

**MINUTES
CITY COUNCIL MEETING
July 5, 2011**

The Wayne City Council met in regular session at City Hall on Tuesday, July 5, 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, Dale Alexander, Doug Sturm, Kaki Ley, Kathy Berry and Jill Brodersen; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on June 23, 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 Haase, whereas the Clerk has prepared copies of the Minutes of the meeting of June 21, 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: AMERICAN BROADBAND, SE, 330.00; AMERICAN BROADBAND, RE, 1173.00; AMERITAS, SE, 1622.84; APPEARA, SE, 101.62; ARNIE'S FORD-MERCURY, SE, 1769.67; AS CENTRAL SERVICES, SE, 448.00; BANK FIRST, FE, 165.00; BAUM HYDRAULICS CORP, SU, 26.36; BEIERMANN ELECTRIC, SE, 6563.00; CITY EMPLOYEE, RE, 106.10; BLACK HILLS ENERGY, SE, 1906.56; BLUEGRASS PLAYROUNDS, SU, 3662.00; CITY EMPLOYEE, RE, 185.22; CARHART LUMBER, SU, 1138.88; CARTRIDGE WORLD, SU, 59.99; CITY OF NORFOLK, SE, 642.10; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 850.00; CITY OF WAYNE, RE, 11.47; CITY OF WAYNE, RE, 100.00; CITY OF WAYNE, RE, 27.00; CITY OF WAYNE, SE, 400.00; CITY OF WAYNE, RE, 221.85; CITY OF WAYNE, PY, 63480.93; CITY OF WAYNE, RE, 60.00; COMMUNITY

HEALTH, RE, 3.00; CRAIG WALLING, RE, 100.00; DAKOTA BUSINESS SYSTEMS, SE, 102.50; DE LAGE LANDEN FINANCIAL, SE, 77.00; DUTTON-LAINSON, SU, 78.92; ELLIS PLUMBING & HEATING, SE, 90.19; EXHAUST PROS, SE, 115.60; FIRST NATIONAL INSURANCE, SE, 272.42; FLOOR MAINTENANCE, SU, 450.85; FORT DEARBORN LIFE, SE, 106.64; FREDRICKSON OIL, SE, 186.93; CITY EMPLOYEE, RE, 819.37; GEMPLER'S, SU, 190.40; GERHOLD CONCRETE, SU, 908.00; GIS WORKSHOP, SU, 36500.00; H.K. SCHOLZ COMPANY. SE, 48600.00; CITY EMPLOYEE, RE, 203.48; HAUGE ASSOCIATES, RE, 167.75; HAWKINS, SU, 121.39; ICMA, FE, 594.00; ICMA, RE, 5632.63; IRS, TX, 19179.63; JEO CONSULTING GROUP, SE, 21276.76; KRIZ-DAVIS, SU, 797.69; LANGEMEIER, WAYNE, SE, 100.00; LEAGUE OF NEBRASKA, FE, 740.00; MCGUIRE & NORBY, SE, 10481.10; CITY EMPLOYEE, RE, 189.49; MICROFILM IMAGING SYSTEMS, SE, 892.81; MIKE TOWNE, SE, 400.00; NE DEPT OF HEALTH, FE, 148.26; NE DEPT OF REVENUE, TX, 2853.62; NE NEB INS AGENCY, SE, 57149.00; NORFOLK TRUCK CENTER, SU, 58.56; NNPPD, SE, 3361.96; NORTHWEST ELECTRIC, SE, 885.27; OLSSON ASSOCIATES, SE, 343.00; PAMIDA, SU, 552.93; CITY EMPLOYEE, RE, 152.47; PIEPER, MILLER & DAHL, SE, 2199.00; PITNEY BOWES, SU, 213.47; CITY OF WAYNE, RE, 43.03; CITY OF WAYNE, RE, 2234.75; QUALITY 1 GRAPHICS, SU, 100.00; QUILL, SU, 601.74; RAMADA INN – KEARNEY, SE, 144.00; CITY EMPLOYEE, RE, 303.50; ROBERTSON IMPLEMENT, SU, 50.75; RON'S RADIO, SE, 43.85; SARPY CO SHERIFFS OFFICE, RE, 251.00; SIOUXLAND TURF PRODUCTS, SU, 3232.50; STADIUM SPORTING GOODS, SU, 215.00; STANLEY SECURITY SOLUTION, SU, 121.19; STATE NATIONAL BANK, RE, 100.00; STATE NATIONAL BANK, RE, 97.76; THE DIAMOND CENTER, SE, 80.10; TOM ADAMSON, SU, 8.00; TOM'S BODY & PAINT SHOP, SE, 26.00; VERIZON, SE, 161.28; VIAREO, SE, 142.58; WATERLINK, SU, 135.47; WAED, RE, 6431.33; WAYNE AUTO PARTS, SU, 590.49; WAYNE COMMUNITY SCHOOLS, SU, 129.00; AVERY ENTERPRISES, RE, 240.00; BARONE SECURITY SYSTEMS, SE, 1080.00; CARROLL DISTRIBUTING, SU, 263.58; CHARTWELLS, SE, 5597.10; CITY OF WAYNE, RE, 100.00; CITY OF WAYNE, RE, 750.89; COPY WRITE, SU, 142.10; DEMCO, SU, 62.89; DOING BETTER INSPECTIONS, SE, 900.00; ELECTRIC FIXTURE & SUPPLY, SU, 336.79; FIRST SOURCE TITLE&ESCROW, SE, 50.00; GERHOLD CONCRETE, SU, 38.25; HASTINGS COLLEGE, RE, 69.95; ISLAND SPRINKLER SUPPLY, SU, 125.68; JASON CAROLLO, SE, 280.00; KELLY SUPPLY, SU, 164.36; KTCH, SE, 605.00; LANGEMEIER, WAYNE, SE, 200.00; LAYNE CHRISTENSEN, SE, 27677.57; MIDWEST SERVICE & SALES, SU, 390.00; NNEDD, FE, 50.00; NE LIBRARY COMMISSION, RE, 1250.00; PRESTO X COMPANY, SE, 93.60; ROBERTSON IMPLEMENT, SU, 33.44; S & S WILLERS, SU, 233.67; SKARSHAUG TESTING LAB, SE, 138.44; SUN RIDGE SYSTEMS, SE, 2600.00; TERRACON, SE, 725.00; WAED, RE, 6383.33; WAYNE COUNTY CLERK, SE, 5.50; WAYNE VETERINARY CLINIC, SE, 182.00; ZACH OIL, SU, 5689.46

Councilmember Sturm made a motion and seconded by Councilmember Ley 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.

Bill Melena, representing The White Dog Pub, was present requesting Council consideration to extending the hours of sale of alcoholic liquor to 2:00 a.m. on the Friday, July 8th, and Saturday, July 9th, nights of the Wayne Henoween and Chicken Show.

Administrator Johnson stated the State now allows communities to make that decision separately. Staff does not have a recommendation on this matter. Sergeant Marlen Chinn advised him if this is approved, the Police Department will accommodate it.

City Clerk McGuire noted for the record she received a phone call from Wes Blecke who was in favor of this proposal. She, along with members of the City Council, received a phone call from "Susie" opposing the same.

Mr. Melena stated there are about 94 communities in the State of Nebraska that have already passed measures allowing bars to remain open until 2:00 a.m. This is his business, and if approved, it would be an opportunity for him to maximize his ability to

make extra money. He felt this was a way to test the waters. He requested Council to waive the three readings so that this could be in effect for this weekend.

Councilmember Frevert introduced Ordinance 2011-5, and moved for its approval, with the clarification being that the 2:00 a.m. closing time is for the business day Friday, July 8th, and Saturday, July 9th; Councilmember Van Delden seconded.

ORDINANCE NO. 2011-5

AN ORDINANCE EXTENDING THE HOURS OF SALE OF ALCOHOLIC LIQUOR FOR CHICKEN SHOW ACTIVITIES.

Ken Jorgensen, owner of “The Max” was also present and stated that they (bar owners) are just like anybody else – just trying to make a living. He thought this would slow down the house parties. He noted there is no off-sale of alcoholic liquor after 1:00 a.m. This weekend would be the best test to see how this would work.

It was noted that this is not mandatory. If bar owners still want to close at 1:00 a.m., they can.

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

Councilmember Sturm made a motion and Councilmember Frevert 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, with the exception of Councilmember Berry who voted Nay, the Mayor declared the motion carried.

Councilmember Sturm made a motion and Councilmember Alexander seconded to move for final approval of Ordinance No. 2011-5. 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 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 \$620,853.79. The engineer on the project has approved the same.

Garry Poutre, Supt. of Public Works & Utilities, updated the Council on the project.

Councilmember Sturm made a motion, which was seconded by Councilmember Alexander approving Application for Payment No. 11 for the 2009-2010 Wastewater Treatment Facility Improvements, Phase I Project, in the amount of \$620,853.79 to Eriksen Construction Co. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

The following Resolution is a requirement by the Nebraska Department of Roads when a state highway will be closed for a celebration/parade. This Resolution pertains to the Wayne State College Homecoming Parade, which will include Band Day, on Saturday, October 8, 2011.

Councilmember Sturm introduced Resolution No. 2011-50 and moved for its approval; Councilmember Brodersen seconded.

RESOLUTION NO. 2011-50

A RESOLUTION ACKNOWLEDGING NEBRASKA DEPARTMENT OF ROADS' REQUIREMENTS FOR THE TEMPORARY USE OF THE STATE HIGHWAY SYSTEM FOR SPECIAL EVENTS.

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

Joel Hansen, City Planner, stated the following Resolution would accept a plan to extend city services and set the public hearing on the proposed annexation of real estate located north across Highway 35 from Northeast Nebraska Public Power District. The owners of this undeveloped property have proposed a subdivision development for that area. The public hearing is scheduled for Tuesday, July 19th, at 5:30 p.m.

A map outlining the area was distributed to Council. The annexation would also include Western Ridge First Addition. There is an agreement in place with the owner of Western Ridge First Addition that when the property to the west is annexed that their property would automatically be annexed as well. The Code also provides that before any developer submits a final plat for consideration by the Council, they have to also include a petition for annexation.

Councilmember Sturm introduced Resolution No. 2011-49 and moved for its approval; Councilmember Ley seconded.

RESOLUTION NO. 2011-49

A RESOLUTION ACCEPTING A PLAN TO EXTEND CITY SERVICES AND SETTING A PUBLIC HEARING ON THE PROPOSED ANNEXATION AREA TO THE CITY OF WAYNE.

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 following Resolution would approve an agreement with Olsson Associates for professional engineering services on the Highway 35 Water and Sewer Extension Project.

The cost of the project for Phase 1 through 2 will be \$7,600, with Phases 3 through 4 being provided on a time and expense basis. These utilities will serve the property that is proposed to be annexed.

Councilmember Sturm introduced Resolution No. 2011-51 and moved for its approval; Councilmember Frevert seconded.

RESOLUTION NO. 2011-51

A RESOLUTION APPROVING AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF WAYNE AND OLSSON ASSOCIATES FOR THE HIGHWAY 35 WATER AND SEWER EXTENSION PROJECT.

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

Discussion took place in regard to fogging streets for mosquitoes. An e-mail was sent out to the City Administrator's list serve. Responses were received back from 8 or 9 communities. About half of them do fogging. All of those communities do what Wayne does now, which is treat standing water with larvacide wafers. In the past couple of years, Wayne has also been spraying the parks, etc.

Garry Poutre, Supt. of Public Works & Utilities, conferred with a company from Newman Grove who contracts with the Village of Carroll. This company has about 23 communities. He sprays in Carroll every Tuesday night about 11:00 p.m., June through September. They fog one week and then do an ultraviolet spray the next week. The cost is about \$2,500 per year. He advised Mr. Poutre that the cost of a sprayer like what Wayne would need would cost somewhere in the neighborhood of \$9,000 to \$10,000.

Mr. Poutre stated Wayne has not fogged for around 20 years. The fogging equipment that the City had was old and it could not be calibrated. He felt this matter

might be something that justifies some public comment, because his department will receive calls from people in the community when they spray the grass on the street bricks. He noted employees must be certified to spray or apply the chemicals that are sprayed in the parks, etc.

Mayor Chamberlain was of the opinion that if property owners wanted their yards treated for mosquitoes, they are more than welcome to do that. However, he found it difficult to justify spending the City's money to do that.

Councilmember Haase stated he has been asked by some citizens with all of the equipment the City owns, why we don't invest in a fogger.

Joel Hansen stated the last time the City fogged was probably in 1991. A contributing factor to getting rid of the fogging machine and not purchasing a new one was that the City of Bridgeport was sued and lost \$375,000 because they were spraying with uncertified operators and a child in the community had a reaction to the chemical. It later turned out they weren't even applying enough chemical to kill the mosquitoes. Bridgeport's website asks all residents, as a precaution, to close their windows during the time they are spraying, and if you have asthma or breathing difficulties, you may want to take additional precautions, up to and including leaving town for the evening.

Councilmember Frevert asked if you have a problem in your yard with mosquitoes, etc., wouldn't you spray it yourself instead of expecting the City to do it for you?

Councilmember Haase stated in his area, he has received complaints.

Councilmember Sturm made a motion and seconded by Councilmember Ley directing staff to obtain information regarding the cost of a fogging machine, the cost to

fog for mosquitoes, the time it would take to fog, and to contact other City Administrators to find out whether or not the fogging machines really work, and report this information back to Council at the next meeting. 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 appointments to the Swimming Pool Renovation/Replacement Committee: Jean Loberg, Jodi Pulfer, Jeff Carstens, BJ Woehler, Mandi Fernau, Karla Jensen, Heather Claussen, and Nana Peterson. This committee will start exploring the future of the swimming pool.

Administrator Johnson stated the pool, itself, is not in bad shape. The last renovation took place in the early 90's. He has received several comments concerning zero entry improvements to the pool.

Councilmember Brodersen shared concerns regarding the bath house.

Administrator Johnson stated that Jeff Carstens of WSC has advised him that because of their Title IX violation, they are going to have to look at options for competitive sports that include more women, and swimming is one of the things they are looking at. They are also looking at the general future of their pool. This may be able to be a joint venture.

Councilmember Ley made a motion and seconded by Councilmember Berry approving the appointments of Jean Loberg, Jodi Pulfer, Jeff Carstens, BJ Woehler, Mandi Fernau, Karla Jensen, Heather Claussen, and Nana Peterson to the Swimming Pool Renovation/Replacement Committee. 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 to the Library Board: Jenny Hammer.

Councilmember Ley made a motion and seconded by Councilmember Sturm approving the appointment of Jenny Hammer to the Library Board. 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 seconded by Councilmember Brodersen setting the budget work sessions for Tuesday, July 26th, at 5:30 p.m. and Tuesday, August 2nd after the Council meeting. 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 Alexander to enter into executive session to discuss the pending litigation matter regarding the pre-determination settlement offer – Phillip Shear v. City of Wayne and to allow City Attorney Mike Pieper and City Administrator Johnson 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 6:33 p.m.

Mayor Chamberlain again stated that the matter to be discussed in execution session relates to the pending litigation matter regarding the pre-determination settlement offer – Phillip Shear v. City of Wayne.

Councilmember Ley made a motion and seconded by Councilmember Alexander 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 6:38 p.m.

Councilmember Alexander made a motion and seconded by Councilmember Haase denying the pre-settlement determination offer – Phillip Shear vs. City of Wayne. 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 seconded by Councilmember Van Delden 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 6:40 p.m.