

**MINUTES  
CITY COUNCIL MEETING  
February 1, 2011**

The Wayne City Council met in regular session at City Hall on Tuesday, February 1, 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, Kathy Berry, and Jill Brodersen; City Attorney Kyle Dahl; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmembers Jon Haase and Kaki Ley.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on January 20, 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 Sturm made a motion and seconded by Councilmember Alexander, whereas the Clerk has prepared copies of the Minutes of the meeting of January 18, 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:** AMERITAS, SE, 2266.78; APPEARA, SE, 97.83; BANK FIRST, FE, 195.00; BAUM HYDRAULICS, SU, 24.33; BLACK HILLS ENERGY, SE, 1671.36; CITY EMPLOYEE, RE, 140.81; CITY EMPLOYEE, RE, 671.83; CARTRIDGE WORLD, SU, 59.99; CITY EMPLOYEE, RE, 32.80; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 1500.00; CITY OF WAYNE, PY, 58670.87; CITY OF WAYNE, RE, 699.93; CITY OF WAYNE, RE, 99.38; COMMUNITY HEALTH, RE, 3.00; CONNIE WEBBER, RE, 100.00; DE LAGE LANDEN FINANCIAL, RE, 232.69; DUTTON-LAINSON, SU, 155.75; ECHO GROUP, SU, 61.10; EGAN

SUPPLY, SU, 1041.58; ERIKSEN CONSTRUCTION, SE, 851015.94; FIRST CONCORD GROUP, SE, 3954.70; FORT DEARBORN LIFE, SE, 1599.23; GODFATHERS, SE, 69.00; CITY EMPLOYEE, RE, 136.80; HEIKES AUTOMOTIVE, SE, 69.23; HUNTEL, SE, 330.00; ICMA, SE, 5693.82; INDUSTRIAL ELECTRIC MOTOR, SE, 1895.25; INTERNATIONAL PUBLIC, SE, 115.50; IRS, TX, 18963.99; JACOB'S ROOM, SU, 205.61; CITY EMPLOYEE, RE, 203.86; CITY EMPLOYEE, RE, 1030.93; KRIZ-DAVIS, SU, 5542.26; MERCY MEDICAL CLINIC, SE, 70.00; MIDWEST OFFICE AUTOMATION, SE, 960.42; MIDWEST SERVICE & SALES, SU, 195.00; MOONLIGHT TOWING, SE, 122.48; MURPHY TRACTOR & EQUIPMENT, SU, 696.75; CITY EMPLOYEE, RE, 126.44; NE DEPT OF REVENUE, TX, 2955.30; NE PLANNING & ZONING, FE, 40.00; NORTHEAST LIBRARY SYSTEM, FE, 66.00; NNPPD, SE, 2493.41; OVERHEAD DOOR, SU, 766.00; PIEPER, MILLER & DAHL, SE, 2527.00; CITY EMPLOYEE, RE, 211.75; PRESTO X, SE, 32.91; CITY EMPLOYEE, RE, 49.50; PUSH-PEDAL-PULL, RE, 150.00; QUILL, SU, 884.07; QWEST, SE, 309.57; RADIANT HEAT, SU, 498.85; ROBERT WOEHLE & SONS, SE, 18429.12; STADIUM SPORTING GOODS, SU, 372.25; THE COFFEE SHOPPE, SE, 95.85; TIM SCHAEFER, SE, 39.50; CITY EMPLOYEE, RE, 81.32; VERIZON, SE, 263.68; VIAERO, SE, 135.36; VOSS LIGHTING, SU, 342.68; CITY EMPLOYEE, RE, 1772.14; CITY EMPLOYEE, RE, 99.38; WESCO, SU, 3386.70; IMPRINT, SU, 206.02; AMERICAN BROADBAND, SE, 1168.11; APPEARA, SE, 48.35; AS CENTRAL SERVICES, SE, 448.00; AWWA, FE, 295.00; BLACK HILLS ENERGY, SE, 1067.51; BOMGAARS, SU, 1089.53; CARHART LUMBER, SU, 444.11; CITY OF NORFOLK, SE, 114.75; CITY OF WAYNE, RE, 513.49; CLAUSSEN & SONS IRRIG, SE, 340.00; CONNEY SAFETY PRODUCTS, SU, 79.49; CREDIT BUREAU SERVICES, SE, 202.59; DAKOTA BUSINESS SYSTEMS, SE, 101.50; DE LAGE LANDEN FINANCIAL, SE, 77.00; DUTTON-LAINSON, SU, 493.86; EASYPERMIT POSTAGE, SU, 1169.64; FLOOR MAINTENANCE, SU, 32.10; FORT DEARBORN LIFE, SE, 103.20; FREDRICKSON OIL, SU, 497.75; GALE GROUP, SU, 90.79; GILL HAULING, SE, 133.00; HAWKEYE ADJUSTMENT, SE, 891.69; HERITAGE HOMES, RE, 5966.00; INLAND TRUCK PARTS, SU, 110.36; JOHN'S WELDING AND TOOL, SU, 15.25; MIDWEST DIESEL, SU, 42.81; NATL ARBOR DAY FOUNDATION, FE, 50.00; CITY EMPLOYEE, RE, 125.50; NE FOREST SERVICE, FE, 80.00; NE SAFETY COUNCIL, SE, 10.95; NHHS, FE, 42.81; NE NEB AMERICAN RED CROSS, SE, 50.00; NE NEB AMERICAN RED CROSS, SE, 19.62; NWOD, FE, 20.00; PEITZ SERVICE, SU, 121.16; POSITIVE PROMOTIONS, SU, 246.45; QUILL, SU, 7.47; THE CHILD'S WORLD, SU, 149.50; CITY EMPLOYEE, RE, 684.78; TYLER TECHNOLOGIES, SU, 968.70; UNITED WAY, RE, 5.00; US BANK, SE, 6516.02; UTILITIES SECTION, FE, 340.00; VERIZON, SE, 101.30; WAED, RE, 6383.33

Councilmember Sturm 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.

Garry Poutre, Superintendent of Public Works & Utilities, reviewed the bid specifications for the purchase of a new four-wheel drive medium duty cab and chassis truck which will replace the 1977 dump truck in the Public Works Department. The 1977 truck has been used for plowing and hauling snow, hauling dirt, wood chips, brush, etc. There is currently \$90,000 in the budget for this purchase. The estimate for this new cab and chassis is \$85,000. A snowplow will also have to be purchased, and that will take place in the next budget year. The snowplow is expected to cost approximately \$6,000 - 7,000 and will be purchased through the state bid program. The intent is to sell the 1977 truck.

Todd Hoeman and Lowell Heggemeyer of the Public Works Department were also present to answer questions.

Councilmember Sturm introduced Resolution No. 2011-4 and moved for its approval; Councilmember Frevert seconded.

#### RESOLUTION NO. 2011-4

#### A RESOLUTION APPROVING FOUR-WHEEL DRIVE CAB AND CHASSIS TRUCK SPECIFICATIONS AND AUTHORIZING BIDS TO PURCHASE.

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

Administrator Johnson stated the following Resolution would establish double sewer rates for customers located outside city limits. As of this time, it would only affect nine customers. This is similar to what is done for water customers located outside city limits. This was an item discussed at retreat.

City Clerk McGuire advised the Council this action could generate an additional \$6,000 to 7,000.

Mayor Chamberlain stated these customers are already being charged double water rates. This action is being modeled off the water charges for those customers living outside city limits.

Councilmember Alexander suggested notifying these customers of this rate change before taking action on the Resolution.

Councilmember Alexander made a motion to table action on Resolution 2011-5 regarding the establishment of double sewer rates for customers outside city limits until the next meeting; Councilmember Sturm seconded the motion.

Councilmember Sturm stated he would lean towards approving this action even after these customers have been notified because they are using this city service.

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

Administrator Johnson presented the wage and salary schedule for exempt and non-exempt employees. This includes a 1% cost of living adjustment which was approved at the budget hearing. In addition, he was recommending that the position of Recreation-Leisure Services Assistant II position be changed from a Labor Grade 16 to a Labor Grade 17, and that the title be changed to "Community Activity Center Director."

Last year, employees received a 2% cost of living adjustment. It was noted that employees who could move on the wage grid could also see an additional 2.17%. Those employees who have been with the City 10 years or longer would only see the cost of living adjustment. Occasionally, job descriptions are adjusted to match the market of comparable cities.

Councilmember Berry stated because the social security tax has been lowered, which means more take-home pay for employees, this may be an opportunity to forego the cost of living adjustment this year.

Administrator Johnson stated last summer, we took the Recreation-Leisure Services Asst. II position from a Labor Grade 7 to a Labor Grade 16. This was when we hired Karla Jensen to fill that position. Her job description now is that of the Community Activity Center Director, which is why he is recommending this change on the resolution. The CAC Director position will report directly to the City Administrator.

In response to Councilmember Alexander's question, Administrator Johnson stated the reason he moved the Labor Grade from a 16 to a 17 was to give some room for a pay increase, other than just the cost of living. Alexander asked when you are hired at the top of the pay range, you don't expect to go any higher, do you? He preferred keeping this position at the Labor Grade 16. He noted that this is the same discussion we had last year. There are a lot of people who are at the top of the pay scale, and we are not going to move their job descriptions just so we can give them another increase.

Administrator Johnson replied he was looking at the job we have asked her to do and comparing it to what she had been doing when she first was hired.

Councilmember Sturm stated her job description has changed. She has been asked to assume more responsibility than what she was doing when we first hired her.

Councilmember Alexander wanted to see the job description she was originally hired at.

Mayor Chamberlain stated we used her to fill the Recreation-Leisure Services Assistant position that we created when we opened the building. When Chad Metzler left, we never filled the position.

Administrator Johnson stated when Karla was hired, Jeff still had oversight over the employees at the CAC. Karla is now in more of a supervisory role up there. These two positions are like they were back in 2002. There are three positions that he does not ever see making over \$40,000 per year and those are the Recreation-Leisure Services Director, the CAC Director, and the Senior Center Director. These positions are not critical to the core of what we do. There are budget issues coming up, and there are not many towns paying over that amount for those positions. It was noted that Karla has been in this position since August 1, 2010.

Councilmember Berry thought there were two totally different things going on in this Resolution. She might agree to one part, but not another part. She was advised that the Council can amend any part they want to amend.

Administrator Johnson stated if Council does not approve this Resolution, then the money stays in reserves. Personnel costs are the highest costs we have because we are a service organization. Capital purchases are what can be held back on if there is a budget shortfall. We have about \$800,000 in the General Fund cash reserves at this time.

Administrator Johnson stated the exempt or salaried positions will also receive 1% and noted that those positions do not receive overtime or comp time. All of these pay increases are subject to satisfactory performance evaluations.

Councilmember Alexander introduced Resolution 2011-6, and moved for its approval, with one amendment which was to move the Community Activity Center Director position back to a Labor Grade 16; Councilmember Frevert seconded.

#### RESOLUTION NO. 2011-6

##### A RESOLUTION APPROVING WAGE AND SALARY SCHEDULE.

Mayor Chamberlain stated the motion, and the result of roll call was a tie, with three Yeas (Councilmembers Frevert, Van Delden and Alexander) and three Nays (Councilmembers Sturm, Berry and Brodersen). Mayor Chamberlain then cast a Yea vote to break the tie, and declared the motion carried.

Administrator Johnson stated the following Resolution would approve a 1% cost of living adjustment for the police dispatchers and officers in the Fraternal Order of Police. The Lieutenant and Police Chief positions are exempt and included in the previous wage and salary Resolution. All of these are subject to satisfactory performance evaluations, too. The FOP contract we are in now gives the Council the option of giving a 0% to 2% cost of living adjustment.

Councilmember Alexander introduced Resolution 2011-7, and moved for its approval with a 1% cost of living adjustment; Councilmember Van Delden seconded.

#### RESOLUTION NO. 2011-7

##### A RESOLUTION APPROVING WAGE AND SALARY SCHEDULE FOR THE WAYNE CHAPTER NO. 54 – FRATERNAL ORDER OF POLICE.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Berry who voted Nay, the Mayor declared the motion carried.

Administrator Johnson stated the following Resolution would approve the LPA agreement with the Department of Roads on the underpass project. This agreement is our official acceptance of the grant that the Department of Roads awarded to us last year on this project. This obligates State funds to this project. The total cost of the project is estimated to be \$576,699, with the STP cost-share at \$403,689, and the local cost-share at \$173,010. Johnson thought the costs went up some because of the segmentation of the Phase II trail from the underpass. The only fixed number in this is what the State will be contributing - \$403,689. The other numbers depend on how the bids come in.

Mayor Chamberlain stated realistically we are probably looking at 2014 for the underpass to be built.

Administrator Johnson stated if the costs would go up, and we would then decide not to go through with the project, we would be obligated to pay back any of the money we used. At this time, we have not used any of their money.

Councilmember Sturm asked if it would be wise not to spend any of their money, because they could come back in 2014 and say it won't be built until 2016. Until we see a check in hand, he did not know if we should do any of this project or we could end up spending \$250,000 when it is all said and done.

Johnson stated this agreement locks those funds in. This is not general fund money; it is gas tax money, and is all specific to the underpass.

Councilmember Sturm introduced Resolution 2011-8, and moved for its approval with the condition being that we do not spend any of these funds until we receive them.

Administrator Johnson advised the Council that if this agreement is approved, the next thing we need to do is select an engineer to design the project. We will have to pay the engineer for their services to design the project. If the Council would not approve a construction contract, we will still have the design costs of the project. Johnson did not see any design changes taking place if the project would not be done by 2014 or later. It's a fairly simple project.

Councilmember Brodersen opined she thought the engineering fees are way too high and that is across the board.

Administrator Johnson thought the application had \$55,000 allocated for design engineering, which is set by the State.

Councilmember Brodersen seconded the motion.

#### RESOLUTION NO. 2011-8

#### A RESOLUTION APPROVING LPA PROGRAM AGREEMENT – STP FUNDS FOR THE WAYNE UNDERPASS.

Mayor Chamberlain stated the motion. The result of roll call was a tie, with three Yeas (Councilmembers Van Delden, Sturm and Brodersen) and three Nays (Councilmembers Frevert, Alexander and Berry). Mayor Chamberlain then cast a Yea vote to break the tie. However, since this was a Resolution approving a contract, there needed to be five affirmative votes to pass the same. Mayor Chamberlain then declared the motion failed.

Administrator Johnson updated Council on the following Legislative Bills. These three bills he thought have the potential to affect the City of Wayne. He would not speak

on behalf of the City of Wayne unless the Council has the same position on these matters as he does.

LB-48: This bill adopts the requirements of the federal immigration law and requires state and local law enforcement to verify the immigration status of persons stopped or arrested for other issues when reasonable suspicion exists they are not U.S. citizens. The contents of Legislative Bill 48 are as follows:

- 1) It states that this Enforcement Act shall be implemented in a manner consistent with existing federal immigration law, protecting the civil rights of all persons;
- 2) It requires local and county and state law enforcement to determine the lawful immigration status of an individual who has otherwise been lawfully stopped, detained or arrested and reasonable suspicion exists that the person may be unlawfully present in the U.S.;
- 3) It states that reasonable suspicion may not be based solely on that person's race, color, religion, sex or national origin;
- 4) It directs the local law enforcement to turn any undocumented persons over to I.C.E. to take custody;
- 5) It states that no person or agency of the state shall limit or restrict the enforcement of federal immigration laws to less than the extent permitted by federal law;
- 6) It provides that an individual's lawful presence in the U.S. can be demonstrated by a valid state motor vehicle driver's license, state ID card or federal ID; and
- 7) It determines that it is unlawful for any person (Swedish, British, Hispanic, or Canadian) who is unlawfully present in the U.S. to work as an employee or independent contractor in this state. (It is already illegal for cities, counties and state agencies to hire any undocumented persons or contract with any businesses that hire undocumented persons).

The recommendation of the City Administrator is to advise the League of Municipalities to not oppose LB-48.

Councilmember Alexander stated while he supports this bill, he was concerned how it could affect the City in the future. It isn't the City or the State that enforces the Federal immigration laws. We cannot make them come and get these people, and if they don't come and get them, then who gets the bill?

Councilmember Sturm stated this doesn't mean anything will change, but it is a process that at least gives us a voice in disagreeing with what the League is doing in Lincoln.

Administrator Johnson stated that the League of Municipalities' staff will be opposing this bill. Their position is based on cost, and that it is the Federal Government's job to do this. His position is that it is the Federal Government's job to do this, but there is increasing local costs by nobody doing it, and if it's legal for States to do it, then it will be up to us because the Federal Government is not going to do it. He is not asking the Council to support LB-48; he is just asking the League to not oppose it.

LB-84: This bill would reallocate the revenues from .5% of the current 5.5% state sales tax to a dedicated construction fund in the Nebraska Highway Trust Fund to be used exclusively for capital construction projects. That would raise about \$125 million per year for 15 years. Without a better alternative, the recommendation of the City Administrator is to advise the League to support this bill, because roads and bridges still must be rebuilt over time and gas tax revenues will continue to fall.

LB-165: This bill will gradually eliminate Nebraska cities' ability to collect occupation taxes on cell phones over the next five years. Wayne currently collects a 5% occupation tax on both landline phones and cell phones. Revenues from cell phones are about \$65,000 per year, and revenues from landline phones are about \$27,000 per year. These funds are deposited into the city's general fund to defray city property taxes. The recommendation of the Finance Director and City Administrator is to advise the League to oppose LB-165 because of the revenue loss for many Nebraska towns, and because it arbitrarily favors national companies that do very large amounts of business in Wayne

but wouldn't be taxable because they aren't locally owned, and it penalizes the landline segment of the telephone communications industry and locally owned businesses.

Councilmember Berry made a motion and seconded by Councilmember Sturm authorizing staff to represent the positions of the City on the following Legislative bills: LB-48 (Illegal Immigration Enforcement Act), LB-84 (Build Nebraska Act) and LB-165 (Nebraska Telecommunications Services Occupation Tax Act). Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Attorney Dahl, after reading the Municipal Code, stated that the Resolution regarding the LPA Program Agreement needed an affirmative vote of five members elected to the Council to pass. Dahl stated the Resolution regarding the wage and salary schedule was approved because it is just setting the wage ranges, and not appropriating any money.

Councilmember Sturm made a motion and seconded by Councilmember Alexander 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 6:49 p.m.