

**MINUTES
CITY COUNCIL MEETING
May 5, 2009**

The Wayne City Council met in regular session at City Hall on Tuesday, May 5, 2009, at 5:30 o'clock P.M. Council President Doug Sturm called the meeting to order with the following in attendance: Councilmembers Brian Frevert, Verdel Lutt, Jon Haase, Kaki Ley, Kathy Berry and Ken Chamberlain; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Mayor Lois Shelton and Councilmember Dale Alexander.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on April 23, 2009, 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 Lutt made a motion and seconded by Councilmember Chamberlain, whereas the Clerk has prepared copies of the Minutes of the meeting of April 21, 2009, 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.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

ADDITIONS AND CORRECTIONS TO CLAIMS LIST OF APRIL 21, 2009:
DELETE: KIRKHAM MICHAEL – WESTERN RIDGE–CDA, SE, 1683.96; THE KIPLINGER LETTER, SU, 58.00
VARIOUS FUNDS: ALLTEL, SE, 434.41; AMERITAS, RE, 1981.84; ARNIE'S FORD-MERCURY, RE, 556.10; AS COMMUNICATIONS, SE, 448.00; BACKFLOW APPARATUS, SE, 573.00; BANK FIRST, FE, 210.00; BIG RED PRINTING, SU, 1457.12; BIG T ENTERPRISES, SU, 371.90; BLACK HILLS ENERGY, SE, 1000.88; BOMGAARS, SU, 1558.23; BROWN SUPPLY, SU, 50.17; CARHART LUMBER SU,

588.32; CDW DIRECT, SU, 1387.81; CHILDREN'S PLUS, SU, 466.21; CITY OF WAYNE, RE, 47.88; CITY OF WAYNE, SU, 125.00; CITY OF WAYNE, RE, 6370.83; CITY OF WAYNE, RE, 15.00; CITY OF WAYNE, PY, 52307.95; CITY OF WAYNE, RE, 185.54; CITY OF WAYNE, RE, 65.90; CITY OF NORFOLK, SE, 374.70; COLONIAL RESEARCH, SU, 125.68; CRANE RENTAL & RIGGING, SE, 1920.00; DANKO EMERGENCY EQUIPMENT, SU, 140.00; DE LAGE LANDEN FINANCIAL, SE, 411.00; DEMCO, SU, 444.57; DUTTON-LAINSON, SU, 148.85; ECHO GROUP, SU, 501.53; ED M FELD EQUIPMENT, SU, 1801.01; EGAN SUPPLY, SU, 73.32; ELECTRICAL ENGINEERING, SU, 48.43; FLOOR MAINTENANCE, SU, 589.04; FREDRICKSON OIL, SU, 751.70; GEMPLER'S, SU, 67.70; HAUFF MID-AMERICAN SPORTS, SU, 608.95; HTM SALES, SE, 2157.40; ICC, FE, 35.00; ICMA, RE, 5204.89; IRS, TX, 16108.15; JEO CONSULTING GROUP, SE, 11014.00; JONES, LEONARD, RE, 500.00; KELLY SUPPLY COMPANY, SU, 705.98; KIRKHAM MICHAEL, SE, 5696.32; KRIZ-DAVIS, SU, 190.96; LEE BOOKSELLERS, SU, 50.28; MID STATES SCHOOL BUS, SU, 123.85; MIDLAND COMPUTER, SU, 632.16; MIDWEST OFFICE AUTOMATION, SE, 1141.31; MIDWEST TAPE, SU, 40.94; MOTION INDUSTRIES, SU, 204.42; NE AMERICAN LEGION, FE, 300.00; NE DEPT OF REVENUE, TX, 2394.26; NE SOFTBALL ASSOC, SE, 897.00; NEXIC, SU, 2556.00; NMPP ENERGY, SU, 5246.82; N.E. NE AMERICAN RED CROSS, RE, 29.62; NNPPD, SE, 2882.99; NWOD, FE, 10.00; POSTMASTER, SU, 625.80; QUALITY INN & SUITES, SE, 254.85; QUILL, SU, 74.66; QWEST, SE, 422.17; QWEST BUSINESS SERVICES, SE, 194.32; RDG PLANNING & DESIGN, SE, 325.00; ROBERT WOehler & SONS, SE, 28342.10; RON'S RADIO, SE, 890.73; SAND CREEK POST & BEAM, RE, 2100.00; SHERMAN NURSERY, SU, 322.97; SIRSIDYNIX, SE, 2623.45; STANLEY SECURITY SOLUTION, SU, 447.75; STATE NATIONAL BANK, RE, 646.77; STATE NATIONAL BANK, RE, 312.65; THOMPSON PUBLISHING GROUP, SU, 438.50; UNITED WAY, RE, 5.09; US BANK, SU, 8625.66; VAKOC BUILDER'S RESOURCE, SU, 179.00; VIAERO, SE, 71.88; WAYNE AREA CHAMBER, FE, 35.00; WAYNE COMMUNITY HOUSING, RE, 2000.00; WAYNE STATE COLLEGE, RE, 1300.00; WESCO, SU, 335.48; WEST POINT GIRLS SOFTBALL, FE, 150.00; WURDEMAN FAMILY PART., SE, 100.00; ZEE MEDICAL SERVICE, SU, 161.56; CDW DIRECT, SU, 949.41; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 3949.09; CLASSY CLEANING LADIES, SE, 325.10; COPY WRITE, SU, 316.38; DIAMOND VOGEL PAINTS, SU, 57.12; DUTTON-LAINSON, SU, 374.35; ECHO GROUP, SU, 227.01; EGAN SUPPLY, SU, 12.83; FLETCHER FARM SERVICE, SE, 1894.38; FLOOR MAINTENANCE, SU, 11.72; FORT DEARBORN LIFE, SE, 1531.38; GILL HAULING, SE, 1997.40; JACK'S UNIFORMS, SU, 367.46; KRIZ-DAVIS, SU, 994.45; LP GILL, SE, 6059.30; MERCY MEDICAL CLINIC, SE, 44.00; NE CRIME COMMISSION, SU, 28.00; NE EMERGENCY SERVICE, FE, 140.00; NORFOLK VFW YOUTH, FE, 25.00; NORTHEAST EQUIPMENT, SU, 45.80; NWTC, SE, 125.00; OLDS PIEPER & CONNOLLY, SE, 1934.00; PIEPER, WIEBELHAUS & DAHL, SE, 840.00; PLUNKETT'S PEST CONTROL, SE, 178.00; QWEST, SE, 1200.72; RAMADA INN – KEARNEY, SE, 130.00; STADIUM SPORTING GOODS, SU, 330.00; STATE NATIONAL BANK, RE, 2018.95; TAK, INC, SE, 141.00;

WAYNE HERALD, SU, 1162.75; WEB SOLUTIONS OMAHA, SE, 275.00; WESCO, SU, 43.90; ZACH OIL COMPANY, SU, 3457.98

Councilmember Chamberlain made a motion and seconded by Councilmember Lutt to approve the claims. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Council President Sturm 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.

Council President Sturm declared the time was at hand for the public hearing to consider the Planning Commission's recommendation regarding the Zoning Use by Exception request of Juan Rojas to construct a church at 117 Main Street under Sec. 394(12) of the B-2 Central Business Zoning District.

The Planning Commission held a public hearing on this matter and recommended that the same be denied by the City Council, with the finding of fact being that it is inconsistent with the Comprehensive Plan.

Lance Webster, Police Chief, stated that Nebraska State Statutes prohibit a bar from building within 150' of a church or school. However, if the bar is pre-existing, there is no statutory regulation against that. It does not adversely affect the current licensed liquor establishments. However, the Liquor Commission was unsure if it would affect an establishment if they wanted to expand their liquor licensed premises.

Attorney Pieper further addressed the matter. He stated as long as the liquor license is in continuous effect, this would have no adverse affect on the license. However, if there is a lapse in a continuous two-year period, they may not get a liquor license back. It could put some permits at risk.

Wes Blecke, representing Wayne Area Economic Development and the Revitalize Wayne Committee, Marie Mohr, and Reggie Yates spoke against the use by exception request and asked that the Council deny the same as recommended by the Planning Commission.

Councilmember Lutt disagreed with the Planning Commission's recommendation. He felt there was more concern about liquor licenses and parking than there was in allowing residents of our community having a place to worship.

Mr. Blecke stated their office would be more than willing to work with the church to try to find a location that might be a little more compatible for the use. They are not against churches or the population they are serving. From the Revitalize Wayne and the Main Street prospective, that program is for retail and those types of things downtown, for not only sales tax purposes but property tax purposes as well.

Councilmember Ley stated we should be trying to help them find a place to worship and be very proactive about that. If they worship here, they will want to live and stay here.

There being no further comments, Council President Sturm closed the public hearing.

Councilmember Ley made a motion and seconded by Councilmember Chamberlain denying the application for zoning use by exception request of Juan Rojas

to construct a church at 117 Main Street. Council President Sturm stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Lutt and Berry who voted Nay, the Council President declared the motion carried.

Administrator Johnson met with several community members about the “Public Property Use Agreement” for the community garden. If a municipality allows people to use public property for commercial purposes or have an Association Agreement, that invokes insurance requirements. His recommendation was to stay with the agreement that was passed by Council at the last meeting, which would then be signed by each person wanting a plot, and informally communicate with a contact person for the group.

Attorney Pieper stated in past instances where there has been a group wanting to use public property, the City has required liability insurance in the amount of \$1,000,000, listing the city as a co-insured, especially if it is for potential commercial purposes. If the Council is considering contracting with the Association, then he would like to see that they are a legally formed entity able to represent their members.

Kevin Jurotich, Traci Bruckner and Monica Snowden addressed the Council. The group is concerned about the dirt at the Community Activity Center and asked if the City would help them get dirt back in there that is more suitable for gardening. They want to integrate the School with this site; however, in the absence of proper gardening dirt, they may not be able to use that location this year.

Since the group wants to integrate the curriculum at the school with this project, Councilmember Lutt suggested they contact the School Board to see if they could use some of the area west of the modulars.

Jeremy Loberg, student at Wayne High School, advised the Council that the school intends to put extra parking at that location.

It was noted that this matter was for discussion only and no action was taken.

An Application for Special Designated Liquor License was received from The Max Again for a beer garden in the Carhart Parking Lot on July 11, 2009 (Chicken Show Activities).

Councilmember Ley made a motion and seconded by Councilmember Chamberlain approving the request of The Max Again for a Special Designated Liquor Permit for a beer garden in the Carhart Parking Lot on July 11, 2009 (Chicken Show Activities).

Wes Blecke, representing Wayne Area Economic Development, advised the Council that The Max Again is going to provide the beer garden. Last year, the Community Theater took care of the wrist bands and security for the dance, with help from the JayCees. WAED would like to see a revolving co-sponsor of the event. This year, the Community Theater will help the Fire Department run the dance so there is consistency of how things are done, etc. The sale of the beer goes to the licensed establishment. We then ask them to make some type of a donation back to the non-profit organization helping them with the wrist bands, security, etc. Last year, the White Dog Pub made a contribution of \$500 back to the Community Theater. All proceeds from the gate first went to insurance and related expenses, with the remaining proceeds then being split (50/50) with the Chamber of Commerce and whoever takes the tickets, etc. The Community Theater received \$800+ from the Chamber of Commerce, totaling \$1,300. The Chamber of Commerce made approximately \$800 on the event.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated that JEO has presented us with Pay Application No. 3 in the amount of \$116,255.06 to Penro Construction Co. for the Ultraviolet Disinfection System. Recommendation is to approve the same.

Councilmember Chamberlain made a motion and seconded by Councilmember Lutt approving Pay Application No. 3 in the amount of \$116,255.06 to Penro Construction Co. for the Ultraviolet Disinfection System. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated the following Resolution would amend the Wage and Salary Schedule to delete the position of “Chief Inspector/Planner” as an exempt or salaried position and change it to “Building Inspector/Planner/Street Superintendent” as a Labor Grade 22.

Councilmember Lutt introduced Resolution No. 2009-33 and moved for its approval; Councilmember Chamberlain seconded.

RESOLUTION NO. 2009-33

A RESOLUTION APPROVING WAGE AND SALARY SCHEDULE.

Council President Sturm questioned how the arrangement with the Inspector from the City of Norfolk was going and whether or not this could be a permanent or long-term arrangement.

Administrator Johnson stated his plan is to hire or promote from within for this position. However, the arrangement at this time is working very well.

Councilmember Ley questioned changing the arrangement if it is working very well.

Councilmember Chamberlain stated this would eliminate the claims of any prejudice against any individual or contractor by the inspector that he has known all of his life.

Garry Poutre, Supt. of Public Works and Utilities, stated that right now the City of Norfolk is doing the inspections that require a certified inspector (ex. Western Ridge, etc.). Joel Hansen is the certified street superintendent we are required to have on staff. He is also our arborist and works with erosion control. He is also going to be the local project administrator which is required by the Federal Highway Department for all of our federal funding for highway dollars. That is the “inside” work that he does. His position would be those things just described, in addition to inspections, planning, zoning, CAD, etc. Eventually, these things will completely take him away from the Public Works Department. Then that position would need to be filled with another operator which is the next item on the agenda. The City of Norfolk is going to need to be here, for sure, for everything that requires a certified building inspector, and they will and can always be here for personality conflicts. It will take some time for Mr. Hansen to become certified. The plan is to have the City of Norfolk doing the certified inspections for one year.

Administrator Johnson stated that in evaluating the position, he is recommending changing the same from exempt (salaried) to hourly and lowering the top hourly wage. The City of Norfolk does not do any plan reviews. In reviewing past records, approximately 10 houses are built per year and 80 - 100 total building permits are issued per year, which include decks, remodeling projects, etc..

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Councilmember Chamberlain made a motion and seconded by Councilmember Ley authorizing staff to begin advertising for a Heavy Equipment Operator 1 position at the Public Works Department. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated the following Resolution would approve the Interlocal Agreement with the Village of Carroll to operate their municipal water system in the event their operator is unable to do so.

Councilmember Lutt introduced Resolution No. 2009-34 and moved for its approval; Councilmember Chamberlain seconded.

RESOLUTION NO. 2009-34

A RESOLUTION APPROVING INTERLOCAL COOPERATIVE AGREEMENT TO JOINTLY OPERATE THE MUNICIPAL WATER SYSTEM BETWEEN THE CITY OF WAYNE AND THE VILLAGE OF CARROLL.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

The League of Nebraska Municipalities advised us that last November, the Federal Trade Commission released the final version of an amendment to the “Fair Credit Reporting Act.” This new law requires “creditors” to determine if they offer accounts susceptible to identity theft, and if so, to create and implement a policy to detect signs of identity theft and methods to prevent or at least mitigate the risk thereof. The League provided us with a template Resolution and “Identity Theft Prevention Program” to use and help guide us in identifying identity theft.

Councilmember Chamberlain introduced Resolution No. 2009-35 and moved for its approval; Councilmember Ley seconded.

RESOLUTION NO. 2009-35

A RESOLUTION APPROVING IDENTITY THEFT PREVENTION PROGRAM.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated the following Resolution would approve a “Community Website Agreement” between the City, County, School District and Wayne Area Economic Development. The City has put \$15,000 in the budget for the website and upgrades.

Brian Kesting, Information Technology Specialist, stated several options were looked at, and the recommendation of the committee is to award the contract to CivicPlus for \$32,055. This company specializes specifically in municipal and government websites.

Councilmember Chamberlain introduced Resolution No. 2009-36 and moved for its approval; Councilmember Frevert seconded.

RESOLUTION NO. 2009-36

A RESOLUTION TO SHARE AND MAINTAIN A COMMUNITY WEBSITE AND OTHER SERVICES BETWEEN THE CITY OF WAYNE, COUNTY OF WAYNE, WAYNE PUBLIC SCHOOLS AND WAYNE AREA ECONOMIC DEVELOPMENT.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated the following Resolution would extend the existing agreement with Olsson Associates to the date of the award of the construction contract on the Wayne Trail Project (Phase 2).

Councilmember Chamberlain introduced Resolution No. 2009-37 and moved for its approval; Councilmember Ley seconded.

RESOLUTION NO. 2009-37

A RESOLUTION ACCEPTING AND AUTHORIZING THE EXECUTION OF SUPPLEMENTAL AGREEMENT NO. 1 WITH OLSSON ASSOCIATES RELATING TO THE WAYNE TRAIL PROJECT (PHASE 2) STPB-90(4).

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Tracy Henschke of the Wayne State College Environmental Sociology Class, under Dr. Monica Snowden, gave a presentation on trail signage.

Administrator Johnson reported on the following:

- League of Cities Green City Conference he attended in Portland, Oregon;
- Inspection of Bressler Park and Henry Victor Park restrooms with Steve Nordhues, Building Inspector of Norfolk, and Todd Hoeman, Public Works Foreman; and
- Business prospects for the “Spec Building” and on north side of Highway 35 across from Pac’N’Save (no specifics were given).

There were no appointments.

Councilmember Haase made a motion and seconded by Councilmember Chamberlain to adjourn the meeting. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried and the meeting adjourned at 6:56 p.m.