

**MINUTES  
CITY COUNCIL MEETING  
May 17, 2011**

The Wayne City Council met in regular session at City Hall on Tuesday, May 17, 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, Jon Haase, Kathy Berry and Jill Brodersen; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmembers Dale Alexander, Doug Sturm, and Kaki Ley.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on May 5, 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 Frevert made a motion and seconded by Councilmember Haase, whereas the Clerk has prepared copies of the Minutes of the meeting of May 3, 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:

**ADDITIONS & CORRECTIONS TO CLAIMS LIST OF MAY 3, 2011:** Delete Taylor Carroll - Mowing - \$105.00

**VARIOUS FUNDS:** ABCREATIVE, INC, SU, 945.00; AMERITAS, SE, 3736.20; CITY EMPLOYEE, RE, 630.20; APPEARA, SE, 97.39; BAKER & TAYLOR BOOKS, SU, 752.71; BANK FIRST, FE, 195.00; BARONE SECURITY SYSTEMS, SE, 716.04; BOMGAARS, SU, 1200.74; CARHART LUMBER COMPANY, SU, 543.52; CITY EMPLOYEE, RE, 5.29; CHARTWELLS, SE, 5437.60; CITY EMPLOYEE, RE, 81.62; CITY OF PONCA, RE, 16279.60; CITY OF WAYNE, RE, 475.00; CITY OF WAYNE,

PY, 65985.35; CITY OF WAYNE, RE, 155.40; CITY OF WAYNE, RE, 4037.59; CITY OF WISNER, RE, 2446.50; COMMUNITY HEALTH, RE, 3.00; COPY WRITE, SU, 145.17; CUSTOM FILTRATION EQUIP., SU, 135.00; DAKOTA BUSINESS SYSTEMS, SE, 102.50; DAVE'S DRY CLEANING, SE, 102.00; ENDURANCE POWER PRODUCTS, SE, 1889.24; FIREMAN, RE, 85.50; FUOSS FARMS, RE, 2112.00; GERHOLD CONCRETE, SU, 899.25; GILL HAULING, SE, 133.00; GREAT PLAINS ONE-CALL, SE, 54.54; HARDING & SHULTZ, SE, 9687.19; HAUFF MID-AMERICAN SPORTS, SU, 720.40; HAUGE ASSOCIATES, RE, 167.75; HAWKINS, SU, 387.56; HD SUPPLY WATERWORKS, SU, 2141.46; CITY EMPLOYEE, RE, 10.33; HILLYARD/SIOUX FALLS, SU, 401.50; HOBART SALES AND SERVICE, SE, 211.00; ICMA, RE, 5603.85; IMLA, FE, 480.00; IRS, TX, 23275.19; JEO CONSULTING GROUP, SE, 1121.50; KRIZ-DAVIS, SU, 1579.62; KTCH, SE, 805.00; KUSTOM SIGNALS, SU, 424.00; LEAGUE OF NEBRASKA, FE, 270.00; LIBERAL GASKET MFG CO, SU, 106.37; MARK ALBENESIUS, INC., SE, 19443.15; CITY EMPLOYEE, RE, 183.16; MICROFILM IMAGING SYSTEMS, SE, 506.73; MID-STATE ENGINEERING, SE, 3059.00; MIDWEST LABORATORIES, INC, SE, 122.75; MIDWEST OFFICE AUTOMATION, SE, 1273.08; MIDWEST TAPE, SU, 149.96; N.E. NEB ECONOMIC DEV DIS, SE, 287.50; NE DEPT OF REVENUE, TX, 3730.82; NE STATE PATROL, SE, 285.00; NPPD, SE, 202485.72; NNPPD, SE, 11634.98; OTTE CONSTRUCTION COMPANY, SU, 16.77; PAC N SAVE, SU, 156.55; PALOS SPORTS, SU, 105.00; PAMIDA, SU, 168.30; PONCA RURAL FIRE BOARD, RE, 3912.43; PRESTO X, SE, 119.15; QUALITY FOODS, SU, 1.98; QUILL, SU, 546.67; RANDOM HOUSE, SU, 260.96; ROBERTSON IMPLEMENT, SU, 241.77; SD MEYERS, SE, 7950.00; SPARKLING KLEAN, SE, 2255.52; STADIUM SPORTING GOODS, SU, 903.75; STATE NATIONAL BANK, SE, 48.51; STATE NATIONAL BANK, RE, 122.35; TOM'S BODY & PAINT SHOP, SE, 176.70; TORCO, SU, 128.05; US BANK, SU, 6148.23; VILLAGE OF WINSIDE, RE, 5184.62; WAED, RE, 1000.00; WAYNE AUTO PARTS, SU, 219.66; WAYNE HERALD, SE, 2103.07; WAYNE JAYCEES, RE, 2000.00; WAYNE VETERINARY CLINIC, SE, 168.00; WESCO, SU, 683.01; WAPA, SE, 30900.88; AMAZON, SU, 211.52; AMERICAN CANCER SOCIETY, RE, 340.00; BARCO MUN PRODUCTS, SU, 550.07; BERRY CAM SERVICE, SU, 345.56; CITY EMPLOYEE, RE, 93.94; CARROT-TOP INDUSTRIES, SU, 304.18; CITIZENS NATIONAL BANK, RE, 3627.56; CITY OF WAYNE, RE, 500.00; CITY OF WAYNE, RE, 1115.22; COVENTRY HEALTH, SE, 20785.88; DE LAGE LANDEN FINANCIAL, SE, 394.00; DEMCO, SU, 240.85; DIGITAL ALLY, SU, 67.50; DUTTON-LAINSON COMPANY, SU, 97.77; ENGINEERED CONTROLS, SE, 946.00; FLOOR MAINTENANCE, SU, 49.95; GAYLORD BROS., SU, 92.89; GEMPLER'S, SU, 123.50; GERHOLD CONCRETE, SU, 163.00; CITY EMPLOYEE, RE, 55.75; JASON CAROLLO, SE, 105.00; JEO CONSULTING GROUP, SE, 336.00; KRIZ-DAVIS, SU, 7125.80; M. LEE SMITH PUBLISHERS, SU, 256.95; CINDY MEYER, RE, 50.00; NATIONAL LEAGUE OF CITIES, FE, 1117.00; NE PUBLIC HEALTH, SE, 151.00; OLSSON ASSOCIATES, SE, 1407.54; PITNEY BOWES, SU, 648.00; CITY EMPLOYEE, RE, 57.60; CITY EMPLOYEE, RE, 320.63; ROBERTSON IMPLEMENT, SU, 24.71; RON'S RADIO, SU, 46.20; SPARKLING KLEAN, SE, 84.00; SUPERCIRCUITS, SU, 183.80; WATERLINK, INC, SE, 283.29; WAYNE CO SHERIFF, SE, 48.19; WAYNE

COMMUNITY SCHOOLS, RE, 3187.75; WES BLECKE, RE, 50.00; WEST PAYMENT CENTER, SU, 197.52

Councilmember Haase made a motion and seconded by Councilmember Van Delden 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.

Mayor Chamberlain requested Council consideration to appointing Sandy Brown to the Recreation-Leisure Services Commission.

Councilmember Brodersen made a motion, which was seconded by Councilmember Frevert approving the appointment of Sandy Brown to the Recreation-Leisure Services Commission. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Sturm arrived at 5:33 p.m.

Administrator Johnson advised the Council that the claim filed against the City by a former dispatcher, Kate Lassila, for discrimination, retaliation and hostile work environment in the amount of \$167,000 needs to be tabled and forwarded to the City's insurance carrier, EMC, for review.

Councilmember Frevert made a motion and seconded by Councilmember Van Delden to table action on the \$167,000 claim filed by Kate Lassila against the City of

Wayne for discrimination, retaliation and hostile work environment and to forward the same to EMC, the City's insurance carrier, for their review. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson advised the Council that Tom Sievers was reappointed as Fire Chief by the Wayne Volunteer Fire Department for the upcoming year. The Council must approve the appointment by motion.

Councilmember Sturm made a motion and seconded by Councilmember Van Delden approving the reappointment of Tom Sievers as Fire Chief. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Tom Sievers, Fire Chief, gave a report on the practice house burn that the Volunteer Fire Department did on May 1<sup>st</sup>.

Administrator Johnson stated the following Resolution would approve the agreement between the City and the Nebraska Game and Parks Commission regarding the grant received for the signage (educational points of interest) for the trail.

Councilmember Sturm introduced Resolution No. 2011-33 and moved for its approval; Councilmember Van Delden seconded.

#### RESOLUTION NO. 2011-33

A RESOLUTION APPROVING THE RECREATIONAL TRAILS PROGRAM PROJECT AGREEMENT BETWEEN THE CITY OF WAYNE AND THE NEBRASKA GAME AND PARKS COMMISSION FOR THE "RECREATIONAL TRAIL SIGNAGE PROJECT."

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 approve the Interlocal Agreement and the Special Operation and Maintenance Agreement between the City and the Lower Elkhorn Natural Resources District for the “Wayne Trail Logan Creek Overlook Bank Stabilization Project.” The project, at this time, is about \$85,000. The NRD will contribute \$25,000. Anthony Lawrence is working on another application to the Nebraska Environmental Trust which, if approved, may lower the City’s cost on the project. The structure of the trail on one side will be undermined and the trail will fail eventually if we don’t do anything. Lower Elkhorn just made their commitment, so the City has one year to start the project. Johnson’s recommendation was that the Council approve the agreements to secure the funding.

Councilmember Sturm introduced Resolution No. 2011-34 and moved for its approval; Councilmember Brodersen seconded.

#### RESOLUTION NO. 2011-34

A RESOLUTION APPROVING INTERLOCAL COOPERATION AGREEMENT AND SPECIAL OPERATION AND MAINTENANCE AGREEMENT BETWEEN THE CITY OF WAYNE AND THE LOWER ELKHORN NATURAL RESOURCE DISTRICT FOR THE “WAYNE TRAIL LOGAN CREEK OVERLOOK BANK STABILIZATION PROJECT.”

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 accept the 2010 Wayne Sidewalk Replacement Project and authorize final payment.

Garry Poutre, Supt. of Public Works & Utilities advised the Council that the railing at Geno’s Steakhouse is still not installed. Therefore, Council can either table this matter until the next meeting or approve it and hold payment until that has taken place.

Councilmember Sturm made a motion and seconded by Councilmember Frevert to table action on Resolution 2011-35 Accepting the 2010 Wayne Sidewalk Replacement Project and Authorizing Final Payment until the next meeting. 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 Co. for the 2009-2010 Wastewater Treatment Facility Improvements, Phase I Project in the amount of \$328,561.00. The engineer on the project has approved the same.

Garry Poutre, Supt. of Public Works & Utilities, gave an update on the status of the project. Eriksen Construction has submitted a request to the engineer for a 22-day extension because of weather related delays. At this time, they are looking at an August 1<sup>st</sup> start-up.

Councilmember Sturm made a motion, which was seconded by Councilmember Frevert approving Application for Payment No. 9 for the 2009-2010 Wastewater Treatment Facility Improvements, Phase I Project, in the amount of \$328,561.00 to Eriksen Construction Co. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Garry Poutre, Supt. of Public Works & Utilities advised the Council that the City has not paid Layne Christensen, contractor for the well project, for some time because of some things that have not been completed at the site. The well came on line in mid-January, so the project is now what is called “substantially” complete. We have had liquated damages ongoing for this project since last July. The cut-off date for liquated

damages was when we were able to bring the well on line. We met with Layne Christensen recently on some things that needed to be handled for us to completely close out the project. One of those things was providing proof of buying American made products, which is required because there was ARRA Stimulus funding involved with this project. There is also an issue with the roof and the contractor providing a 10-year warranty for the same. We still have not received the warranty certification; however, they have offered the City a deduct of \$1,500 because we don't have the warranty certification. Mr. Poutre will be meeting with another contractor this week to look at the roof to make a determination as to whether or not they think the roof is adequate and will indeed give us 10 years of life without issue and whether or not \$1,500 represents what they would indicate would be about half of what the value of the roof is. We will be talking about closing out this project completely in the near future, and how the Council might want to handle the liquidated damages. We have agreed to go ahead and pay them this \$29,452.27, knowing that we still have the retainer (10%) for liquidated damages.

In regard to the roof, the contractor installed the roof; however, the contractor isn't a certified installer. The roof product is made by Firestone, and Firestone will not warranty the roof unless it is installed by a certified contractor. One of the issues to begin with was that there was a fair amount of wrinkling in the rubber. Dale Paulson, a roofing contractor, is going to look at the roof on behalf of the City.

Liquidated damages up to the date of substantial completion is approximately \$46,000. The retainer on this project is about \$36,000. It was noted that this project should have been completed a year ago. The issue between Layne Christensen, who is the general contractor and his subs, is something for him to work out with his subs. The

City's issue is with Layne Christensen. The City does not need to make money on this, but we should at least cover our costs (engineering and labor costs).

Administrator Johnson advised the Council that on all of these projects, staff works very hard to get the lowest bid possible, and one of things we try to do is to have good relationships with the contractors and engineers. Legally, we can assess the total liquidated damages, but doing so just makes it tougher the next time we are bidding projects out.

Mayor Chamberlain advised the Council that if they feel the liquidated damages might exceed the \$36,000 retainer fee we still have, the matter should be tabled until the next meeting.

Councilmember Frevert made a motion and seconded by Councilmember Sturm to table action on Pay Application No. 10 in the amount of \$29,452.27 to Layne Christensen Co. for the Well House and Municipal Well 2009-1 Project. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Nancy Braden, Finance Director, advised the Council that the Wayne Revolving Loan Fund to Felix Industries is uncollectible. The auditors have recommended that this loan be written off so it can be taken off the books. The total amount to be written off as of this date is \$41,833.94. This is the third loss the City has had in the 20 years of having a revolving loan fund.

Councilmember Frevert made a motion, which was seconded by Councilmember Haase to write-off the Wayne Revolving Loan Fund Loan of Felix Industries in the amount of \$41,833.94. Mayor Chamberlain stated the motion, and the result of roll call

being all Yeas, with the exception of Councilmember Sturm who voted Nay, the Mayor declared the motion carried.

Administrator Johnson stated in 2000, the Community Activity Center was opened with a policy that a person had to be 12 years or older to go unaccompanied in the CAC. Over time, we were letting a few in that were under 12 years of age. We recently asked our insurance carrier if we could change that policy. Their response was that somebody 18 years or older had to accompany those children. After submitting a couple of proposals to our insurance carrier, they have agreed to the following change:

“To use the Community Activity Center, children of the age of 8 and below must be accompanied with supervision of a person age 18 or older or a person 12 or older that holds a current Red Cross Babysitter Certification.”

Karla Jensen, Community Activity Center Director, was present, and stated that when the facility was built, the intent was that it was supposed to be a safe place for kids to go and we don't want to lose sight of that. It's difficult for every person to have an 18 year old to look after their kids, but she thinks it is necessary. After school, the CAC is mass chaos. After implementing the “After School Program”, they got a better handle on it. Those children 8 and younger who are enrolled in the “After School Program” do not have to be accompanied by an 18 year old. She felt this was a good recommendation, and she is looking into becoming certified to teach the Red Cross Babysitter class so that it can be offered more than twice a year.

Councilmember Brodersen made a motion and seconded by Councilmember Haase to amend the policy on the age limits for unattended children at the Community Activity Center as follows, with a trial period of one year beginning June 1st:

“To use the Community Activity Center, children of the age of 8 and below must be accompanied with supervision of a person age 18 or older or a person age 12 or older that holds a current Red Cross Babysitter Certification.”

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 seconded by Councilmember Brodersen to enter into executive session for the annual review of the City Administrator and to protect the reputation of the Administrator, and to allow Attorney Pieper to be in attendance. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried, and executive session began at 6:28 p.m.

Mayor Chamberlain again stated that the matter to be discussed in execution session relates to the annual review of the City Administrator.

Councilmember Sturm made a motion and seconded by Councilmember Frevert to resume open session. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried, and open session resumed at 6:58 p.m.

Councilmember Frevert made a motion and seconded by Councilmember Sturm 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 7:01 p.m.