

**BOOK 26**  
**May 28, 2024**

**BURLINGTON CITY COUNCIL SPECIAL SESSION 5-28-2024**

City of Burlington Governing Body met in Special Session at City Hall's address, 1013 N. 4<sup>th</sup> Street, Burlington, Kansas, at 6:00 p.m. Tuesday, May 28, 2024. Mayor Luke called the meeting to order.

**THE PLEDGE OF ALLEGIANCE**

**ROLL CALL:**  Stan Luke, Mayor

Council Members present:

Jerilyn Curtiss (President of Council)

Maxi Berryman (By phone)  Cara Mays

Lila Van Horn

Nathan Strawder  Martin Ernst

Superintendents Present:

Kevin Boyce (Parks)

Alan Schneider (Electric)

Mark Davidson (Street)

Doug Jones (Chief of Police)

Danny Hawkins (Water/Wastewater)

Also Present:

Anne Brown (City Clerk)

Mary Mader (Administrative Assistant)

Philip Wright (City Attorney) (By phone)

Jimmy Hugunin (Zoning/Grants Clerk)

Kerri Weltha (Deputy City Clerk)

**Media Present:**

**VISITORS:**

**HEAL Grant - Pam Scott**

City Clerk Brown, "We have a quorum." Council Member Curtiss, "Yes, we do. Pam, is there anything you'd like to say before we get started?"

Pam Scott, "I hope you had a chance to look over--." City Clerk Brown, "Could you speak up so they could hear you on the phone?" Pam Scott, "Okay. I hope you had a chance to look over the grant application to know what you're supporting me of. If not, and you have any questions, I'll be glad to answer those. I applied last fall and didn't receive it. And I got an email telling me it was open again, and I got that email May 1st from the Kansas Department of Commerce. I know it's open to thousands of people out there, and I don't know how they decided to send me an email, but it appeared. So, I jumped right on it to apply again, but their rules have changed, as all governments will." City Clerk Brown, "And we'll go through-- we'll kind of go over that." Pam Scott "So, when that changed, then I had to find somebody to apply for me, and I approached you as you were one of the suggested organizations to do that. I've gone and made some tweaks in my dialogue. I did some proofing today and got a couple of other donations, so I had to go and add that for my match. So, a few things have changed from the ones you've got, but I'll be glad to fill in."

Council Member Curtiss, "And I understand you--. Did you go to the Commissioners?" Pam Scott, "No." Council Member Curtiss, "Oh, you haven't." Pam Scott, "No." Council Member Curtiss, "Okay." Pam Scott, "They had turned me down before. They wrote a letter supporting me, but they would not...." Council Member Curtiss, "And we did, and we supported you with the letter last fall?" Pam Scott, "Yes, you did." Council Member Curtiss, "So why the change in the amount of time? Is it just something that they...?" Pam Scott, "Yeah, I don't - I have no idea. It's Kansas Department of Commerce. So, it's part of their--. I think you got the first part. I tried to send her, Anne, I tried to send her everything over email, but it wouldn't let it go." City Clerk Brown, "I couldn't open it." Pam Scott, "And so I thought, well, so I printed a hard copy so she could have the information that way, but that's part of the instructions that came."

City Clerk Brown, "Did you all have a chance to read the requirements of this? Did you all go through that?" Some members indicated yes. City Clerk Brown, "Okay, so you understand that she is asking us, as the city, it would probably be me, to be responsible for signing off on this grant, stating that everything in it is correct to my

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knowledge. We would be-- I would be responsible for the financial reports. I would be responsible for the distributing of the money and keeping her in line, on track, on what she is supposed to be doing.”

Pam Scott, “I’ll jump in here. You don’t have to do the annual reports; you have to track it and make sure I get them done and filled out. So that’ll, you know, you’re just going to hold your whip over me and say do this.” Council Member Curtiss, “But after reading through some of this, it seemed like Anne has some responsibilities other than that.” Pam Scott, “She has to distribute the payment to me. So, if I would get, if I would receive the grant, it would not be for the full \$100,000 because I could not get that much match money. What I did get was \$71,000 to this point. If I have any surprises in the next couple of days, I’ll slip those in. It would be \$71,000. When I have a contract with a worker, then they complete the work, I have to pay them, I show her the bill, she writes me the check to give to them.”

Council Member Berryman, “Is it that \$71,000? Is that committed money, or is it pledged money?” Pam Scott, “Committed.” Council Member Curtiss, “If you were to get it, how long do you have to get all of these phases done?” Pam Scott, “That I would have to fit into HEAL’s timeline. I think from beginning to end, I think it was 30 months.” City Clerk Brown, “You had to have the construction done in two years.” Pam Scott, “Yeah, and somebody quotes somebody in there using it, and well, I’ve already got ideas for entertainers to come in to raise revenue to finish the theater part, the movies.” Council Member Curtiss, “Is it feasible that you could get all of that done within two years?” Pam Scott, “If I can get a contractor, yeah.” City Clerk Brown, “And you have to have a contractor within four months. Are you going to be able to do that?” Pam Scott, “Well, I’ve already got the bid sheet ready. It’s been ready since I applied for the Heritage Trust Fund. So, yeah, I will have it ready. I mean, all I have to do is put it in the newspaper and, get bids, and find somebody, and I can work with TK Architects. He’s pretty good up in Kansas City.” Council Member Curtiss, “They are pretty good.” Pam Scott, “Mike Cummings is the one that I’ve been working with, and he grew up here in town.” Council Member Berryman, “Are you working with some local contractors, or will it all be out of town?” Pam Scott, “I want to use local, but if they do not apply or their bids are way out of line, then I’m not going to use them. But I want to use local. I’ve used local up to this point. I think Iola, my roofer, was from Iola. The others have been local.”

City Clerk Brown, “Okay, well, I have to say that I don’t know that I am comfortable with signing off on this because this is budget time right now. I have a lot of responsibilities where that goes. I don’t know that I have time to follow through with all of this. Do we really want to be responsible for someone else’s grant? Is that good business practice?” Pam Scott, “I guess Kansas Department of Commerce thinks it is.” City Clerk Brown, “Okay, what do you guys think?” Council Member Ernst, “I don’t see a problem with us trying to submit the grant. When is--? I guess once it’s submitted, what’s the timeline on when you’re going to hear back from them? I mean, because it’s going to be sometime in the future.” Pam Scott, “Well, they have a deadline. June 3rd is the deadline for everybody to have their grants turned in, and then I’m assuming that by the end of June or the end of July, they will get the word back? So, and if I don’t get it, no skin off your nose, right?”

Council Member Van Horn, “You know, I have also wondered if maybe if it’s too much for Anne, maybe we could just have like a volunteer committee that would do all the leg work so that Anne doesn’t have to do anything but sign off on it.” Pam Scott, “I’ve thought of that because I know the city people are busy with other things running our city, but I could make a graph for Anne and have those dates on it. Then she’d just have to look at that paper and give me a call and say --.”

Council Member Berryman, “But for Anne to sign off on it, she has to read over everything that is submitted to her and go on the assumption that it is correct. Is that right? I mean, if you got a committee of volunteers, they’re going to do X amount of work. If Anne signs off on it, she’s going to want to know that everything: every period, comma, dot, and everything. So, I don’t see the feasibility of that.” Council Member Curtiss, “Okay, on page 11, you’ve got a proposed timeline.” Pam Scott, “Okay. I knew there was one somewhere.” Council Member Curtiss, “Now, of those things on that page on that timeline, are any of those completed at all?” Pam Scott, “Yes, and I should have brought that, but I did not. I have a list of everything that has been done. The roof has been replaced. The electric has been put in the north end as well as the south end. All of the neon tubing has been taken down and, repaired and then returned. So it’s here, ready to go back up. The marquee has been all painted and

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refurbished. The big plaza board is inside restored. And I just received the contract with Coffelt's finally, that he's going to put it all back together. That was the agreement back when the neon came down because it went to Kansas City. There was no place local that refurbished neon, and so that did go to Kansas City. They had worked with Rick over at Coffelt's before and, so they talked to him before they did it, and he knew what parts he was going to do, and they knew what parts they were going to do. And so now it's in Rick's ballpark, and he signed the contract and said he's ready to go, and he actually came and took the lettering boards, took those back with him to see what kind they were if they could be repaired. He took back one of the letters to see how it fit and all of that, and we're of the understanding that that's probably going to have to be modernized. It will look like back in the 1940s, but it will be modern and LED lights for the back tubes that they have; the neon will still be on it."

City Clerk Brown, "Okay, I guess part of my question is, too is, do you really qualify for this because it's listed as an emergency?" Pam Scott, "My floor is falling through; yeah, I qualify." City Clerk Brown, "But part of the thing it says is if the current building owner, this is on page 2, has owned the property for more than five years, they must provide proof that they've been keeping the building in good condition prior to the damaging event. So, it's like, what was the damaging event? It's like it's been neglected for years and years and years and years. They're asking for what has happened right now that has caused the damages that you need this money right away." Pam Scott, "Rain. Rain and wind. The tiles on the front were loosened, and some have fallen off. Water that got into the basement caused the steel I-beams over the years. So, it's just a continuous thing anytime there was rain. And Bob Salazar discovered why. He was working on the, my neighbor, next door with the apartment, he was working on some things over there, and I was outside getting rid of some stuff, and he goes, 'oh hi,' and I said, 'hi,' and we got to talking and then I said, 'dang I wish I could figure out what's going on with the basement.' He's the one that did my masonry work on the front of the building, and that's been done on the right-hand side, too. He signed a contract to do the left when we get the tile. He looked down and said, 'I can see the problem.' The gutter--."

Council Member Berryman, "I'm sorry, but Anne, if I understand your question correctly, you're asking for a specific date of a specific incident that led to damage. Is that right?" City Clerk Brown, "Yes." Council Member Berryman, "That's what I thought, thank you." Pam Scott, "It's just a continuous thing that's been going on." City Clerk Brown, "Well, and it asked too; part of this here is it can be reviewed and awarded quickly, stabilizing the building at risk of collapse, and you said in your deal that it's not at risk of collapse right now. It needs a lot--." Pam Scott, "But I've had to prove that I've been doing work on it, so that's in there also." Council Member Curtiss, "How long have you owned it?" Pam Scott, "5 years. Well, 2019. So that's six years in October." Council Member Strawder, "Did they indicate with the last go-around whenever you applied for the grant and everything, did they indicate why it wasn't selected, or anything was there any type of reasoning?"

Pam Scott, "They don't do that. That seems to be standard with them. They don't tell you why they just say yes or no." Council Member Strawder, "Okay, so the other part of that is it sounds like some of the requirements on the grant might have changed, most notably who is the actual applicant now and that stuff. Is it the same grant as what was applied for before, or is this a completely different grant but just similar?" Pam Scott, "They're just calling this round four, and the amounts are different. They've received more to go toward these things. They also had several historic theaters apply, which showed a need, and I think that might have instigated some of this too, but I don't know." City Clerk Brown, "Was the other one just a HEAL Grant before, where this one is an Emergency HEAL Grant?" Pam Scott, "Right." City Clerk Brown, "So that's probably the difference." Pam Scott, "Oh, and it was \$75,000, and this one is \$100,000." City Clerk Brown, "Okay."

Council Member Van Horn, "It seems to me that if your building didn't qualify under their terms, I don't know why they would invite you to reapply again." Pam Scott, "Me too." Council Member Van Horn, "I mean, the worst they can do is say no, right? They can say you don't qualify, end of the story." Pam Scott, "Yeah, right." Council Member Van Horn, "So with the--. You have 71, so they're matching 71. Is that enough to get it?" Pam Scott, "Not enough to get it, but it's enough to move on. I still have some funding left from the Heritage Trust Fund grant that I got, and that's part of the matching money. They sent a letter and said you can match this plus what they're retaining. So I've got some of that. What happens with them is I have to send everything through them just like I'm going to have to on this one, and I have to do reports with this one just like I do with them. You

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get your contractor; they have to approve it. So I have to send them the contract, they approve it. Then it comes back to me, and they say do the work. Tell him or her to do the work, they do that, they give me the bill, I write the check, make copies, send that to them, and then they reimburse what that was minus 10%, which they retain, and then I use that money that I get back from them to pay for the next job I need done. So, I just keep rotating that way. That's what I do."

City Clerk Brown. "Is this going to be enough to complete the job completely; it will be done and ready to open?" Pam Scott, "It'll be good enough to open. Yeah, I can if I can get the floor done and the seats, I think would be good. The others-- facelift on the walls, I need one wall rebuilt that was torn out. I need the concession stand then rebuilt." Council Member Curtiss, "You need the toilets, the asbestos, the mold, the lead paint--." Pam Scott, "Yeah, TK came through. They've already done some of that. I'm sorry. I didn't make that clear." Council Member Curtiss, "Okay." Pam Scott, "I'm sorry. I didn't make that clear." Council Member Curtiss, "Okay, I was wondering because that's going to take a while." Pam Scott, "Yeah, they came, and he brought a team down with him."

Council Member Curtiss, "On page 12, it says either your organization with the building owner previously applied and was not awarded the HEAL for this project, you said no. It had not been previously submitted." Pam Scott, "No, I said yes." City Clerk Brown, "She said yes; I guess you can't see it on yours, but she does have yes marked." Council Member Curtiss, "Oh, okay, I can't see it, so I was thinking that's not right." Council Member Ernst, "I was thinking the same thing, so don't feel bad." Council Member Curtiss, "I'm not the only one." Pam Scott, "I think I mentioned this is the fourth go around for the HEAL Grant. The very first one it was quick. We've got this money. We want to know if there's any interest in this type of thing. So, I belong to the Kansas Historical Theater Association. We had a meeting, and they said throw something together. It doesn't matter what. Just throw something together so they can see that we have historical theaters in Kansas; in the state of Kansas. So I think there were 30 of us, and we just quick did what we could because we only had a couple of weeks to do that. And so we quick did that. And I gave it to them and said, well, here you go. It's just thrown together, and they said all of ours are, and that's how they knew that they had an interest here in Kansas. So and, then, they got more monies from the feds somewhere. That just grows on trees for them."

Council Member Curtiss, "So explain to me, if you can, exactly what Anne's responsibilities, completely, would be in this and the city's responsibility." Pam Scott, "The city has to write a letter that they're applying, and they're supporting and willing to do this. Commit to supporting the project through the fiscal administration of the grant funds and, in parenthesis, distributing the payments to the building owner, tracking the bi-annual financial reports. I do the reports." City Clerk Brown, "But I would need to see those." Pam Scott, "Yes, you would need to see those." City Clerk Brown. "And it would just still be me signing. I mean, in the long run. I'm the one that would be held responsible for it, saying that what you are submitting is true and correct." Pam Scott, "I haven't been called a liar yet. Don't do it now." City Clerk Brown, "I'm not saying that, but I'm still-- that's the responsibility that lays on me." Pam Scott, "I'm aware, but I don't know what else to tell you other than if I had the reports and you just have to look them over. And if you needed to see checks or anything like that, my personal checks that I write for the construction worker for the mechanical work, whatever, then I'd show you that so you can have all of that, and I'll keep a record of it, of course. And then ensuring that the building owner is on track with program deadlines. That's with their deadlines they set, that 30 months, and I can make a form up for her to follow and for me to follow so that I make sure I'm on track."

City Clerk Brown, "Well, and it also says that the applicant will also be designated as the primary point of contact for all projects under the grant. The applicant will also designate, I'm sorry, designate a primary point of contact for all projects. I'm sorry I misread that." Council Member Strawder, "What are the... I don't know what the term would be, the repercussions or liabilities that the city would be under if those deadlines aren't met?" City Clerk Brown, "That's what I would like to know." Pam Scott, "And that I cannot tell you because I do not know." Council Member Van Horn, "Maybe they just take their money back." City Clerk Brown, "Philip, do you know on these kind of grants what happens if the deadlines are not met? If we sign off on this and the deadlines are not met. What happens?"

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Attorney Wright, “So the guidelines and paperwork are very unclear with regards with the--. You guys are asking what the city liabilities are going to be if this project goes off track?” City Clerk Brown, “Correct.” Attorney Wright, “It’s extremely unclear to me what that liability is on a city that is pledging to support the project. I don’t know if that means that the city is going to be required to financially support the project in the end. You know those sorts of things. I can’t answer that question. I don’t know if we would be able to find somebody to define what that is. The project or the project guidelines are pretty ambiguous and vague. (inaudible)”

Pam Scott, “I know with the Heritage Trust Fund grant that I have, there was a timeline on it that they have extended it twice now because COVID shut down two years, and then everybody kept saying we can't get parts. We can't get this. All I have to do is to contact them and say this is what they're telling me. I'll get a note or a letter that the contractor will send them an email, and they go from there. So I've had those renewed, but I'm sure that if somebody falls through and doesn't do what they say they're going to do, you have to pay the money back.” City Clerk Brown, “So the city would be responsible for paying that money back?” Pam Scott, “The owner.” Attorney Wright, “That’s where I’m unclear because I think ultimately the owner is responsible, but the city is administering it. I don’t know what that would look like. Pam, can I ask one question? We were talking about—you were asked if the funds that you have were committed or pledged. I’m going to reduce the question to how much of that \$70,000 and some change is sitting in the bank, ready to be spent on this project?”

Pam Scott, “And I did not bring that, hang on. All but \$10,000 that I am putting in on my own of a life insurance policy.” City Clerk Brown, “Is in the bank account right now?” Pam Scott, “Well, other than the HEAL grant.” City Clerk Brown, “Right, your matching funds.” Council Member Ernst, “Your \$70,000 matching funds, you have about \$60,000 in the bank right now?” Pam Scott, “I have \$15,000 in my checking account, \$34,000 from Heritage Trust Fund, \$10,000 from my personal life insurance policy.” Council Member Berryman, “Have any organizations contributed to the money yet?” Pam Scott, “EMP and the Arts Council.” Council Member Berryman, “Can I ask what those amounts were?” Pam Scott, “EMP \$100. Arts Council, which was hard for me to deal with, was \$10,000.” Council Member Berryman, “So, you got to check for \$10,000 from the Arts Council?” Pam Scott, “Yes, ma’am. It's deposited in the bank.” Council Member Berryman, “Thank you.”

Council Member Strawder, “Kind of process-wise, I’m going to assume some here, but you have an application, they make a decision, if you're selected to move forward or not, then I'm going to guess that there's additional work that needs to be done before, like an agreement, and all of that that gets done before we actually receiving the grant type of thing. I’m assuming is --.” Pam Scott, “I had to sign a contract to get the Heritage Trust Fund.” Council Member Strawder, “Well, okay, so I'm assuming, but the process would be: apply, selection, and then finalize everything for the grant. So, by applying technically, it comes to if selected, and it comes to the agreement phase and some of that stuff, we find out then, there's still an avenue out, type of thing.”

Council Member Curtiss, “Is that true?” Pam Scott, “Yeah, well, I would assume so. If they won't answer a question for me or they'll clarify for me. Heritage Trust Fund: I had to go in front of their committee and talk to them, and if I had any questions, they would answer them, and then I could sign. Then, I went to several workshops that they had put on. So, I'm assuming that it will work very similar, but I can't promise that because it's them.” Council Member Curtiss, “Philip, did you hear what Nathan had to say?” Attorney Wright, “Yeah, I can jump in just briefly. So, it’s my understanding that once the grant is awarded, basically, there will be a contract that would have to be entered into by the city with the state with regards to the specific details of the grant. So, if Nathan is asking if there is an out like they say, the devil is in the details; we get into that and decide not to do it, I think the answer is yes; we can still say no at that point to the grant.” Pam Scott, “I can still say no.” Council Member Curtiss, “That’s good to know. Okay, where are we at, guys? Does anybody have more to ask of Pam or discussion?”

Attorney Wright, “I would just briefly say that it makes me uneasy to have a city employee sign a document basically under penalty of perjury without having had the full opportunity to see everything. You know, we talked a little bit about the financial stuff. I personally wouldn’t want to sign something that pledged certain funds without having seen some evidence of that. Does that make sense? People get caught up—I’m not calling anybody a liar here, but this is sort of what happens in the real world. I don’t know that it would be fair to ask a certain city

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employee to sign this document with that acknowledgment in there unless that employee was willing to do that sort of under their own coalition, if that makes sense.”

Council Member Mays, “That’s on the application?” Attorney Wright, “Yes, I’m talking about the application; it says that it’s signed under penalty of perjury. You are verifying that everything is true and correct.” Council Member Strawder, “Is it everything is true or correct, or to your knowledge everything is true and correct?” Attorney Wright, “Well, that’s the same thing; I mean to your knowledge – in my mind as a lawyer – I wouldn’t say as a (inaudible) that if there were things in there that were not true and correct. Knowledge will be implied that you are signing that knowingly. What I am saying is I wouldn’t feel very comfortable in asking Anne to sign the application unless she was okay in doing that. Now, Anne doesn’t have to sign it. It could be anybody in the city that can sign that. So, if there is anybody at the city that is saying their okay with signing this, then that’s one thing. The other part of this is the city council can say, ‘Anne, we want you to sign and administer this grant as part of your duty.’ See where I’m coming from? I think it’s okay for the city to assign Anne responsibility if the city council so chooses to do that. I don’t know if it’s a particularly good idea to say, Anne, we are saying you have to sign this application because there is kind of that personal statement in there. I don’t know if I’m making sense.”

Council Member Berryman, “Yes, that makes sense.” Council Member Van Horn, “So you’re saying that any city employee that was asked to do it could sign that contract.” Attorney Wright, “What I would say is that the city council could authorize any employee; it doesn’t necessarily have to be Anne to sign the document. And we need to have a city employee that is willing to do that under their own (inaudible). Does that make sense?” City Clerk Brown, “So does it have to be an employee, and it cannot be a council member?” Attorney Wright, “I believe that anybody representing the city, city council could certainly give that authorization to that person to sign the application. That could be a city council person, the mayor, or an officer of the city.” Council Member Curtiss, “But Anne, you do not feel comfortable.” City Clerk Brown, “I’m not comfortable doing that. I’m really not.” Pam Scott, “Well, and the only reason I approached Anne is because she’s the administrative assistant, and so the communication would have to go through her. But if I need to take your name off, I will take it off. You know, that’s not hard. It’s on my computer now, and I can delete it.”

Council Member Curtiss, “Okay, so if her name is taken off and Nathan’s would be put on, then he would be the person you would report to, not to Anne, right?” Attorney Wright, “No, I don’t think that’s necessarily the case. I think all we’re looking for is the person it’s authorized by the city for the city to apply for this.” Council Member Curtiss, “Okay.” Attorney Wright, “I think at some point the city council could assign a city employee with regard to taking on the responsibility. I think we need to have somebody that is willing to do that freely and voluntarily because there is that personal aspect with regard to verifying that the contents of the application are true?”

Council Member Mays, “Do you have the application with you right now?” Pam Scott, “Yes, it’s the same thing you guys have.” Council Member Mays, “I don’t have it with me.” Attorney Wright, “So, for example, if the city had somebody at the city, let’s say the city had a director of revitalization within the city, we had a program for that within the city itself, and that person was familiar with this project and types of projects that you might see in a bigger city. They would work with the owner and fill out the application, and they would be more hands-on and involved with that. I think that is really what this grant is sort of envisioning is something more like that. That’s why if you look at the application, the people who can apply for it talks about these nonprofits and some of these other types of organizations, are also sort of organizations that do this. And there are some cities that have departments that would be more – would have the knowledge base to know. There are a lot of different cities that work on different kinds of project contracts and other projects like this sort of thing, but if you had that and that particular employee was more sort of informed because they have actively been involved in the application process, then it would be easy for them to say, ‘hey yeah, I’ll sign the application because I’m the one that put the application together.’ They are the ones that did it with the help of the owner, and you know, it’s a little bit different. You have the owner who is taking all the initiative to fill out this application to reduce the burden on the city. I think a large part, too, is just the time demands as well. So, the city really just hasn’t had that happen and have that involvement in the project, in the application, you know, and the familiarity with regard to the whole project.”

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Council Member Strawder, “So, hypothetically, the council could vote, it would have to be worded correctly, so to basically to approve this but leave the caveat that, you know, it has to be signed by somebody, but we're not going to put that pressure on anybody to sign it. Does that make sense? Like, I'm not okay with making it part of somebody's job that they have to sign something. That's never going to be the case on anything, but I don't think that means that the council as a council can't have a favorable, you know, like we're passing the first roadblock, meaning we're not going to say, ‘no, we are not dealing with this at all.’ You know, if there's a motion that it says that we are in favor of proceeding with the grant and then if it gets hung up that it's a signature aspect or whatever, then that's, I mean.... Again, all that we're--. We can move that we are in favor of moving forward with the grant.”

Council Member Curtiss, “I understand that.” Council Member Strawder, “I mean again, I think you'd have to figure out the verbiage to make sure. But that would, I think, give the action towards, and I don't know if it then goes on to the mayor to, you know, go through the remaining of the process. Meaning, if the mayor decides they are the person that wants to sign it or if it's having a poll, if anybody wants to sign it. I don't know what that process is, but is that something that can be done?” Attorney Wright, “I would say that, and I don't think you're too far off at all, I would say that traditionally what the city has done with regards to the sort of thing is actually in the motion authorize a specific individual to sign the app for the city. That's what has been done traditionally.”

Council Member Strawder, “Okay, but if a motion is made that doesn't identify an individual, then it falls onto the duty of the mayor to identify that individual, correct?” Pam Scott, “Mayor Luke signed the letter last time.” Attorney Wright, “I think you're asking me if that happens by default; I don't know that that's accurate.” Council Member Strawder, “Not that the mayor signs it but that the mayor—it's then the mayor's responsibility to find or follow through to assign it somebody.” Attorney Wright, “I understand that part of it, but I don't think that that is really the case. If the city council moves to approve moving forward with the application process, as long as there is somebody that is willing to sign the application. I don't think that automatically puts that responsibility on the mayor to find that person.”

Council Member Mays, “But how is that not when you said that the city, I mean, we don't want if Anne's not comfortable, we don't want to have to, but we ultimately could vote to have Anne do it. So how is that not Mayor Luke's responsibility to find or appoint on that?” Council Member Berryman asked, “Why would you vote for someone who has said they don't want it? I don't understand.” Council Member Mays, “Well, we don't want to do that. I mean, I don't want to put Anne in that position. But ultimately, we have—ultimately, that can be done. We just don't want to pressure that, but if what Nathan I feel like is saying, is if we vote today to say, ‘hey, we want to support her, we want the city, we are willing to do the application.’ Now it is on Mayor Luke, I mean, responsibility to find who that person is. How is that not?”

Council Member Curtiss, “But that person has to sign off on this application, or is it just--?” City Clerk Brown, “The organization will commit to sponsor. We would have to sign off on the eligibility for the applicant. That is where the organization will commit to support the project. So, somebody would have to sign that saying yes that we are going to--.” Pam Scott, “It's that letter that Mayor Luke and I both signed last fall supporting the project.” Attorney Wright, “So, the other part of it too is the person signing the application they are signing they believe this project is in conformance with the application guidelines or the project grant guidelines as outlined, and there are some concerns that it doesn't meet those guidelines.”

Council Member Mays, “Well, then if it doesn't meet the guidelines, then they just won't be awarded.” Council Member Van Horn, “They will just turn us down.” Council Member Mays, “I don't see there's a huge liability issue with voting to say we're going to submit the application there.” Attorney Wright, “Sure, I'm not talking about the liability issue with --.” Council Member Mays, “All we are doing is signing to say that we are applying.” Attorney Wright, “What I'm saying is you're asking somebody to sign the application saying that (inaudible) guidelines, so you need to have somebody that believes that that is the case, right?”

Council Member Strawder, “I guess I'm confused.” Council Member Mays, “Yeah.” Council Member Van Horn, “I think we have to have a signature before she can--.” Council Member Strawder, “No, I agree.” Council

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Member Mays, "I agree." Council Member Strawder, "I understand that aspect of it, but I don't see why the council has to be the one to identify that. I was under the impression, per city code and stuff, that if an individual is not designated by with an action decided on by the council if an individual or a department is not indicated in that motion and, then it falls on the mayor's responsibility to identify and to basically follow through with it and find somebody to decide if it's him that signs that another council member or whatever. I mean, it very well might be the possibility, and this is just hypothetically speaking, that the council decides to move forward, but then you don't find anybody that's willing to sign for it. That is very possible. We are dealing with a short timeline."

Council Member Curtiss, "We are. What is it the 3rd you have to have it in?" Pam Scott, "Yes." Council Member Strawder, "But at the same time is, I mean, for the purpose of what we are doing now, I mean, I don't know if you would move to table something, you know, per se I don't know if you would move to table something because you are trying to find somebody that will sign it. Because I, again, this is my understanding of what's kind of in the code, is that at the individual, or group, committee, or whatever is not indicated in motion, that it falls onto the mayor's responsibility to administer that aspect of it; to put it through the following through." Council Member Curtiss, "When is Stan coming back?" City Clerk Brown, "Not until Friday the 31<sup>st</sup>"

Council Member Strawder, "That's my thought process on it is--." Council Member Berryman, "Well, didn't Philip say that it doesn't automatically fall to Stan to find somebody if I understood him right?" Attorney Wright, "I think the Mayor would probably try like crazy. I think, with all likelihood, most probable the person that would sign that is sitting in the room right now. I mean, I don't know what else to say, right? And this has to be turned in on Monday, and the mayor's not going to be back until Friday, so it's the weekend." Council Member Mays, "But as far as the council saying we support, that's what we're voting on tonight, correct? And we are voting as a city if we feel comfortable to support the application." Council Member Ernst, "At the same time, we would kind of be letting them down." Council Member Mays, "Not getting it done?" Council Member Ernst, "Right. I mean, if we just kind of, you know, we do it, you know." Council Member Mays, "I get it."

Council Member Curtiss, "We support them, but we don't have anybody to sign it." Council Member Ernst, "Right." City Clerk Brown, "When will the next grant be coming out? Do they let you know that ahead of time because I think there needs to be more thought and --." Pam Scott, "I will never get the theater done if I have to keep doing little things like this all the time. I'll never get it done. I wanted it done by now when I took it. I didn't know that the grant was open until they sent me the notice. I guess I can check every week and see if it's open. And the only place that- on page 19, if you look down at the bottom of the letter of commitment, that's -- I have to attach the letter that you're willing to support this, and it has to be signed by me." Council Member Curtiss, "Signed by both parties." Pam Scott, "By somebody by the city, and last fall it was Mayor Luke."

Attorney Wright, "You have a whole city council and, I think, probably a mayor that fully supports what you are trying to do. I don't think there is any question with regard to that. Anybody can sign that letter that says we support her. But we are talking about signing the application. I think what you're experiencing right now at the council meeting is a city council that wants you to succeed with this and wants to help you, and they fully support you. I can't see people's faces, but I would imagine just looking around, all of the people are nodding yes on this. It's just that when you get into the technical requirements of this, you know, I think that there's probably a little bit of hesitation with regard to sort of the application process itself and the information on the application. Because quite honestly, the city is going to have to be intimately involved in this project, a lot more than what you're probably used to and definitely a lot more than what the city is used to with regard to this sort of thing. So, there's going to be a little bit of discomfort having not been really involved with regards to the application process."

Council Member Curtiss, "Well guys, where are we at? We're between a rock and a hard place." Council member Van Horn, "What are you looking for, Nathan?" Council Member Strawder, "Where is it on the application where the signature is?" Pam Scott, "On page 19." Council Member Strawder, "So on page 19--." Pam Scott, "At the very bottom, the letter of commitment" Council Member Strawder, "Oh, yeah, but--." Council Member Mays, "As a representative of the city." City Clerk Brown, "On page 20 at the very last." Reading parts of the contract. Council Member Strawder, "And project contact. This person will be in charge of communicating with all the others. Okay, and then statement of insurance authorized to act on behalf of the organization --certified



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blah blah. And presented here, everything is true and accurate, but I'm not seeing where-- I don't know. To me, I don't see where it's saying where your committing perjury by reviewing a document if we believe everything is true by that document; that's the case with any document. If you read that last statement on there, it's no different than what somebody does whenever they apply for city permits, that they-- the items on the document that they feel are true and accurate. Could you go upon, and I mean, yes, legally, I'm sure that they can come back and say, you know, if there is definite fraudulent stuff on there, then you can be held that, but if there's an honest mistake. That's kind of where I'm at on.... I think that's a very standard item on any type of application that has to be filled out, not just grants or whatever else."

Attorney Wright, "Why don't you sign it then, Nathan?" Council Member Strawder, "I mean, hell, if you want me to sign it, I will review it, and that might be a decision, but that's also indicating then that this is the person that's in charge of it. I mean, I don't see how this is any different than any application that you submit and say yes, I believe this information is correct. I don't, this right here, I don't necessarily see it as a legal document or whatever. It's an application. There are still processes afterwards. This is to get an idea of who the interested parties are. If it was signed with employee A and employee A leaves the organization, then a new employee gets assigned to that or whatever. This is simply stating that they believe everything is true to their knowledge, you know, everything is true."

City Clerk Brown, "I agree with that. I'm not disagreeing that anything in this is wrong. I think she spelled it out, and I would tend to believe what she's put in here is true and correct to her ability. My concern is that holds me responsible if the application is accepted and it moves forward because I am the one that's assigned to it." Council Member Strawder, "Well, I mean so, that's where I go back to the signature on there was the sponsoring organization and project contact." Council Member Van Horn, "So, just the contact, whoever it is?" Council Member Strawder, "For the project contact. So, I guess I don't understand...." Council Member Mays, "How is the city as a whole not being if we are directing Anne as the person being responsible? Is that what you're saying? That's how I feel." Council Member Strawder, "Yeah."

Council Member Mays, "I think the City of Burlington would be held responsible; it's not Anne. And I don't know why Anne has to be the person that has to do that. I'm saying, as the city, why was that put on you? Because you're the administra -- I mean, to me, that's our legal or our mayor who has to be those point of contacts. Why you, as administrator, have to do that? That's my opinion. You put your mayor or your legal people who are ultimately the...." Council Member Strawder, "Because I haven't digested every single word in the application, but there's nothing that says that you can't change who it is afterwards or whatever. It's a representative of the city for the project contact." Council Member Mays, "To me, that's the project contact, the city's contact."

Council Member Strawder, "The city's contact. I don't know. I think it's being very, very cautious. I won't say overly cautious, but that I think it's being very, very cautious, which is rightfully so. It's a good thing to be that way on this, but I also wonder; I mean, we've had people with the city review the application as well. We've had an individual fill out the application and all of that. It's just a matter of the submitting of the application to -- there's either a whole bunch of people included in here, if there's any fraud in here, there's a whole bunch of people that are included in committing that fraud for anybody to really come back and get into an issue. If the application was filled out and it's been documented, you know, again, worst case scenario, speaking of hypothetically, that it was filled out, it was submitted to us, we reviewed it, we reviewed it under pretense that everything there was true. We had nothing to the contrary of it, but it turned out that the applicant was fraudulent in the information that they were providing then, I still think that there's still that avenue the burden on proof that it would have to be placed on whomever signs this on behalf of the city would be.... I mean, great. I'm just looking at the likelihood of it on -- because there's always that risk, any time you sign something that you could be held in contempt of fraud or anything else like that. And that's why I wanted to read that last bit on there. I mean, the worry that I would have about signing it is that it would put me as the project point of contact, not so much the fraudulent aspect, or whatever on that. But that it would mean that I become the project contact for that. And that's where I wonder if I mean as far as the point of contact on acting on behalf of the city or whatever I would say that probably falls to the mayor right now."

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Council Member Curtiss, “Yes. Can we change that without Stan?” Council Member Strawder, “Yeah, then again, after you go through the application process and you go through the awarding, selection process, and all of that, then, if we get to a point, who knows how long down the road it is, if it's weeks or months, where it's okay, we are ready to sign the document and get the money coming. You know, we have up until that point then to determine how this will actually be handled on the city aspect. Who will actually be managing those and all of that.” Council Member Curtiss, “Because it's such a rushed...I feel rushed.” Council Member Mays, “I agree.” Council Member Curtiss, “I really do.” Pam Scott, “Well, so do I.” Council Member Mays, “But I think we're right. I mean, I feel like Anne doesn't feel comfortable; I don't feel like Anne, as the administrator, should be the person. Not saying that you're under, or yeah, I don't think you should be the default person.”

Council Member Curtiss, “Can we put Stan’s name on there?” Attorney Wright, “You can, but I am not going to withdraw my opinion. You heard where I am at with it. There is a personal element with signing that application. I think that person is decided under their own...you know, they don't need to be commanded by the city council to sign it by virtue because they work for the city.” Council Member Van Horn, “I wouldn't be afraid to sign it. If you just need a figurehead, I'd sign it.” Attorney Wright, “Well, there you go.” Council Member Curtiss, “So, if Lila were to sign it, we would change Anne to Lila.” Pam Scott, “I would take that out and put Lila in.” Council Member Mays, “I appreciate that, but--” Council Member Strawder, “I think it should be Stan.” Council Member Curtiss, “But without him being here. I agree with you.” Pam Scott, “Can he be contacted?” City Clerk Brown, “He's in a place where, maybe, we could not get a hold of him. So, he's on vacation, so I really, sorry, I hate to bother him.” Council Member Curtiss, “But going forward from that...”

Council Member Mays, “—at the county, who would sign these kinds, do you know if Wade Bowie is?” Council Member Ernst, “I would imagine he would, but I don't know for sure.” Council Member Mays, “But I guess if he doesn't agree with it, then he shouldn't be--” Council Member Strawder, “You can't force anybody to sign any document; that's standard.”

Council Member Curtiss, “If Lila is willing and be the applicant person, contact at this point then once we have time to go through the process and get to that point where we are going to decline it, if need be, or whatever, and discuss who is really... we could change this person, can't we?” Pam Scott, “As far as I know.” Attorney Wright, “I absolutely think that the point of contact person can change. I don't think that we are stuck with--” Council Member Van Horn, “With Lila.” Pam Scott, “I'll be stuck with you, Lila.” Attorney Wright, “I think that is something that is definitely if the grant were awarded that would be worked out in the next phase of documents what the contract, you know, the grant contract.” Council Member Van Horn, “Let's do it then.” Council Member Ernst, “So, if Lila signs this, is she also the one that submits it, or does that still fall on you, Anne, to submit it?” Pam Scott, “That falls on me.” Attorney Wright, “The city is submitting it; it doesn't matter who submits it from the city. We just need to be able to have one person be able to sign the application.” City Clerk Brown, “Okay.” Council Member Curtiss, “Any more discussion?” Council Member Van Horn, “I think we've come to a conclusion.” Council Member Curtiss, “Do we have a motion.” Attorney Wright, “If you guys can hear me okay, I can word one for you. I would look for a motion to authorize Lila to sign the HEAL grant application for the theater project as submitted.” Council Member Strawder, “Well, as amended with Lila's name instead of Anne's name.” City Clerk Brown, “It hasn't been applied yet.” Pam Scott, “It hasn't been applied.” Council Member Curtiss, “Do I hear a motion?”

***Council Member Strawder, “I move to authorize Council Member Lila Van Horn to sign the HEAL grant application for the theater project as submitted.” Council Member Mays, “I second the motion.” Hearing no further discussion, President of Council Curtiss called for a vote. Motion unanimously carried, 6:0.***

President of Council Curtiss declared the meeting adjourned.

Approved by the Governing Body and signed by Kerri Weltha, Deputy City Clerk