

**MINUTES
CITY COUNCIL MEETING
September 21, 2021**

The Wayne City Council met in regular session at City Hall on September 21, 2021, at 5:30 o'clock P.M.

Mayor Cale Giese called the meeting to order, followed by the Pledge of Allegiance, with the following in attendance: Councilmembers Dwaine Spieker, Terri Buck, Nick Muir, Yasuko Taoka, Chris Woehler, Jason Karsky, Matt Eischeid and Jill Brodersen; Attorney Amy Miller; City Administrator Wes Blecke; and City Clerk Betty McGuire.

Notice of the convening meeting was given in advance thereof by publication in the Wayne Herald, Wayne, Nebraska, the designated method of giving notice, as shown by Affidavit of Publication. In addition, notice was given to the Mayor and all members of the City Council, and a copy of their acknowledgement of receipt of notice and agenda is on file with the City Clerk. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. 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 Council Chambers, as well as on the City of Wayne website 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.

Councilmember Brodersen made a motion, which was seconded by Councilmember Spieker, to approve the minutes of the meeting of September 7, 2021, and to waive the reading thereof. Mayor Giese 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, 2922.58; AMERITAS, SE, 100.13; AMERITAS, SE, 72.00; AMERITAS, SE, 174.53; APPEARA, SE, 54.25; ARC-HEALTH & SAFETY, SU, 518.51; AUTO ANATOMY ALTERNATIVES, SE, 2972.23; BATTERY SOLUTIONS, SU, 102.00; BATTERY

SOLUTIONS, SU, 204.00; BENSCOTER INC, RE, 3998.82; BENSCOTER, LOUIS, RE, 5714.11; BORDER STATES INDUSTRIES, SU, 636.29; BRUMMOND, SCOTT, RE, 50.00; CERTIFIED TESTING SERVICES, SE, 243.50; CITIZENS STATE BANK, RE, 7310.08; CITIZENS STATE BANK, RE, 5070.22; CITY EMPLOYEE, RE, 187.20; CITY EMPLOYEE, RE, 148.01; CITY EMPLOYEE, RE, 288.20; CITY OF WAYNE, PY, 86750.74; CITY OF WAYNE, RE, 85.46; CIVICPLUS, SE, 3149.87; COMFORT INN-GRAND ISLAND, SE, 86.00; CONSOLIDATED MANAGEMENT, SE, 113.48; COTTONWOOD WIND PROJECT, SE, 14015.84; DAS STATE ACCTG-CENTRAL FINANCE, SE, 67.79; DAVE'S DRY CLEANING, SE, 42.00; DOESCHER REPAIR, SU, 244.00; DUTTON-LAINSON COMPANY, SU, 6291.60; EAKES OFFICE PLUS, SE, 229.37; ECHO GROUP, SU, 220.09; ED M. FELD EQUIPMENT, SE, 1270.00; ELLIS, JEFF, RE, 500.00; EMPLOYERS MUTUAL CASUALTY, RE, 2500.00; FAITH REGIONAL PHYSICIAN SERV, SE, 99.50; GARCIA, PEDO, RE, 40.00; GODFATHERS PIZZA, SE, 115.49; GRAINLAND ESTATES, RE, 4885.65; GROSSENBURG IMPLEMENT, SU, 85.77; HILAND DAIRY, SE, 71.86; HILAND DAIRY, SE, 66.24; HYPERION MONITORING, SE, 81.00; ICMA, RE, 147.00; ICMA, RE, 145.28; ICMA, RE, 112.52; ICMA, RE, 1450.04; ICMA, RE, 159.20; ICMA, RE, 376.22; ICMA, RE, 34.38; ICMA, RE, 8155.21; ICMA, RE, 125.48; ICMA, RE, 366.40; ICMA, RE, 315.76; IRS, TX, 61.04; IRS, TX, 14597.52; IRS, TX, 10754.01; IRS, TX, 261.04; IRS, TX, 3413.96; IRS, TX, 162.06; ISLAND SPRINKLER SUPPLY, SE, 15819.47; J. F. AHERN CO, SE, 1139.00; JEO CONSULTING GROUP, SE, 8131.00; KAUP FORAGE & TURF, SU, 1440.00; LEAGUE OF NEBRASKA MUNICIPALITIES, FE, 10219.00; LUND, ELLIOTT, RE, 20.00; MATHESON-LINWELD, SU, 35.06; MID PLAINS GRAIN, RE, 6139.36; NDEE-FISCAL SERVICES, FE, 500.00; NE DEPT OF REVENUE, TX, 73.08; NE DEPT OF REVENUE, TX, 4643.25; NPPD, SE, 38801.02; NO SWETT FENCING, SU, 25426.51; OCC BUILDERS, SE, 56121.00; PAC N SAVE, SU, 4.45; PAC N SAVE, SU, 767.89; PLUNKETT'S PEST CONTROL, SE, 95.80; QUADIANT FINANCE USA, SU, 1000.00; QUALITY 1 GRAPHIC, SU, 128.40; QUALITY FOOD CENTER, SU, 6.38; STATE NEBRASKA BANK-PETTY CASH, RE, 300.00; US FOODSERVICE, SU, 1727.79; VAN DIEST SUPPLY, SU, 78.60; VERIZON, SE, 536.12; WAHOO HERITAGE INN, SE, 145.90; WAYNE COUNTY COURT, RE, 300.00; WAYNE HERALD, SE, 723.87; WAYNE HERALD, SE, 294.00; WAYNE HOSPITALITY, RE, 19295.98; WAYNE VETERINARY CLINIC, SE, 140.00; WESCO, SU, 236.00; WINDOM RIDGE, RE, 2042.43; ACES, SE, 956.14; ALL HOURS TOWING, SE, 225.00; AMAZON, SU, 634.24; ARNIE'S FORD, SU, 459.29; BAKER & TAYLOR BOOKS, SU, 1603.59; BIG RIVERS ELECTRIC CORPORATION, SE, 239863.51; BLUE CROSS BLUE SHIELD, SE, 48904.74; BOMGAARS, SU, 1951.57; BROGIE, ED, RE, 500.00; BRUCKNER, BRIAN, RE, 500.00; CHEMQUEST, SE, 695.00; CITY EMPLOYEE, RE, 575.04; CITY OF WAYNE, RE, 142.62; COMPLETE FLOORS, SE, 12353.00; CONSOLIDATED MANAGEMENT, SE, 88.62; ELKINS PORTABLE RESTROOMS, SE, 260.00; FLOOR MAINTENANCE, SU, 136.34; GROSSENBURG IMPLEMENT, SU, 2.37; H.K. SCHOLZ COMPANY, SU, 1825.42; HAWKINS, SU, 516.40; INGRAM LIBRARY SERVICES, SU, 610.43; IOWA PUMP WORKS, SU, 672.98; JEO CONSULTING GROUP, SE, 26021.50; KAUP FORAGE & TURF, SU, 1440.00; MARCO TECHNOLOGIES, SE, 200.61; MIDWEST TAPE, SU, 43.99; NE PUBLIC HEALTH ENVIRONMENTAL LAB, SE, 686.00; NE STATE FIRE MARSHAL, SE, 244.00; NNEDD, SE, 60.00; NORTHEAST NE INS AGENCY, SE, 6750.71; NORTHEAST POWER, SE, 13819.26; OLSSON ASSOCIATES, SE, 6700.00; OVERDRIVE, SU, 984.19; QUADIANT LEASING USA, SE, 2691.00; STAPLES, SU, 203.29; WAED, SE, 6000.00; WESCO, SU, 560.00

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

Raegan Reifenrath, a student at Wayne State College, was present requesting Council consideration to allowing her to keep a rabbit inside City limits (Bowen Hall) for the purposes of being an “emotional support animal.”

Raegen provided documentation from her veterinarian, as well as the rabbit’s pedigree information and approval from WSC. She would like approval so she can get the rabbit licensed with the Police Department. She noted that rabbits do not need vaccinations according to her veterinarian.

Attorney Miller explained the main difference between this request and the last request for keeping an emotional support animal (pit bull), is that this animal will be located on State property. We do not have control over that housing. If Raegan would ever move off campus and want to keep the animal, she would have to go through this process again.

Marlen Chinn, Police Chief, advised the Council that the local vet has advised him that a rabies vaccination is not approved or recommended for a rabbit.

Councilmember Brodersen made a motion, which was seconded by Councilmember Taoka, approving the request of Raegan Reifenrath to keep a rabbit inside City limits (Bowen Hall of Wayne State College) for the purposes of being an “emotional support animal.” Mayor Giese 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 Transportation when a state highway will be closed for a celebration/parade. This Resolution pertains to the Annual Christmas in Wayne Celebration/Annual Parade of Lights to be held on Thursday, November 18, 2021.

Abby Schademann, representing Wayne Area Economic Development, was present to answer questions.

Councilmember Karsky introduced Resolution No. 2021-52 and moved for its approval; Councilmember Spieker seconded.

RESOLUTION NO. 2021-52

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

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

Abby Schademann, representing Wayne Area Economic Development, was requesting Council consideration to prohibit parking on Main Street in the 200 and 300 blocks of Main Street from 5:30 p.m. until 8:00 p.m. for the Christmas in Wayne Celebration/Annual Parade of Lights Event to be held on Thursday, November 18th.

Councilmember Spieker made a motion, which was seconded by Councilmember Brodersen, which was then amended, approving the request of Wayne Area Economic Development to prohibit parking on Main Street in the 200 and 300 blocks of Main Street from 5:30 p.m. until 8:00 p.m. for the Christmas in Wayne Celebration/Annual Parade of Lights Event to be held on Thursday, November 18th. Mayor Giese stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Paul Linder was present requesting Council consideration to allowing him to extend his sidewalk into the city terrace/right-of-way at 601 Westwood Road.

Mr. Lindner's evergreen tree at 601 Westwood Road has grown over the existing sidewalk. Mr. Lindner was notified by the City that the tree needed to be trimmed or removed. Mr. Lindner would like to relocate the sidewalk around the tree instead of trimming/removing the tree.

City Code requires Council to consider or approve/deny any request for sidewalk placement that is in "any other place than the regularly prescribed location." The regularly prescribed location for this sidewalk is in its current location.

Mr. Lindner stated he will keep pruning the tree so that it does not extend past that point. If the tree would die, he would take this sidewalk out and go back to the original sidewalk placement. He noted that by driving around town, he found six examples of sidewalks that were diverted around trees, two of which are in his neighborhood.

Councilmember Spieker made a motion, which was seconded by Councilmember Buck, approving the request of Paul Lindner to extend his sidewalk into the City terrace/right-of-way at 601 Westwood Road.

Mr. Lindner noted that he will be paying for this himself and getting the project done within 60 days.

Councilmember Spieker amended his motion, which was then seconded by Councilmember Buck, approving the request of Paul Lindner to extend his sidewalk into the City terrace/right-of-way at 601 Westwood Road, and to have the same completed by December 1st. Mayor Giese stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mark Meyer, d/b/a Milo Meyer Construction, Inc., has been hired to move a storage building at 212 Windom Street owned by Diana and Dave Zach. Mr. Meyer is requesting Council to waive the section in the code that requires a certified engineer's statement that the movement of the structure will in no way have an adverse effect upon any road surface or bridge on or along the proposed route within the city jurisdiction. A copy of the "Application for Building Moving Permit," as well as a map showing the proposed route was included in the packet. Mr. Meyer has provided the necessary bond.

Mr. Meyer was present to answer questions. He plans on moving the building this weekend (Sunday). The building is 20'x50'. When asked, he responded that he had not contacted the State for a permit.

Councilmember Eischeid made a motion, which was seconded by Councilmember Woehler, approving the request of Mark Meyer, d/b/a Milo Meyer Construction, Inc., to waive the requirement for a certified engineer's statement per Wayne Municipal Code Section 150.03 Moving Buildings (A) Permit required 3 (f). Mayor Giese stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

American Broadband is requesting the same consideration as was given ALLO and Black Hills Energy for a "Community-Wide Blanket Construction Permit." They want to work city-wide to enhance the efficiencies of their build-out.

City Attorney Miller recommended adding the following language into the agreement, as well as changing the wording “Memorandum of Understanding” to “Agreement:”

“This Agreement shall not prohibit City or City’s assigns from completing any construction, repairs, or maintenance to City’s property. All costs to remove, repair, replace, or otherwise alter ABB’s equipment or fiber broadband to effectuate this provision shall be attributable to ABB, and City shall be held harmless therefrom.”

The above language was already inserted into the agreement that was in the packet.

Pam Adams, Marketing Manager with ABB, as well as Bryce Reimers, North Area Manager, Don Archer, Outfit Plant Supervisor, and Tim Johnson, General Manager for the Midwest Region, were present to answer questions. They will provide the detailed drawings the City is requiring.

Administrator Blecke stated ABB could start doing whatever they want to, permit by permit, block by block, but instead of doing that type of process, they are asking for an entire community-wide permit instead.

Councilmember Eischeid introduced Resolution 2021-53, and moved for its approval, with the following changes:

1. Change the wording “Memorandum of Understanding” to “Agreement;”
2. Correct the subparagraph numbers; and
3. Pending staff approval of design.

Councilmember Brodersen seconded.

RESOLUTION NO. 2021-53

A RESOLUTION APPROVING INITIAL COMMUNITY-WIDE TECHNOLOGY OVER-BUILD AGREEMENT BETWEEN THE CITY OF WAYNE AND HUNTEL.NET, INC., D/B/A AMERICAN BROADBAND COMMUNICATIONS, INC.

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

Since ABB has bought out or acquired the assets of Wayne.Net LLC (BNT), they will be assuming the use of the City poles. Therefore, the Pole Use Agreement that Council approved with Wayne.Net LLC has been redrafted to reflect ABB as the Licensee. Nothing else has changed in that agreement.

Councilmember Brodersen introduced Resolution No. 2021-54 and moved for its approval, Councilmember Eischeid seconded.

RESOLUTION NO. 2021-54

A RESOLUTION APPROVING POLE USE AGREEMENT BETWEEN THE CITY OF WAYNE AND HUNTEL.NET, INC., D/B/A AMERICAN BROADBAND NEBRASKA COMMUNICATIONS, INC.

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

Jon Mooberry, Engineer with JEO Consulting Group, Inc., presented Contractor's Application for Payment No. 2 in the amount of \$160,099.93 to Meyers Construction, Inc., for the "Pine Heights Road & Utility Improvements Project – CDBG No. 19-PW-017."

Councilmember Muir left the meeting at 7:01 p.m. and returned at 7:03 p.m.

Mr. Mooberry updated the Council on the project and noted that the contractors are about one month behind. Mr. Mooberry stated he was pleased with the contractors and their workmanship, and they have been very proactive in communicating with the public, more so than he has seen on any project that doesn't specifically require them to send letters on a regular basis to residents. Joel Hansen, Street and Planning Director, also stated he was very pleased with the contractors. Administrator Blecke noted that Casey Junck, Water/Wastewater Superintendent, was also very pleased with the contractors.

Councilmember Woehler had concerns with the project not being completed on time – by October 1st.

Mr. Mooberry stated the City could assess liquidated damages. He is anticipating that a request for an extension will be submitted. He will review that like he would on any project and determine if there is justification for the extension request.

Councilmember Eischeid made a motion, which was seconded by Councilmember Karsky, approving Contractor's Application for Payment No. 2 in the amount of \$160,099.93 to Meyers Construction, Inc., for the "Pine Heights Road & Utility Improvements Project – CDBG No. 19-PW-017."

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

Administrator Blecke stated the following agenda item is required for work found not acceptable during the one-year warranty period on the 2019 Nebraska Street Improvements Project. The unacceptable work includes seeding, pavement cracking and a storm sewer manhole adjustment. Photos were included in the packet. The City is requesting an additional one-year warranty from October 8, 2021. The contractor has responded stating they would give the City an additional six-month warranty period, but they want the City to pay for the extra cost they are assuming for that. Staff recommendation is to have a one-year warranty extension and that the contractor pay the cost for the same.

Mr. Mooberry reviewed what has taken place during project construction, etc. At the six month period, he noticed hairline and random cracking that was occurring. They sent a notice to Robert Woehler and Sons Construction, as well as the City. Their recommendation at that time was to grout and seal the cracking. They also put them on notice that they wanted to monitor it further through this year and the warranty period. While random cracking does occur, this is more frequent and sooner than he would anticipate seeing on any street, which is the basis for wanting to extend the warranty period another year.

Mr. Mooberry noted that identifying the root causes are challenging at times, so before he would make a final determination on what the final corrective action should be, he feels it is best or warranted to go through another year warranty period and monitor the same.

The request for an extended warranty period was sent to the contractor, and they requested that the city cover the cost. They generally agreed that an extended warranty period was appropriate. They also made the assertion that the cracking may be related to design or engineering problem rather than defective workmanship.

When asked, Mr. Mooberry stated sometimes you can get bad concrete. However, from what they saw in the pours, the aggregate was generally well spread, it vibrated correctly, and the compressive strengths checked out on the project. The tests at the time met all of their specifications, so it is tough to say that the concrete is a direct result of the cracking.

The cores that were removed were 8"x4" concrete samples. The ones along the center line is where they could see the saw cut depth and take measurements. The saw cut depths should be one-third; these were one-fourth.

Attorney Miller asked if there was a way to determine if the inadequate saw cut depth is what caused the cracking? Mr. Mooberry would have to follow up with some individuals to directly say that with 100 percent certainty. It was noted that the one-third saw cut depth was in the plans and specs.

The cracking is mainly between 5th and 6th Street. There are a couple of panels in between 4th and 5th where they have seen random cracking and then there are a couple of panels on the north side of 6th street that also has some random cracking.

Mr. Mooberry stated if a year goes by and there is no additional cracking, he would request that only two panels be replaced.

It was noted that they are not seeing any cracks in the first phase that was poured. There were two core samples taken from the first phase. They could test the core samples further to analyze the concrete, but that is expensive.

It was also noted that the tests taken at the time of pouring passed. They do not test every truck that is dumped, however. From what they were seeing per their field rep, Steve Harris is a good contractor, and Mr. Mooberry has not had any issues with their concrete work. If there is a bad batch of concrete, that is an issue between the contractor and the concrete company. He does not feel the concrete testing is the City's responsibility, and from what they have tested to this point, he has not seen a concern to take that next step, but that is something that can be done.

After further discussion, Councilmember Brodersen made a motion to approve the action on Certificate of Extended Warranty Period for corrective action on the 2019 Nebraska Street Improvements Project. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Woehler who abstained, the Mayor declared the motion carried.

The following Resolution would approve the agreement and payment of \$4,500 to Certified Testing Services, Inc., for evaluating the pavement subgrade on the Nebraska Street Improvements Project.

Councilmember Brodersen introduced Resolution No. 2021-55 and moved for its approval; Councilmember Eischeid seconded.

RESOLUTION NO. 2021-55

A RESOLUTION APPROVING AGREEMENT WITH CERTIFIED TESTING SERVICES, INC., FOR PAVEMENT SUBGRADE EVALUATION TESTING SERVICES FOR THE “2019 NEBRASKA STREET IMPROVEMENTS PROJECT” - \$4,500.

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

Administrator Blecke stated the following ordinance would approve Amendment No. 4 to the market based rate partial and full requirements agreement with Big Rivers Electric Corporation. The main purpose of this contract amendment is to change the City of Wayne’s interconnection point from the current point to one closer to electrical delivery. This settlement area will help hedge the differences in SPP and MISO when the spread is wide. This change will help minimize risk like the Winter Storm Uri event from February 2021. The amendment also gets rid of the basis differential between the points between SPP and MISO. The other change made was BREC doubling the City’s ability to incorporate additional renewables into our electric mix (allows, doesn’t require).

Councilmember Eischeid introduced Ordinance No. 2021-13, and moved for approval thereof; Councilmember Brodersen seconded.

ORDINANCE NO. 2021-13

AN ORDINANCE APPROVING AMENDMENT NO. 4 TO THE CONTRACT WITH BIG RIVERS ELECTRIC CORPORATION.

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

Councilmember Eischeid made a motion, which was seconded by Councilmember Spieker, 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, the Mayor declared the motion carried.

Councilmember Eischeid made a motion, which was seconded by Councilmember Spieker, to move for final approval of Ordinance No. 2021-13. Mayor Giese stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Blecke stated the contract between BREC and the City has a most-favored nation clause in it, meaning if BREC makes a reduced offer to one customer, it must make the same to all. BREC is making this offer to one of Northeast Power's customers who is increasing its load substantially. Instead of waiving this entire section in the contract or amending it to allow for a special circumstance, the City Attorney suggested that the City sign a "Letter of Consent" to waive the provision for this one defined offer. If the City would have a customer making the same type of investment/anticipated load growth, we would propose the same back to BREC.

Councilmember Eischeid made a motion, which was seconded by Councilmember Brodersen, approving the "Consent to Proposed Amendment" and the waiver of rights under Section 3.15 for the purposes of the proposed amendment. Mayor Giese stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Blecke gave an update on the Chicago Street Storm Sewer and Paving issue. Chicago Street is currently an unimproved, platted street (2 blocks) that connects South Sherman Street to South Lincoln Street. When Southview II Addition (Lots 1-20) was being developed, the Subdivision Agreement with the owners stated the City will convert an open ditch area to underground and re-route existing pipe into the Chicago Street right-of-way within 5 years of the agreement (dated November 8, 2017). The owners are also to request a paving assessment district for the street within 10 years of the agreement. The discussion to take place is whether or not the City should start to plan to pave at the same time it relocates the storm sewer. Staff recommends that the City builds the street at the same time it relocates the storm sewer. Bidding the project this winter, with summer 2022 construction, means getting it designed ASAP. If favorable to Council, staff will likely be asking Council to approve an engineer to design/bid/oversee the project at a meeting in October. Council consensus was for staff to obtain proposals from the engineers for design services.

There being no further business to come before the meeting, Mayor Giese declared the meeting adjourned at 7:37 p.m.