regulations (the “Regulations”).

**SECTION 10. Covenants.** The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

**10.1.** The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

**10.2.** The City agrees and covenants that it will promptly construct the improvements included in the Project.

**10.3.** The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal and interest on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the City.

**10.4.** The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

**SECTION 11. Depositories.** The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

**SECTION 12. Consent to Appointment.** In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

**SECTION 13. Severability.** If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

**SECTION 14. Repeal of Resolution.** At such time as the Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the City.

**SECTION 15. Authorization of City Officials.** The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents, or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

**SECTION 16. Effective Date.** This Resolution shall take effect on the 20<sup>th</sup> day following its publication, unless suspended by a referendum.

Adopted at Gary, South Dakota, this 6<sup>th</sup> day of May, 2024.

APPROVED:

\_\_\_\_\_  
Larry Stoks, Mayor

(SEAL)

Attest: \_\_\_\_\_  
Finance Officer

First reading: May 6, 2024

Published: May 15, 2024

Effective: June 4, 2024

All voting aye; motion carried.

Along with Resolution 2024-03 is Resolution 2024-04 that approves a surcharge payable by each customer until the loan is paid in full. Motion by Nosbush, second by Nelson to have Mayor Stoks sign Resolution 2024-04 to commence the monthly surcharge at a date to be determined based on the loan closing. Resolution 2024-04 is as follows:

**RESOLUTION NO 2024-04**

**RESOLUTION AMENDING THE CITY'S RATE STRUCTURE, PROVIDING FOR A SURCHARGE FOR IMPROVEMENTS TO THE SEWER SYSTEM, FOR PAYMENT OF A REVENUE BORROWER BOND AND YEARLY REVIEW OF RATE**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARY AS FOLLOWS:**

1. **Surcharge for Borrower Bond.** There shall be charged a monthly surcharge for the services provided by the improvement financed by the CW-01 Conservancy District Loan. The surcharge for each loan shall be segregated from other revenues of the City and shall be used for the payment of the Borrower Bond CW-01 (the "Borrower Bond"). Provided that such surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements.

2. **Rates and collection.** The City does hereby establish the special charge or surcharge payable by each customer of its system who receives or benefits from the services of the project financed with the Borrower Bond. Such charge or surcharge shall be set at a level which, assuming a 10% delinquency rate, will produce income at the times and in amounts sufficient to pay when due the principal of and interest on the Borrower Bond and the administrative expense surcharge and all other payments as may be required under the loan agreement and Borrower Bond.

3. **Borrower Bond Surcharge.** The following clean water debt service surcharge shall be applicable to all customers served:

Borrower Bond CW-01 Surcharge: \$37.80 per user per month commencing \_\_\_\_\_.

This surcharge shall remain in effect until such time as the revenue bond is paid in full. The initial surcharge shall be collected at the same time as other charges of the system. The surcharge is found to be equitable for the services provided by the improvements.

4. **Segregation.** The debt service surcharge shall be segregated from other income of the system in a separate book-keeping account and is pledged to the South Dakota Conservancy District for the payment of the loan payments on the Borrower Bond.

5. **Yearly review.** The amount of the surcharge shall be reviewed from year to year and may be modified in order to provide such funds as are set forth herein. The charges shall be reviewed yearly by City and administratively adjusted, upwards or downwards, to such amounts as may be necessary to pay principal, interest, administrative surcharge and other charges as may become due and owing under the loan agreement or Borrower Bond.

6. **Billing and Accounting.** The surcharges shall be included in the monthly user bill. Nothing contained herein requires the surcharge be indicated on the billing, however, the surcharge segregation shall be indicated on the books of the City.

7. **Automatic Repeal.** The surcharge for the Borrower Bond shall be automatically repealed when the Borrower Bond is paid in full.

8. **Partial Invalidity.** If any one or more of the provisions of the shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

Adopted at Gary, South Dakota, this 6<sup>th</sup> day of May, 2024.

APPROVED:

\_\_\_\_\_  
Larry Stoks, Mayor

(SEAL)

Attest: \_\_\_\_\_

Finance Officer

First reading: May 6, 2024

Published: May 15, 2024

Effective: June 4, 2024

All voting aye; motion carried.

A special meeting will be held with Helms and Associates Engineer Firm to discuss in length their agreement related to the Wastewater Improvement project.

A written complaint was received and reviewed by the council. Mayor Stoks had previously addressed this complaint about ATV's and golf carts driving on the city sidewalks. Driving a motorized vehicle on sidewalks is a violation of state law. The complaining party was informed to contact law enforcement if this activity happens again.

Melvin Pieper asked the council about using city property across from the rodeo grounds during the rodeo event. More information will be gathered and discussed again.

Motion by Stee, second by Grabow to approve a special temporary malt beverage permit for American Legion Ballroom, E 24' of Lot 11 and all of Lots 12,13,14 in Block 1, Original Plat, Gary, South Dakota. May 19 and June 1, 2024. On sale only. All voting aye; motion carried.

A bean bag tournament is scheduled for June 22 at the Gary Liquor Store. Due to the large number of entries participating, it was asked if they could use the parking lot area behind the Municipal Building. Motion by Stee, second by Grabow to approve the request and issue a special temporary liquor license for a beer garden the same day. All voting aye; motion carried.

Motion by Bekaert, second by Engesser to enter executive session for personnel matters at 9:28pm. All voting aye; motion carried. Mayor declared out at 9:43pm.

Motion by Grabow, second by Nosbush to offer Mike Anderson employment for summer help at \$14 an hour. All voting aye; motion carried.

Motion by Grabow, second by Stee to adjust David Peterson's wage to \$16 per hour, effective immediately. All voting aye; motion carried.

The next regular council meeting will be Monday, June 3, 2024, at 7:30 pm at the Gary City Hall.

Motion by Bekaert, second by Engesser to adjourn. All voting aye; motion carried.

City Council, City of Gary  
Joni Kjelden, Finance Officer

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