

**MINUTES  
CITY COUNCIL MEETING  
September 4, 2018**

The Wayne City Council met in regular session at City Hall on Tuesday, September 4, 2018, at 5:30 o'clock P.M.

Mayor Jill Brodersen called the meeting to order, followed by the Pledge of Allegiance, with the following in attendance: Councilmembers Cale Giese, Rod Greve, Jon Haase, Jennifer Sievers, Terri Buck, Jason Karsky, Matt Eischeid and Nick Muir; City Attorney Amy Miller; City Administrator Wes Blecke; and City Clerk Betty McGuire.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on August 23, 2018, and a copy of the meeting notice and agenda were simultaneously given to the Mayor and all members of the City Council. All proceedings hereafter shown were taken while the Council convened in open session.

Mayor Brodersen advised the public that a copy of the Open Meetings Act was located on the south wall of the Council Chambers and was available for public inspection. In addition, she advised the public that the Council may go into closed session to discuss certain agenda items to protect the public interest or to prevent the needless injury to the reputation of an individual and if such individual has not requested a public hearing.

Councilmember Haase made a motion, which was seconded by Councilmember Sievers, to approve the minutes of the meeting of August 21, 2018, and to waive the reading of said minutes. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

**VARIOUS FUNDS:** 4IMPRINT, INC., SU, 1406.04; APPEARA, SE, 90.71; BENSCOTER CONST, RE, 66.08; BLACK HILLS ENERGY, SE, 301.67; BOMGAARS, SU, 686.31; BORDER STATES INDUSTRIES, INC, SU, 409.57; BROWN PLUMBING, SU, 171.25; CENTURYLINK, SE, 422.59; CHEMQUEST, SE, 695.00; CITY EMPLOYEE, RE, 391.65; COLONIAL RESEARCH, SU, 149.16; DAS STATE ACCTG-CENTRAL FINANCE, SE, 448.00; DGR & ASSOCIATES SE, 1391.35; DUTTON-LAINSON, SU, 7353.04; ED M. FELD

EQUIPMENT, SU, 177.00; ENVIRONMENTAL SERVICES, SE, 110.00; ERXLEBEN, RADELLE, RE, 100.00; FLOOR MAINTENANCE, SU, 353.20; GERHOLD CONCRETE, SU, 3,032.63; GIS WORKSHOP, SE, 4200.00; GROSSENBURG IMPLEMENT, SU, 95.82; HILAND DAIRY, SE, 124.32; HYDRO OPTIMIZATION, SU, 4242.00; ICMA, SE, 9614.34; JACOBSEN, TOM, RE, 500.00; JEO CONSULTING GROUP, SE, 1818.75; JMB CONTRACTING, RE, 100.00; JMB CONTRACTING, RE, 100.00; KALLHOFF, KYLE, RE, 106.97; KATHLEEN A LAUGHLIN, CHAPTER 13 TRUSTEE, RE, 243.00; KELLY SUPPLY, SU, 2623.86; LAUN, GALE, RE, 14.33; MARRIOTT HOTELS, SE, 159.00; METERING & TECHNOLOGY SOLUTIONS, SU, 100.51; MILLER LAW, SE, 5259.73; MURPHY TRACTOR & EQUIPMENT, SU, 689.91; NE DEPT OF TRANSPORTATION, RE, 2221.00; NE STATE VOLUNTEER FIREFIGHTERS ASSOC, FE, 816.00; NNEDD, SE, 1110.00; NORTHEAST POWER, SE, 13417.72; OAKSTONE PUBLICATIONS, SU, 217.80; OVERDRIVE, SU, 432.70; PROGRESSIVE PROPERTIES, RE, 250.00; PROGRESSIVE PROPERTIES, RE, 250.00; PROPERTY EXCHANGE, RE, 417.47; QUALITY 1 GRAPHIC, SU, 70.00; RESCO, SU, 1431.66; RIESBERG, PAT, RE, 160.54; ROBERT WOehler & SONS, SE, 55593.00; SCHMIT, KIM, SE, 10.00; SD MYERS, SE, 396.00; SKARSHAUG TESTING LAB, SE, 283.61; STAPLES, SU, 241.81; STATE NEBRASKA BANK-PETTY CASH, RE, 99.66; THREE RIVERS LIBRARY SYSTEM, FE, 10.00; TYLER TECHNOLOGIES, SE, 1437.50; VIAERO, SE, 116.44; WAED, SE, 7853.83; WAYNE COUNTY COURT, RE, 150.00; WESCO, SU, 446.19; WISNER WEST, SU, 349.31; ZIMCO SUPPLY, SU, 357.00; AMERICAN BROADBAND, SE, 2502.87; AMERITAS, SE, 86.15; AMERITAS, SE, 72.00; AMERITAS, SE, 60.16; AMERITAS, SE, 2524.50; ARNIE'S FORD, SE, 1559.10; BOK FINANCIAL, RE, 11090.00; BOK FINANCIAL, RE, 157055.63; BORDER STATES INDUSTRIES, SU, 3742.74; BOUND TO STAY BOUND BOOKS, SU, 20.51; BRIGGS, SU, 277.80; CITY OF WAYNE, PY, 86027.39; CORE & MAIN, SU, 340.18; DEMCO, SU, 206.73; DENKLAU, MICHAEL, RE, 7.00; ECHO GROUP, SU, 58.20; FIRST CONCORD GROUP, SE, 3983.29; GAMBLE, ROBBIE, SU, 81.15; GERHOLD CONCRETE, SU, 245.00; GILL HAULING, SE, 237.50; HEIKES AUTOMOTIVE, SE, 311.37; HOMETOWN LEASING, SE, 409.53; IRS, TX, 9611.18; IRS, TX, 14332.14; IRS, TX, 3351.82; L.G. EVERIST, SU, 1403.18; MIKEY C PRODUCTIONS, SE, 210.00; NE DEPT OF REVENUE, TX, 3918.80; NORTHEAST POWER, SE, 6240.00; ONE CALL CONCEPTS, SE, 94.05; PAC N SAVE, SU, 471.64; QUALITY FOOD CENTER, SU, 23.30; RESCO, SU, 165.78; SKARSHAUG TESTING, SE, 190.70; SUBSURFACE SOLUTIONS, SU, 86.75; TYLER TECHNOLOGIES, SE, 200.00; US BANK, SU, 5816.92; UTILITIES SECTION, FE, 3106.00; WESCO, SU, 4199.75

Councilmember Sievers made a motion, which was seconded by Councilmember Buck, to approve the claims. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Brodersen proclaimed September as “National Senior Center Month.”

Mike Powicki, Director of Athletics at Wayne State College, was present requesting Council consideration to allowing them to have a fireworks display at the College after the “Family Day” football game on Saturday, September 15, 2018.

Councilmember Sievers made a motion, which was seconded by Councilmember Buck, approving the request of Mike Powicki, Director of Athletics at Wayne State College, to have a

fireworks display at the College after the “Family Day” football game on Saturday, September 15, 2018. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Andrew Ross, Director of the Nebraska Municipal Power Pool, gave a presentation on the electric cost-of-service study he prepared on behalf of the City of Wayne. He had two proformas – one that showed no electric rate increase and one that showed a 4.3% electric rate increase. No increases would result in negative operating income and deplete the cash by year 2023. A 4.3% increase now through 2023 would increase the net operating income and hit the cash balance target. Mr. Ross is targeting a January 1<sup>st</sup> adjustment to the rates. The majority of the increase would be on the customer service charge. The whole industry is shifting towards fixed cost recovery. The only fixed revenues that a municipality has is the customer service charge. The average customer service charge is around the \$20 - \$25 range. With that said, there would probably be some relief on the commodity or energy charge. In his opinion, Wayne’s rates are too seasonal. He thought there was too big of a discrepancy between the summer and winter rates.

Mr. Ross was directed to prepare/design rates as he recommended during his presentation, with a higher fixed rate on the service charge and lower commodity charge, and flagging any of those rate classes that are being subsidized.

Mayor Brodersen declared the time was at hand for the public hearing on the Application for Community Development Block Grant Funds on behalf of Jason Sears Flooring located at 904 Jaxon Street.

Jeff Christensen, representing Northeast Nebraska Economic Development District, was present to answer questions.

Jason Sears wants to purchase the warehouse he has been renting for the past three years, located at 904 Jaxon Street in Wayne. The warehouse is a one-story building built in 2012 that is 4,180 sq. ft., with an additional 960 sq. ft. used by Grace Counseling. The total

project costs are estimated to be \$177,000 for the purchase of that warehouse. Mr. Sears and the Elkhorn Valley Bank in Wayne are requesting that the City of Wayne provide a loan in the amount of \$50,000 to purchase the warehouse. The bank has approved a loan of up to \$99,000 for the building. Mr. Sears is providing equity of \$18,000 cash. Besides the current six employees that will be maintained, the project will create one to two additional jobs (7-8 total).

Wayne's CDBG Funds will be sub-granted to Northeast Economic Development, Inc. (NED, Inc.) NED, Inc., will then loan the funds to Mr. Sears to purchase the building at 904 Jaxon Street in Wayne. The \$50,000 loan will have a 15-year term at 5.00% (fixed). Payments will be made to NED, Inc. This is the process approved by the Nebraska Department of Economic Development (DED) to de-federalize CDBG funds in our local communities.

Other funds include \$10,000 from the Wayne Area Economic Development (WAED) with a 10-year term at 0.00% interest.

The Northeast RLF Committee was presented information on credit scores, net worth, collateral, and financial information as part of the loan summary discussion and recommends this loan for approval.

Jason Sears was present to answer questions.

City Clerk McGuire had not received any comments for or against this public hearing.

There being no further comments, Mayor Brodersen closed the public hearing.

Councilmember Sievers introduced Resolution No. 2018-47 and moved for its approval; Councilmember Giese seconded.

#### RESOLUTION NO. 2018-47

A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) LOAN IN THE AMOUNT OF \$50,000 TO JASON SEARS FLOORING AND SUB-GRANTING CDBG FUNDS TO NEBRASKA ECONOMIC DEVELOPMENT, INC.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Brodersen declared the time was at hand for the public hearing on the land acquisition from G & D Appel, LLC.

The legal descriptions are as follows:

- Lots 1, 2, 3 and 6, 7, 8 and 8' of the vacated alley adjacent to each, and Lot 5 and 14.5' of the vacated alley and 16' of the vacated alley (previously Tax Lots 8 and 9), Block 29, Original Town of Wayne, Wayne County, Nebraska; and
- Tax Lot 83, being part of the SW1/4NW1/4 of Section 18, Township 26 North, Range 4 East of the 6<sup>th</sup> P.M., Wayne County, Nebraska (By Riley's)

The address of said properties is 113 S. Main Street, Wayne, Nebraska, and the proposed purchase price is \$87,275.00.

City Clerk McGuire had not received any comments, either verbal or in writing, for or against this public hearing.

There being no further comments, Mayor Brodersen closed the public hearing.

Councilmember Eischeid introduced Resolution 2018-48, and moved for its approval; Councilmember Greve seconded.

#### RESOLUTION NO. 2018-48

A RESOLUTION APPROVING THE ACQUISITION OF TWO PARCELS OF REAL ESTATE LOCATED IN THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA, FROM G & D APPEL, LLC.

Councilmember Eischeid reintroduced Resolution 2018-48, and moved for its approval; Councilmember Greve then seconded.

#### RESOLUTION NO. 2018-48

A RESOLUTION APPROVING THE ACQUISITION OF TWO PARCELS OF REAL ESTATE LOCATED IN THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA, FROM G & D APPEL, LLC, **FOR THE AMOUNT OF \$87,275.00.**

Councilmember Giese noted his dissent. He liked the idea of the City controlling its own destiny and having a blank slate on one of the most important properties downtown, but he does not feel it is the city's role to do that at this time.

Councilmember Eischeid stated he feels more confident in spending \$87,000 for this piece of property than investing hundreds of thousands of dollars again on a development like Western Ridge. He feels this is a smart move, because it is cleaning up an area that is in desperate need of a facelift.

Mayor Brodersen stated that this Resolution is to acquire the property, and does not say what the city is going to do with it.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Giese and Haase who voted Nay, the Mayor declared the motion carried.

Mayor Brodersen declared the time was at hand for the public hearing on the proposed FY 2018-2019 budget.

The total of the FY 2018-2019 budget is \$35,836,401. The property tax proposal for the General Fund operation is \$828,838.32, which compares to the 2017 tax asking of \$793,321.67. Pursuant to State Law, the maximum levy for a municipality is \$0.45 per \$100 of property valuation. When combined with the debt service asking, the combined amount for the proposed budget year is \$929,838.32 or \$.410444 per \$100 of property valuation, which is slightly lower than last year - \$.410485. The valuation in the community, as reported by the County Assessor for 2018 is \$226,544,459, which is up \$8,674,894 from last year.

Finance Director Beth Porter stated these numbers are based on the final numbers set at the budget work session. When preparing for the budget, an estimated 2% increase on valuation in the community was used for calculations. The actual increase was closer to 4%, which results in an increase of about \$16,000 in Property Taxes that can be set aside in the General Fund Reserve Account.

City Clerk McGuire had not received any comments for or against this public hearing.

There being no further comments, Mayor Brodersen closed the public hearing.

Councilmember Giese introduced Resolution 2018-49, and moved for its approval;  
Councilmember Eischeid seconded

RESOLUTION NO. 2018-49

A RESOLUTION TO ADOPT THE 2018-2019 BUDGET FOR THE CITY OF WAYNE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Brodersen declared the time was at hand for the public hearing regarding the tax asking/property tax levy.

To support the proposed general operating and debt service budgets for the City and the Airport Authority, a total property tax levy of \$.449048 per hundred dollars of property value is included. The levy equates to a tax request of \$1,017,295.31. Last year's general tax levy was \$.410485 per hundred dollars of valuation; this year it is \$.410444, excluding the airport.

City Clerk McGuire had not received any comments for or against this public hearing.

There being no further comments, Mayor Brodersen closed the public hearing.

The following Resolution would approve the final property tax request of \$929,838.32. This Resolution does not include the airport levy.

Councilmember Giese introduced Resolution 2018-50, and moved for its approval;  
Councilmember Greve seconded.

RESOLUTION NO. 2018-50

A RESOLUTION APPROVING FINAL PROPERTY TAX REQUEST FOR FY 2018-2019.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Giese introduced Ordinance 2018-25, and moved for its approval;  
Councilmember Sievers seconded.

ORDINANCE NO. 2018-25

AN ORDINANCE TO ADOPT THE BUDGET STATEMENT TO BE TERMED THE ANNUAL APPROPRIATION BILL; TO APPROPRIATE SUMS FOR NECESSARY EXPENSES AND LIABILITIES; TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Giese made a motion, which was seconded by Councilmember Sievers, to suspend the statutory rules requiring ordinances to be read by title on three different days. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Giese made a motion, which was seconded by Councilmember Buck, to move for final approval of Ordinance No. 2018-25. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

The base year started in 1998. The restricted funds are the property taxes, payments in lieu of property taxes, local option sales taxes, motor vehicle taxes, state aid, transfers of surpluses from any user fee, and any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements, but which were not spent and are not expected to be spent for capital improvements. Cities are given the opportunity to increase the base limitation of the restricted funds budget by 1%. The State Auditor is also recommending that entities pass this 1% increase. This increases our base number we can use for our restricted fund revenues.

Councilmember Giese made a motion, which was seconded by Councilmember Sievers, approving the allowable 1% increase in base limitation of the restricted funds budget. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Attorney Miller explained the agenda item (ordinance) regarding the variance for the construction of the 8' fence. She noted that the Council is not voting to grant a

variance; they are simply voting to change the ordinance to read that the Board of Adjustment may consider granting a variance. However, Nebraska statutes are very specific on when a variance can be granted, and what conditions must be met. The purpose of a variance is to deal with situations related to the property itself, not the owners of the property. All of the conditions outlined in the State Statutes have to be met as it relates to the land. Even if the ordinance passes that allows for the variance, the Board of Adjustment still has to look at the remaining conditions for granting a variance. They are all-inclusive. If it does not meet every one of those conditions, all dealing with the situation of the property, a variance is not justified.

She also noted that a variance is not meant for this sort of issue. If the Council's goal is to allow Mr. Rutenbeck to have an 8' fence for the safety of his children, then the way to go about that would be in the fence provision. While there are other options, it was her legal opinion that simply amending the ordinance to provide a means for the requesting party to go to the Board of Adjustment to get a variance, when legally a variance should never be given in this situation, is the wrong way to go about this.

Attorney Miller stated that the ordinance could include language as follows: "Fences separating residential land uses shall not exceed 6' in height; however, the City Council may, by granting a waiver, authorize the construction of a fence higher than 6,' but not exceeding 8' in height, if the Council finds the public welfare is preserved."

Councilmember Eischeid opined he did not want everyone in Wayne putting in an 8' fence. He was of the opinion it should be on a case-by-case basis.

Micki Rutenbeck was present to answer questions. He advised the Council that he has already put up a 6' privacy fence around his house. He will finish the inside with an 8' privacy fence.

Councilmember Muir introduced Ordinance No. 2018-23, and moved for approval of the second reading thereof, with the following language inserted therein:

**“Fences separating residential land uses shall not exceed 6’ in height; however, the City Council may, by granting a waiver, authorize the construction of a fence higher than 6,’ but not exceeding 8’ in height, if the Council finds the public welfare is preserved.”**

Councilmember Sievers seconded.

#### ORDINANCE NO. 2018-23

AN ORDINANCE AMENDING TITLE XV LAND USAGE, CHAPTER 152 ZONING, SPECIFICALLY SECTION 152.131 FENCES AND SCREENS; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Haase and Eischeid who voted Nay, the Mayor declared the motion carried. The third and final reading will take place at the next meeting.

Attorney Miller stated that several sections were added to the following ordinance to address some of the issues being experienced in Victor Park.

Joel Hansen, Building and Planning Director, suggested establishing campground rules.

Councilmember Eischeid stated that before the Council starts passing these changes, he wants to make sure that everything is in order before moving forward.

Councilmember Eischeid made a motion to table action on the second reading of Ordinance No. 2018-24; Councilmember Muir seconded.

#### ORDINANCE NO. 2018-24

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, BY ADDING SECTION 91.085 PARKS – OPEN HOURS; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Councilmember Giese continued discussion on the open hours. In the last two years, the Police Department has been called to city parks 27 times; 15 of those calls were to the Softball Complex. His concerns were that the Council was making an otherwise normal behavior illegal.

We are justifying the law by citing selective enforcement. We are relying on the enforcement branch of government to address our failure at the legislative level. We are passing a law with the full expectation that it is not going to be fully enforced. Is the real intent of this law to keep people out of the park or is it to prevent activities that are already illegal from taking place?

Police Chief Chinn stated it may seem like we are putting rules on top of rules, but without them, the police cannot do anything. Right or wrong, they are trying to be proactive of what is going on in the parks.

Councilmember Eischeid stated he wants to protect whatever the City owns.

Councilmember Karsky was in favor of passing the ordinance. He has lived near Bressler Park for approximately 20 years, and the activity there has gotten worse over that period of time.

Councilmember Giese stated he was in favor of having closing hours at the Summer Sports Complex because he did not feel that fit into the purview of a public park. He disagrees with having a blanket policy, however, on all parks.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Blecke stated that Providence Medical Center is participating in a Government program called the 340(b) program. This program allows them to purchase pharmaceutical products at a discount for certain Medicare patients. One of the requirements of the program is that they provide healthcare services to low income individuals who are not entitled to benefits under Title XVIII of the Social Security Act or eligible for assistance under the State Plan (Medicaid) under that subchapter. While they think the current contract for ambulance services meets this requirement, they would like to update the Memorandum of Understanding that was originally approved in 2012 by the City just to make sure. The only change on this agreement is the date.

Councilmember Sievers introduced Resolution No. 2018-51 and moved for its approval, Councilmember Haase seconded.

RESOLUTION NO. 2018-51

A RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WAYNE AND PROVIDENCE MEDICAL CENTER.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Advanced Consulting Engineering Services presented Contractor's Application for Payment No. 2 on the "2<sup>nd</sup> Street Storm Sewer Improvement Project" for \$35,019.72 to Robert Woehler & Sons Construction, Inc.

Councilmember Eischeid made a motion, which was seconded by Councilmember Muir, approving Contractor's Application for Payment No. 2 for \$35,019.72 to Robert Woehler & Sons Construction, Inc., for the "2<sup>nd</sup> Street Storm Sewer Improvement Project." Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Blecke stated that The College, Public Schools, County and City meet once per quarter to discuss how our entities can share services/equipment/facilities and simply work better together. One item that the group has been discussing at its last few meetings is facilities that could be added or enhanced to benefit more than one entity. The four of us decided to put together a working group to study the possibilities of three facilities to the community: indoor swimming pool, additional gymnasium space, and a performing arts center. This working group would consider the needs for the facilities, determine economic impact...and then, if those are positive, would look at the feasibility of locations, costs, ownership, etc. This group would report back in March to its respective governing body. This agenda item is only to approve appointments to this working group. No other commitments are being asked for or made at this time.

Councilmember Giese made a motion, which was seconded by Councilmember Sievers, approving the appointment of Jill Brodersen, Terri Buck and Bryce Meyer to the Recreation and Performing Arts Community Task Force. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Giese made a motion, which was seconded by Councilmember Sievers, to adjourn the meeting. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 7:44 p.m.