

MINUTES
CITY COUNCIL MEETING
October 20, 2020

The Wayne City Council met in regular session in the Community Room of the Wayne Community Activity Center on October 20, 2020, at 5:30 o'clock P.M.

Mayor Cale Giese called the meeting to order with the following in attendance: Councilmembers Dwaine Spieker, Terri, Buck, Jon Haase, Jennifer Sievers, Chris Woehler, Jason Karsky, and Matt Eischeid; Attorney Amy Miller; City Administrator Wes Blecke; and City Clerk Betty McGuire. Absent: Councilmember Jill Brodersen.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on October 8, 2020, 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.

Mayor Giese advised the public that a copy of the Open Meetings Act was located on the southwest wall of the Community Room of the Wayne Community Activity Center, as well as on the City of Wayne website at cityofwayne.org/8/Government, 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.

Jon Mullen, Water/Wastewater Department, and Steve Sherman, Street Department, new employees were introduced to the Council.

Councilmember Spieker made a motion, which was seconded by Councilmember Woehler, to approve the minutes of the meeting of October 6, 2020, and to waive the reading thereof. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

VARIOUS FUNDS - FISCAL YEAR 2019-2020: ACE HARDWARE & HOME, SU, 242.52; AMAZON, SU, 1096.84; APPEARA, SE, 42.05; BAKER & TAYLOR BOOKS, SU, 369.58; BIG RIVERS ELECTRIC CORPORATION, SE, 223363.98; BIG STONE TRANSPORTATION & LANDSCAPE SUPPLY, SU, 1560.00; BOMGAARS, SU, 3219.76; BRENTLINGER, CASEY, SE, 30.00; BSN SPORTS, SU, 224.56; CARHART LUMBER COMPANY, SU, 43.44; CARLSON WEST PVONDRA ARCHITECTS, SE, 7930.47; CARROLL DISTRIBUTING, SE, 250.00; CERTIFIED TESTING SERVICES, SE, 2291.75; CHEMQUEST, SE, 898.00; CITY EMPLOYEE, SE, 132.00; CONTRERAS, SHERRY, RE, 10.00; COPY WRITE PUBLISHING, SE, 85.31; CORE & MAIN, SU, 24.00; COTTONWOOD WIND PROJECT, SE, 14243.30; DAS STATE ACCTG-CENTRAL FINANCE, SE, 61.04; DAVE'S DRY CLEANING, SE, 33.00; DUTTON-LAINSON COMPANY, SU, 11284.22; EASYPERMIT POSTAGE, SU, 873.47; ENVIROTECH SERVICES, SU, 5765.12; FASTENAL, SU, 30.62; FLOOR MAINTENANCE, SU, 705.76; GERHOLD CONCRETE, SU, 15.60; GLOBAL PAYMENTS INTEGRATED, SE, 26.00; HAWKINS, SU, 2208.39; HUBER TECHNOLOGY, SU, 384.75; INGRAM LIBRARY SERVICES, SU, 612.04; JEO CONSULTING GROUP, SE, 7454.75; JOHN'S WELDING AND TOOL, SU, 246.39; KNEIFL, BROOKS, SE, 48.00; KNEIFL, JACOB, SE, 48.00; LUTT OIL, SU, 5249.36; MAROTZ, MORGAN, SE, 24.00; MATHESON-LINWELD, SU, 34.25; MERCHANT SERVICES, SE, 25.77; MERCHANT SERVICES, SE, 1604.80; MERCHANT SERVICES, SE, 2292.33; MIDWEST LABORATORIES, SE, 189.00; NE PUBLIC HEALTH ENVIRONMENTAL LAB, SE, 63.00; NPPD, SE, 36628.58; NORFOLK DAILY NEWS, SE, 237.60; NORTHEAST POWER, SE, 7371.00; NOVA FITNESS EQUIPMENT, SU, 2831.60; ODEYS, SU, 1725.49; ONE CALL CONCEPTS, SE, 123.81; OVERDRIVE, SU, 984.43; PAC N SAVE, SU, 7.16; PAC N SAVE, SU, 12.98; PAC N SAVE, SU, 589.53; PLUNKETT'S PEST CONTROL, SE, 189.46; POLLARD PUMPING, SE, 345.00; QUALITY FOOD CENTER, SU, 54.91; RIDLING, JOE, SE, 24.00; SARGENT DRILLING, SE, 4526.75; SCHWARTE, AMBER, RE, 76.34; SOBOTKA, CALEB, SE, 72.00; ST OF NE-CHARITABLE GAMING DIVISION, TX, 818.00; STAPLES, SU, 65.33; STATE NEBRASKA BANK & TRUST, SE, 60.32; TYLER TECHNOLOGIES, SE, 1961.25; US BANK, SU, 15030.26; WAYNE AUTO PARTS, SU, 258.89; WAYNE COUNTY CLERK, SE, 46.00; WAYNE HERALD, SE, 693.50; WAYNE HERALD, SE, 465.00; WAYNE HERALD, SE, 2473.37; WAYNE HERALD, SE, 595.00; WAYNE VETERINARY CLINIC, SE, 98.00; WAPA, SE, 14676.09; WILSON, ZANE, SE, 60.00; WISNER WEST, SU, 117.71; ZACH HEATING & COOLING, SE, 193.00; ZIMCO SUPPLY, SU, 1020.00; BAKER & TAYLOR, SU, 9.70; EMPLOYERS MUTUAL CASUALTY, SE, 112.79; LEAK INVESTIGATORS, SE, 1000.00; LOPEZ, JUAN, RE, 62.16; NORTHEAST POWER, SE, 18917.44; TITAN MACHINERY, SU, 467.00; WORLDPAY INTERGRATES PAYMENTS, SE, 354.31; CITY EMPLOYEE, RE, 66.96

VARIOUS FUNDS - FISCAL YEAR 2020-2021: AMAZON, SU, 158.35; APPEARA, SE, 97.11; BEBEE, TIMOTHY J. & LESLIE A, RE, 3076.61; BORDER STATES INDUSTRIES, SU, 2858.79; BROWN, SANDY, RE, 55.00; BSN SPORTS, SU, 714.41; CITIZENS STATE BANK, RE, 1753.33; CITY EMPLOYEE, RE, 689.11; CITY EMPLOYEE, RE, 89.00; CITY EMPLOYEE, RE, 150.00; CITY EMPLOYEE, RE, 268.40; CITY OF WAYNE, RE, 195.64; CITY OF WAYNE, RE, 689.11; CREATIVE SITES, SE, 18000.00; DGR & ASSOCIATES, SE, 1019.50; DUTTON-LAINSON COMPANY, SU, 18763.56; FLOOR MAINTENANCE, SU, 1171.91; FOURTH GENERATION, RE, 13042.29; GALE/CENGAGE LEARNING, SU, 74.72; GERHOLD CONCRETE, SU, 259.20; GRAINLAND ESTATES, RE, 1216.66; GROSSENBURG IMPLEMENT, SU, 23.97; HILAND DAIRY, SE, 311.75; HTM SALES, SU, 4689.58; INTERSTATE BATTERY SYSTEM, SU, 45.25; JORGENSEN, KEN, RE, 1986.44; LINCOLN WINWATER WORKS, SU, 1475.10; MARCO TECHNOLOGIES, SE, 191.17; MC ELHOSE, DAVID, RE, 500.00; METERING & TECHNOLOGY SOLUTIONS, SU, 879.35; MICHAEL TODD & CO, SU, 365.70; MZRB, RE, 3065.26; NE PUBLIC HEALTH ENVIRONMENTAL LAB, SE, 79.00; NE SAFETY COUNCIL, FE, 332.50; NEXIC, SE, 720.00; NORDBY FENCING, SE, 895.00; OVERDRIVE, SU, 923.25; OVERHEAD DOOR, SU, 114.00; PER MAR SECURITY SERVICES, SE, 116.72; PETERSON, CARTER, RE, 1398.46; REEG, BETTY S. Revocable Trust, RE, 2796.92; STADIUM SPORTING GOODS, SE, 100.00; TOMPKINS, RODNEY R. Irrevocable Trust, RE, 2796.92; TYLER TECHNOLOGIES, SE, 2878.43; VAN DIEST SUPPLY, SU, 592.50; WAYNE COMMUNITY SCHOOLS, SU, 80.00; WESCO DISTRIBUTION, SU, 1206.96; AMERITAS, SE, 72.00; AMERITAS, SE, 2229.36; AMERITAS, SE, 184.60; AMERITAS, SE, 102.41; BORDER STATES INDUSTRIES, SU, 112.88; CITY

EMPLOYEE, RE, 150.00; CITY EMPLOYEE, RE, 4.58; CITY EMPLOYEE, RE, 149.76; CITY OF WAYNE, PY, 79158.02; CITY OF WAYNE, RE, 588.27; DEARBORN LIFE INSURANCE COMPANY, SE, 2487.14; GERHOLD CONCRETE, SU, 1937.60; GILL HAULING, SE, 261.25; ICMA, SE, 7866.27; IRS, TX, 13294.66; IRS, TX, 9929.88; IRS, TX, 3109.22; LIQUID ENGINEERING CORPORATION, SE, 3925.00; MEYER, JONATHAN, RE, 500.00; NDEE-FISCAL SERVICES, SE, 150.00; NE DEPT OF REVENUE, TX, 4165.09; NE MUNICIPAL CLERKS ASSOC, FE, 45.00; PRONUNCIATOR, SU, 450.00 STADIUM SPORTING GOODS, SE, 30.00; VERIZON, SE, 416.58; W.T. COX SUBSCRIPTIONS, SU, 1134.86

Councilmember Buck made a motion, which was seconded by Councilmember Haase, to approve the claims. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried.

Jon Mooberry, representing JEO Consulting Group, Inc., the City's engineer on the "2019 Nebraska Street Improvements Project" updated the Council on the project. He presented the following documents:

1. Certification of Substantial Completion:

- a. Certificate establishes work was substantially completed on 10/8/20.
- b. Contract Substantial Completion Date is currently 9/19/20.
 - i. Liquidated Damages, if assessed are \$1,000/day or \$19,000.
- c. Contract Final Completion Date is currently 10/19/20.
 - i. Liquidated Damages, if assessed are \$500/day after 10/19/20.

2. Pay Application No. 8:

- a. Progress payment for work completed, but not including final quantity concurrence or change order items negotiated and under consideration.

3. Change Order No. 2:

- a. Change Order No. 2 is requested by the Contractor for payment of fly ash incorporated into the subgrade for mainline paving from 4th to 7th Streets.
- b. The week of 8/31 to 9/4, the Contractor had prepared subgrade for mainline paving, passed the density and moisture requirements, and was ready for paving. Over the weekend, a rain event saturated the top of the subgrade not allowing the mainline to be paved immediately the following week.
- c. On 9/9/20, Contractor requested use of fly ash to dry out and stabilize the subgrade to expedite paving. JEO informed them that fly ash for "Subgrade Stabilization," as bid, was intended for use if fat clay and or unsuitable soils were encountered - no fat clays or unsuitable soils within the subgrade were identified by the Geotechnical Engineer following pavement removals, and it was not intended for use to expedite construction. Therefore, JEO denied Contractor's request to be paid for using fly ash.

4. Change Order No. 3:

- a. Change Order No. 3 is a contract time extension revising completion dates as follows:
 - i. Substantial Completion Date revised to 10/8/2020.

- ii. Final Completion Date revised to 11/1/2020.
- iii. No assessment of liquidated damages, unless final contract obligations are not met.
- b. In conjunction with a time extension the following should be taken into consideration: the substantial/final completion of work to date, the Contractor's request for Change Order No. 2, and subsequent costs accrued by JEO/City due to additional time extensions.

Blake Eisenmann, representing JEO Consulting Group, Inc., was also present, as well as BJ Woehler, representing Robert Woehler & Sons Construction, Inc.

Councilmember Spieker made a motion, which was seconded by Councilmember Eischeid, approving Certificate of Substantial Completion as of October 8, 2020, on the "2019 Nebraska Street Improvements Project" – CDBG No. 16-CD-208. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent and Councilmember Woehler who abstained, the Mayor declared the motion carried.

Mr. Mooberry then presented Application for Payment No. 8 in the amount of \$314,910.80 to Robert Woehler & Sons Construction, Inc., for the "2019 Nebraska Street Improvements Project" – CDBG No. 16-CD-208.

Councilmember Eischeid made a motion, which was seconded by Councilmember Buck, approving Application for Payment No. 8 for \$314,910.80 to Robert Woehler & Sons Construction, Inc., for the "2019 Nebraska Street Improvements Project" – CDBG No. 16-CD-208. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent and Councilmember Woehler who abstained, the Mayor declared the motion carried.

Mr. Mooberry then presented Change Order No. 2 which is a decrease of \$28,104.32 for fly ash stabilization to Robert Woehler & Sons Construction, Inc., for the "2019 Nebraska Street Improvements Project" – CDBG No. 16-CD-208.

Most of the discussion involving the agenda items for this project revolved around this particular Change Order regarding the fly ash subgrade stabilization that was used on the project due to a rain event by the contractor, which was not approved by the engineer. The question was who was going to or who should pay for the same.

Administrator Blecke requested copies of the documentation from BJ Woehler showing how much fly ash was used by the contractor.

Mayor Giese stated a vote yes for this Change Order is going to compensate the contractor \$19,558.24 for the fly ash, which results in a decrease as per this Change Order of \$28,104.32. A vote no for this Change Order would not compensate the contractor for the fly ash, which would result in a decrease or a deduct of \$47,662.56. Council can vote to pay a portion of the \$19,558.24 if they so choose.

Councilmember Eischeid thought it was an error in judgment on the contractor's part to make the decision to use the fly ash on their own; however, he also felt that if the contractor was of the opinion that this was something that was needed for the project, it should be done. He also felt the contractor should be compensated for some of it. A comfortable number for him was one-half of the \$19,558.24 or \$9,779.12.

Mayor Giese stated that Councilmember Eischeid is proposing a Change Order of (\$37,883.44).

Councilmember Karsky had a concern about the contractor going against the recommendation of the Engineer, and thought this could pose problems on future projects.

After discussion, Councilmember Eischeid made a motion, which was seconded by Councilmember Sievers, approving Change Order No. 2 (Fly Ash Stabilization) for the "2019 Nebraska Street Improvements Project" – CDBG No. 16-CD-208 in the amount of (\$37,883.44) for Robert Woehler & Sons Construction, Inc. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, Councilmember Karsky who voted Nay, and Councilmember Woehler who abstained, the Mayor declared the motion carried.

Mr. Mooberry then presented Change Order No. 3 (Time Extension) on behalf of Robert Woehler & Sons Construction, Inc., for the "2019 Nebraska Street Improvements Project" – CDBG No. 16-CD-208. This changes the substantial completion date from September 19, 2020, to October 8, 2020. The final completion date stays the same – November 1, 2020. This would eliminate the liquidated damages.

Councilmember Eischeid made a motion, which was seconded by Councilmember Spieker, approving Change Order No. 3 (Time Extension) on behalf of Robert Woehler & Sons Construction, Inc., for the "2019 Nebraska Street Improvements Project" – CDBG No. 16-CD-208. Mayor Giese stated the

motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent and Councilmember Woehler who abstained, the Mayor declared the motion carried.

Administrator Blecke stated an amended Application and Certificate of Payment No. 5 (Final) for the “Restoration of Walking Trail Project” is being brought back for consideration due to an error being found in one of the previous pay applications (No. 3). Final payment should be \$111,508.85 instead of \$130,337.98, as was approved at the last meeting.

Councilmember Spieker made a motion, which was seconded by Councilmember Eischeid, approving Amended Application and Certificate of Payment No. 5 (Final) for \$111,508.85 to M&B Quality Concrete for the “Restoration of Walking Trail Project.” Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried.

Mayor Giese declared the time was at hand for the public hearing to consider the Planning Commission’s recommendation on a request to rezone property. The applicant, Diana Zach, is seeking the request to rezone 212 Windom Street, 313 East 3rd Street, and 321 East 3rd Street from R-3 Residential to B-3 Neighborhood Commercial. The applicant wishes to replace an old quonset with a new storage building.

The Planning Commission held a public hearing on October 5th on this matter, and recommended approval of the same with the “Finding of Fact” being staff’s recommendation. However, because this rezoning conflicts with the future land use map recently amended in May, 2020, the recommendation is to table this matter until the future land use map can be brought before the Planning Commission again for review/recommendation. The future land use map should be amended before a zoning change takes place if it is in conflict thereof. That has not been done in the past – zoning changes have taken place and then the future land use map has been amended.

There being no further comments or discussion, Mayor Giese closed the public hearing.

Administrator Blecke stated the City received one offer to purchase the 30’x30’ piece of property located at approximately 14th Street and the alley between Pearl and Lincoln Streets and legally described

as the West 30' of Lot 12, Block 6, College Hill First Addition to the City of Wayne, Wayne County, Nebraska, and that was from Tom Jacobsen, d/b/a Wayne Rentals, LLC, for \$100.00.

Tom Jacobsen was present to answer questions.

Attorney Miller advised the Council that if Mr. Jacobsen wants title insurance on the property, as reflected in his offer, that he pay for the entire cost of the same, because that cost to the City would be more than the purchase price of \$100.00.

Councilmember Sievers introduced Resolution 2020-50, and moved for its approval; Councilmember Spieker seconded.

RESOLUTION NO. 2020-50

A RESOLUTION AUTHORIZING THE SALE OF A 30' x 30' PIECE OF PROPERTY AT WHAT WOULD BE LOCATED AT APPROXIMATELY 14TH STREET AND THE ALLEY BETWEEN PEARL AND LINCOLN STREETS AND LEGALLY DESCRIBED AS THE WEST 30' OF LOT 12, BLOCK 6 COLLEGE HILL FIRST ADDITION TO THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA, TO THOMAS J. JACOBSEN, D/B/A WAYNE RENTALS, LLC, FOR \$100.00, WITH THE TERMS AND CONDITIONS ALSO INCLUDING THAT THE CITY WILL NOT PAY FOR TITLE INSURANCE.

Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried.

Councilmember Eischeid introduced Ordinance No. 2020-18, and moved for approval thereof; Councilmember Buck seconded.

ORDINANCE NO. 2020-18

AN ORDINANCE DIRECTING THE SALE OF A 30' x 30' PIECE OF PROPERTY AT WHAT WOULD BE LOCATED AT APPROXIMATELY 14TH STREET AND THE ALLEY BETWEEN PEARL AND LINCOLN STREETS AND LEGALLY DESCRIBED AS THE WEST 30' OF LOT 12, BLOCK 6 COLLEGE HILL FIRST ADDITION TO THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA, TO THOMAS J. JACOBSEN, D/B/A WAYNE RENTALS, LLC.

Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried.

Councilmember Spieker made a motion, which was seconded by Councilmember Buck, to suspend the statutory rules requiring ordinances to be read by title on three different days. Mayor Giese stated the

motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried.

Councilmember Spieker made a motion, which was seconded by Councilmember Eischeid, to move for final approval of Ordinance No. 2020-18. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried.

Discussion took place regarding Ordinance 2020-11 amending Wayne Municipal Code, Title VII Traffic Code, Section 78-174 Truck Parking; Where Designated. This is the third and final reading.

Attorney Miller reviewed/explained her amendments to the ordinance as discussed at the last meeting.

Councilmember Spieker made a motion to approve the third and final reading thereof as amended; Councilmember Buck seconded.

ORDINANCE NO. 2020-11

AN ORDINANCE TO AMEND SECTION 78-174 OF TITLE VII TRAFFIC CODE OF THE WAYNE MUNICIPAL CODE RELATING TO TRUCK PARKING; WHERE DESIGNATED; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Giese stated the motion, and the result of roll call was all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried.

Councilmember Spieker introduced Ordinance 2020-12, and moved for approval of the third and final reading thereof; Councilmember Buck seconded.

ORDINANCE NO. 2020-12

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE VII TRAFFIC CODE, SECTION 78-131 RESTRICTED PARKING 12:00 MIDNIGHT TO 5:00 A.M.; SOUTHEAST QUADRANT OF THE CITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent, the Mayor declared the motion carried.

Councilmember Spieker introduced Ordinance 2020-13, and moved for approval of the third and final reading thereof; Councilmember Buck seconded.

ORDINANCE NO. 2020-13

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE, TITLE VII TRAFFIC CODE, CHAPTER 70 GENERAL PROVISIONS – PROHIBITIONS AND ENFORCEMENT, SECTION 78-132 PROHIBITED PARKING; SOUTHWEST QUADRANT OF THE CITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Councilmember Eischeid noted he was voting no for this because it was brought forward because of one complaint.

Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Brodersen who was absent and Councilmember Eischeid who voted Nay, the Mayor declared the motion carried.

Action on Agenda Item No. 17 – Resolution 2020-51 approving Memorandum of Understanding between the City of Wayne and the Nebraska Regional Interoperability Network was postponed until a later date.

Councilmember Spieker made a motion, which was seconded by Councilmember Buck, to enter into executive session for the purpose of protecting the public interest to receive an update on potential pool litigation, and to allow the following persons to be in attendance: City Administrator Blecke, City Clerk McGuire, Attorney Miller, Joel Hansen, Marlen Chinn and Casey Junck. Mayor Giese stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried, and executive session began at 7:08 p.m.

Mayor Giese again stated that the matter to be discussed in execution session pertains to being updated on potential pool litigation.

Councilmember Eischeid left the meeting at 7:17 p.m.

Councilmember Spieker made a motion, which was seconded by Councilmember Buck, to resume open session. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception

of Councilmember Brodersen who was absent, the Mayor declared the motion carried, and open session resumed at 7:25 p.m.

There being no further business to come before the meeting, Mayor Giese declared the meeting adjourned at 7:25 p.m.