

**MINUTES
CITY COUNCIL MEETING
January 18, 2011**

The Wayne City Council met in regular session at City Hall on Tuesday, January 18, 2011, at 5:30 o'clock P.M. Mayor Ken Chamberlain called the meeting to order with the following in attendance: Councilmembers Brian Frevert, Jim Van Delden, Dale Alexander, Doug Sturm, Kaki Ley, Kathy Berry, and Jill Brodersen; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmember Jon Haase.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on January 6, 2011, 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.

Councilmember Van Delden made a motion and seconded by Councilmember Sturm, whereas the Clerk has prepared copies of the Minutes of the meeting of January 4, 2011, and that each Councilmember has had an opportunity to read and study the same, and that the reading of the Minutes be waived and declared approved.

Mayor Chamberlain 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: AMAZON, SU, 438.90; AMERITAS, SE, 2250.85; APPEARA, SE, 102.96; BAKER & TAYLOR BOOKS, SU, 702.36; BANK FIRST, FE, 195.00; BIG T ENTERPRISES, SU, 88.95; CITY EMPLOYEE, RE, 144.46; CHARLIE HARDER, RE, 150.69; CITY OF WAYNE, RE, 1250.00; CITY OF WAYNE, PY, 58313.76; CITY OF WAYNE, RE, 1783.71; COMMUNITY HEALTH, RE, 3.00; CULLIGAN, SE, 43.95; DAVE'S DRY CLEANING, SE, 69.00; DAVID SHELTON, RE, 700.00; DEMCO, SU, 431.14; DOUGLAS CO ENVIRONMENTALS, FE, 100.00; ECHO GROUP, SU, 283.70; EDM PUBLISHERS, SU, 99.00; ENERGY FEDERATION, SU, 2660.08; FBINAA-NE CHAPTER, FE, 90.00; FLOOR MAINTENANCE, SU, 329.11;

GALE GROUP, SU, 471.02; GAYLEN BENNETT, RE, 90.52; GAYLORD BROS, SU, 147.06; GEMPLER'S, SU, 259.25; GREAT PLAINS ONE-CALL, SE, 37.48; HARDING & SHULTZ, SE, 1427.02; HAUFF MID-AMERICAN SPORTS, SU, 285.00; HUNTEL, SE, 1172.65; ICMA, SE, 5641.90; INGRAM BOOK COMPANY, SU, 519.98; IRS, TX, 18619.29; JACOB'S ROOM, SU, 203.64; JORGENSEN, JASON, RE, 51.18; JOYCE & BRAD HOSKINS, RE, 343.20; KEPSCO, SU, 14.80; KTCH, SE, 525.00; LEAGUE OF NEBRASKA, FE, 100.00; LOFGREN, LAUREN, RE, 500.00; LOGIN/IACP NET, FE, 250.00; CITY EMPLOYEE, RE, 343.97; LOVE SIGNS, SU, 1152.78; M.E. COLLINS, SE, 93313.44; MAIN STREET AUTO CARE, SE, 470.00; MARK HAMMER, RE, 500.00; MERIT MECHANICAL, SE, 9416.15; MICROFILM IMAGING SYSTEMS, SE, 527.63; MID-STATE ENGINEERING, SE, 255.00; MIDWEST LABORATORIES, SE, 340.90; MIDWEST TAPE, SU, 145.96; MOONLIGHT TOWING, SE, 79.88; MSC INDUSTRIAL, SU, 245.96; CITY EMPLOYEE, RE, 592.15; NE CODE OFFICIAL ASSOC, FE, 255.00; NE DEPT OF REVENUE, TX, 2888.12; NE DEPT OF REVENUE, TX, 39.24; NE DEPT OF ROADS, SE, 3150.00; NPPD, SE, 400943.73; NICP, FE, 350.00; NORTHEAST EQUIPMENT, SU, 958.74; NORTHEAST LIBRARY SYSTEM, SU, 6.00; N.E. NE AMERICAN RED CROSS, RE, 39.24; NNPPD, SE, 11634.98; OLSSON ASSOCIATES, SE, 2800.95; PAMIDA, SU, 109.38; PAUL DANGBERG, RE, 100.00; PEPSI-COLA, SU, 376.54; POSTMASTER, FE, 110.00; PRESTO X, SE, 44.29; PUSH-PEDAL-PULL, SE, 157.50; QUILL, SU, 572.19; QWEST, SE, 156.04; RANDOM HOUSE, SU, 145.50; CITY EMPLOYEE, RE, 815.68; RICHARD CARLSON, RE, 438.89; SPARKLING KLEAN, SE, 1476.00; STADIUM SPORTING GOODS, SU, 74.00; STANLEY SECURITY SOLUTION, SU, 925.49; STATE FARM INSURANCE, SE, 563.00; STATE NATIONAL BANK, SE, 94.53; THE WAKEFIELD REPUBLICAN, SU, 25.00; UNITED WAY, RE, 10.00; UNIVERSITY OF NE-LINCOLN, SE, 170.89; US BANK, SU, 3235.49; VAN METER & ASSOCIATES, FE, 260.00; WATSON LABEL PRODUCTS, SU, 141.83; WAED, RE, 10000.00; WAYNE AUTO PARTS, SU, 1533.39; WAYNE COUNTY CLERK, SE, 5.50; WAYNE COUNTY TREASURER, SE, 1050.00; WAYNE HERALD, SE, 1983.04; WEIGL PUBLISHERS, SU, 43.47; WAPA, SE, 35302.82; ZACH HEATING & COOLING, SE, 8889.90; BAUM HYDRAULICS, SU, 31.44; CITY EMPLOYEE, RE, 409.71; BLUE DEVIL BOOSTER CLUB, SE, 75.00; BOMGAARS, SU, 104.66; CARHART LUMBER, SU, 566.23; CITY OF WAYNE, RE, 20.00; CITY OF WAYNE, RE, 575.00; COVENTRY HEALTH, SE, 23348.74; DE LAGE LANDEN FINANCIAL, SE, 394.00; DGR & ASSOCIATES, SE, 226.00; EGAN SUPPLY, SU, 109.07; EKBERG AUTO SALVAGE, SU, 50.00; ELECTRONIC SYSTEMS, SE, 60.00; FLOOR MAINTENANCE, SU, 279.08; GEMPLER'S, SU, 12.00; GEMSTONE, SE, 5613.00; GRAHAM TIRE, SU, 335.76; HANSEN, GENE, RE, 125.80; HAUFF MID-AMERICAN SPORTS, SU, 20.45; JOANNE BONDHUS, RE, 700.00; KTCH, SE, 80.00; LAB SAFETY SUPPLY, SU, 119.16; LANGEMEIER, WAYNE, SE, 60.00; MAIN STREET AUTO CARE, SE, 2838.00; MARK KAI, RE, 57.36; MERCY MEDICAL CLINIC, SE, 70.00; MSC INDUSTRIAL, SU, 59.11; MURPHY TRACTOR, SU, 210.08; NE HARVESTORE, SU, 11.03; NE PUBLIC HEALTH, SU, 199.00; NMC, SU, 31.40; CITY EMPLOYEE, RE, 205.74; PITNEY BOWES, SE, 648.00; RON'S RADIO, SE, 131.03; SPARKLING KLEAN, SE, 287.00; STADIUM SPORTING GOODS, SU, 472.25; STANLEY

SECURITY SOLUTION, SU, 1123.19; STATE NATIONAL BANK, RE, 110.99; STEFFEN, SU, 837.52; TACO'S AND MORE, SU, 25.00; WAED, RE, 16000.00; WAYNE COMMUNITY SCHOOLS, SU, 135.00

Councilmember Frevert made a motion and seconded by Councilmember Alexander to approve the claims. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Chamberlain 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, he 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 arrived at 5:33 p.m.

Joe Jetensky, Director of Regulated Operations at American Broadband, provided Council with an update of what has been happening over the past couple of years. He advised the Council that over the past two years, they have invested \$1.2 million dollars in infrastructure improvements.

In addition, Mr. Jetensky advised the Council that he and staff have been negotiating the renewal of the Franchise Agreement with HunTel CableVision. The proposed Franchise Agreement will be for 15 years, with a 15-year extension. The longer term lease helps with the financing they have with their banks. This is a non-exclusive franchise agreement, and therefore if the City would ever get to a point where they feel HunTel is not providing the service as expected, the City can ask another cable company to provide service in Wayne. HunTel also has an agreement with the City to use the

City's utility poles to make attachment of CATV facilities. This amount will be increased from \$8.00 per pole to \$9.00 per pole for the first five years, \$10.00 per pole for the next five years, and \$11.00 per pole for the remaining five years.

Councilmember Sturm introduced Ordinance 2011-1, and moved for its approval; Councilmember Ley seconded.

ORDINANCE NO. 2011-1

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO HUNTEL CABLEVISION, INC., A NEBRASKA CORPORATION, ITS SUCCESSORS AND ASSIGNS TO OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF WAYNE, NEBRASKA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE PROVIDING FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT

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

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

Councilmember Ley made a motion and Councilmember Sturm seconded to move for final approval of Ordinance No. 2011-1. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Alexander introduced Resolution No. 2011-2 and moved for its approval; Councilmember Ley seconded.

RESOLUTION NO. 2011-2

A RESOLUTION APPROVING POLE USE AGREEMENT BETWEEN THE CITY OF WAYNE AND HUNTEL CABLEVISION.

Garry Poutre, Supt. of Public Works & Utilities, stated several communities were polled to come up with the amounts in the Pole Agreement. We have been at \$8.00 per pole for approximately 8 years.

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

Mayor Chamberlain declared the time was at hand for the public hearing to consider the Planning Commission's recommendation regarding an Application for Zoning Use by Exception Permit of Dr. Rob Burrows to allow for a dental clinic at 617 Pearl Street.

Administrator Johnson stated that the Planning Commission held a public hearing on this matter and recommended approval thereof, with the condition that a six foot privacy fence be placed on the south side of the property. This is the second time this matter has come before the Planning Commission and the Council, for the reason that the time allowed on the first permit has expired. The first time this application was approved there was also a condition to install low luminary lighting. Johnson would also like to see that as a condition of this permit. Johnson has visited with Dr. Borrows, who did not have a problem with the low luminary lighting condition. He also noted that the Planning Commission's "Findings of Fact" were that this was consistent with the comprehensive plan and the current and future land use maps.

Dr. Burrows, the developer, was present to answer questions, as well as his consultant, Ed Cable. Mr. Cable stated there was just a slight change in the site plan layout of the parking, but essentially there were no other changes to the building size, etc.

Wes Blecke, Director of WAED, was in favor of the Planning Commission's recommendation.

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

City Clerk McGuire noted that she received one objection to this request, which was from Dianna Buerger, who preferred that the area stay residential.

Councilmember Sturm introduced Resolution 2011-3, and moved for its approval, subject to the conditions that a six foot privacy fence be placed on the south side of the property and that low luminary lighting be installed; Councilmember Alexander seconded.

RESOLUTION NO. 2011-3

A RESOLUTION APPROVING APPLICATION FOR ZONING USE BY EXCEPTION PERMIT TO ALLOW FOR A DENTAL CLINIC AT 617 PEARL STREET.

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

Gene Hansen, Electric Production Superintendent, updated the Council on the new EPA air quality standards that will take effect in 2013 for reciprocating internal combustion engines, a/k/a the "RICE" rule. The City has a generating plant with 8 diesel generators, all over 500 hp, which fall under the mandate of the RICE rules. These 8 generators are leased to NPPD. The RICE regulations have been a long time coming from the EPA. Since the new administration in the White House, there is real emphasis on trying to restrain all of the CO as much as possible that can be emitted into the atmosphere. Our power plant is already under the guise of the regulations of the Nebraska EPA Air Quality Division. Our power plant emits CO into the air each year,

but that amount is getting less and less every year because we don't operate that much. However, for each ton that we do emit into the air, we pay a dollar amount back to the air quality division so they can run their department. The RICE mandate will take effect May 3, 2013. The reason we need to comply with the RICE regulations is that NPPD has no use for our contract if we can't run our power plant under the new EPA regulations. Our contract with NPPD runs until 2022. We will probably need to spend approximately \$600,000 for this emission equipment. We receive about \$650,000 plus each year from NPPD for the lease agreement. This emission equipment would have a one-year payback. Therefore, it would behoove the City to install the necessary equipment to come into compliance with the RICE regulations. If we would do nothing, we would probably receive very minimal payments, if any, from NPPD. In addition, we would only be allowed to run 15 hours per year.

There being no further discussion, Mayor Chamberlain moved onto the next agenda item.

Wes Blecke, Director of Wayne Area Economic Development, gave the required semi-annual LB 840 activity report to the Council. There have been two applications approved by the City Council since the last report -- the Wayne Hospitality Group for \$250,000 which was changed from a 15-year loan to a grant, and the \$10,000 grant to WAED.

Councilmember Van Delden questioned whether or not funds could be withheld from a recipient, if it was discovered that the recipient had more of their own money in the kitty. In this case, the grant has already been given to this particular recipient, but he has found out now that there is more money in the war chest.

In response, Mr. Blecke stated it would depend on what was in the original agreement. In his opinion, unless something is stated in the agreement, it's a done deal.

Attorney Pieper opined it would be a done deal in the absence of fraud on the application.

Mr. Blecke then explained the matrix process and how that works. He advised the Council that when the committee starts the scoring and discussion process, the applicants are not in the room. He then calls the applicants to advise them what the committee's recommendation was.

There being no further discussion, Mayor Chamberlain moved onto the next agenda item.

Attorney Pieper stated the following ordinance would rescind or repeal the action taken by Ordinance 2010-29, which released all of the side-yard utility easements on Lots 8 and 9 in Fairway Estates Subdivision. The only easements that should have been released and abandoned were the East 7' of the side-yard utility easement located on Lot 8 and the West 7' of the side-yard utility easement located on Lot 9. Ordinance 2011-3 will release and abandon the correct side-yard utility easements.

Councilmember Alexander introduced Ordinance 2011-2, and moved for its approval; Councilmember Sturm seconded.

ORDINANCE NO. 2011-2

AN ORDINANCE RESCINDING ORDINANCE NO. 2010-29 WHICH RELEASED AND ABANDONED ALL OF THE SIDE-YARD UTILITY EASEMENTS IN LOTS 8 AND 9, FAIRWAY ESTATES SUBDIVISION TO THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA.

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

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

Councilmember Alexander made a motion and Councilmember Haase seconded to move for final approval of Ordinance No. 2011-2. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Sturm introduced Ordinance 2011-3, and moved for its approval; Councilmember Alexander seconded.

ORDINANCE NO. 2011-3

AN ORDINANCE AUTHORIZING THE RELEASE AND ABANDONMENT OF THE SIDE-YARD UTILITY EASEMENTS CONSISTING OF THE EAST 7 FEET OF SIDE-YARD UTILITY EASEMENT IN LOT 8 AND THE WEST 7 FEET OF SIDE-YARD UTILITY EASEMENT IN LOT 9, FAIRWAY ESTATES SUBDIVISION TO THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA.

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

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

Councilmember Sturm made a motion and Councilmember Ley seconded to move for final approval of Ordinance No. 2011-3. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated a pay request has been received from Eriksen Construction Company for the Wastewater Treatment Plant Project in the amount of \$851,015.94. The engineer on the project has approved the same.

Councilmember Sturm made a motion and seconded by Councilmember Ley approving Application for Payment No. 5 for the Wastewater Treatment Plant Project in the amount of \$851,015.94 for Eriksen Construction Company. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Chamberlain requested Council consideration to the following appointment: Dr. Jeff Carstens to the Planning Commission (replacing Sharon Braun).

Councilmember Haase made a motion and seconded by Councilmember Alexander approving the appointment of Dr. Jeff Carstens to the Planning Commission (replacing Sharon Braun).

Mayor Chamberlain publicly thanked Sharon Braun for the hard work and effort she has put into the Planning Commission. She has been a real asset on that Commission.

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

Councilmember Alexander made a motion and seconded by Councilmember Brodersen to adjourn the meeting. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 6:12 p.m.