

AGENDA
CITY COUNCIL MEETING
COUNCIL CHAMBERS – CITY HALL
306 PEARL STREET
August 2, 2022

1. [Call the Meeting to Order – 5:30 p.m.](#)
2. [Pledge of Allegiance](#)

Anyone desiring to view the Open Meetings Act may do so. The document is available for public inspection and is located on the southwest wall of the Council Chambers as well as on the City of Wayne website.

The City 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.

3. [Approval of Minutes – July 19, 2022](#)
4. [Approval of Claims](#)
5. [Update from the Community Redevelopment Authority and action on the request for additional funds for development](#)

Background: The current CRA is being aggressive with redeveloping areas that are not being developed by the private market. With this comes expenses/investments. The CRA has a very limited revenue stream. In order to continue redevelopment activities, down payment assistance for new construction, etc., the CRA needs funding to do this.

6. [Action on an Application for Addition to Liquor License — Johnnie Byrd Brewing Company \(new description to read: one-story building approx. 44x87 with additional indoor area to the east approx. 70x40 and including outdoor area approx. 34x20 — Greg Ptacek\)](#)

Background: Greg has made application to the Nebraska Liquor Control Commission to expand the area of his liquor licensed premises.

The old description read: single story building approximately 87' x 44' including outdoor area approximately 30' x 34.'

The new description will read: single story building approximately 44' x 87' with additional indoor area to the east approx. 70' x 40' including outdoor area approximately 34' x 20.'

7. [Action on Work Change Directive No. 1 in the amount of \\$12,406, with an additional 14 day increase for Robert Woehler & Sons Construction, Inc., for the “Chicago Street Improvements Project” – Taylor Kube, Olsson](#)

Background: This change order is to reroute a water line on this project. The water main was exposed during the construction phase and ended up being too shallow. The water main

is required to be lowered to maintain a 4' bury to avoid freezing temperatures. The new contract sum will be \$756,733.

8. [Action on the request of Dustin Soden, Chairman, Cruise Main in Wayne, and Luke Virgil, WAED Executive Director, to close Logan Street from Fairgrounds Avenue to 2nd Street from 8:00 a.m. through 10:00 p.m. for a “Burn Out Competition” on Saturday, September 17, 2022, for the 2nd Annual Burnout Competition](#)

Background: Dustin Soden and Luke Virgil are requesting to close Logan Street from Fairgrounds Avenue to 2nd Street from 8:00 a.m. to 10:00 p.m. for the “2nd Annual Burn Out Competition.” Event insurance is required for anyone wishing to use City right-of-way. WAED will provide the necessary Certificate of Insurance naming the City as an additional insured under their “event insurance coverage.”

9. [Report to Council on LB 840 Activity — Luke Virgil, Director of Wayne Area Economic Development](#)
10. **Public Hearing:** Acquisition of Real Estate – Lot 5, Kardell East 14th Street Addition to the City of Wayne, Wayne County, Nebraska — Cornerstone, LLC (Virgil Kardell) (Advertised Time: 5:30 p.m.)

11. [Resolution 2022-47: Approving the acquisition of real estate located in the City of Wayne, Wayne County, Nebraska, from Cornerstone, LLC \(Virgil Kardell\)](#)

Background: This acquisition would provide property to enhance the City’s electric distribution system with a proposed new substation and provide space to consider the future for the City’s electric production/generation.

12. [Resolution 2022-48: Authorizing the allocation of property taxes to the Wayne Airport Authority - \\$69,337 \(last year - \\$63,408\)](#)
13. [Resolution 2022-49: Adopting Drug and Alcohol Testing Policy – Wayne Public Transit](#)

Background: The Nebraska Department of Transportation has notified Diane Bertrand, Senior Center Coordinator, that the Federal Drug and Alcohol Regulations have recently changed and that their policies are now outdated. The NDOT provided template policies for both Zero Tolerance and Second Chance. The NDOT does not recommend the Second Chance Policy. Therefore, the policy in the packet, as recommended, is for Zero Tolerance. The same needs to be approved by the Council and returned to the NDOT by September 30th.

14. [Resolution 2022-50: Acknowledging Requirements for the Temporary Use of the State Highway System for Special Events \(WSC Homecoming Parade and Band Day – Saturday, October 8, 2022\)](#)

Background: This, along with the next agenda item, are annual requests made by Wayne State College for the homecoming parade.

15. [Action on the Contract for Services between the City of Wayne and the Board of Trustees of the Nebraska State Colleges – Wayne State College for the homecoming parade](#)

16. Action to set Council Retreat Date – August 30, 2022, at 5:30 p.m. in the Wayne Fire Hall
17. Discussion regarding negotiations for the purchase of real estate — Old Final Touch Property (Lot 9, Block 29, Original Town of Wayne; and Tax Lot 57, PtSW1/4NW1/4 Wayne Tracts 18-26-4)

Background: Staff and a couple of Councilmembers looked at this property a few weeks ago. This acquisition could solve some immediate needs with Parks and Recreation and Library storage. This property is also adjacent to other City-owned property that could create a larger redevelopment project in the area in the future.

18. **Update on the R. Perry Construction, Inc., project and potential litigation matter**
19. Adjourn

**MINUTES
CITY COUNCIL MEETING
July 19, 2022**

The Wayne City Council met in regular session at City Hall on July 19, 2022, 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 Brendon Pick, Terri Buck, Nick Muir, Dallas Dorey, Chris Woehler, Matt Eischeid and Jill Brodersen; Attorney Amy Miller; City Administrator Wes Blecke; and City Clerk Betty McGuire. Councilmember Jason Karsky.

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 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 Buck, to approve the minutes of the meeting of July 5, 2022, 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 Karsky who was absent, the Mayor declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

JUNE 29, 2022 – NOT ON CLAIMS LISTING: MILLER LAW, SE, 5416.67; WAED, SE, 8592.41
VARIOUS FUNDS: ACE HARDWARE & HOME, SU, 657.66; ADVANCED CONSULTING ENGINEERING SERVICES, SE, 289.54; APPEARA, SE, 121.22; BAKER & TAYLOR BOOKS, SU, 784.25; BARGHOLZ, CINDY, RE, 200.00; BINSWANGER GLASS, SE, 224.50; BORDER STATES INDUSTRIES, SU, 510.27; CITY EMPLOYEE, RE, 1948.23; CITY OF WAYNE, RE, 913.23; CLARK EQUIPMENT COMPANY, SU, 61500.87; CLAUSSEN, HEATHER, FE, 680.00; COLONIAL RESEARCH, SU, 573.52; COMMUNITY REDEVELOPMENT AUTHORITY, RE, 10000.00; CONCRETE INDUSTRIES, SU, 4823.12; COPY WRITE PUBLISHING, SE, 324.03; COTTONWOOD WIND PROJECT, SE, 14990.17; CUSTOM FILTRATION, SU, 590.70; DAVE'S DRY CLEANING, SE, 48.00; DEARBORN LIFE INSURANCE COMPANY, SE, 2817.78; ED M. FELD EQUIPMENT, SU, 1854.52; ELKINS PORTABLE RESTROOMS, SE, 325.00; EMPLOYERS MUTUAL CASUALTY, RE, 314.58; FASTENAL, SU, 10.28; GERHOLD CONCRETE, SU, 3577.16; GLOBAL PAYMENTS INTEGRATED, SE, 835.27; GREAT PLAINS COMMUNICATIONS, RE, 1000.00; GREAT PLAINS COMMUNICATIONS, RE, 1000.00; HK SCHOLZ COMPANY, SE, 1870.00; HAWKINS, SU, 4798.18; HEIKES AUTOMOTIVE, SE, 18.00; HEITHOLD CONSTRUCTION, RE, 500.00; HILAND DAIRY, SE, 137.44; INGRAM LIBRARY SERVICES, SU, 817.81; ITRON, SE, 2714.47; JEO CONSULTING GROUP, SE, 2516.25; LUTT OIL, SU, 9575.00; MAIN STREET GARAGE, SU, 227.05; MATHESON-LINWELD, SU, 34.25; MIDWEST LABORATORIES, SE, 503.50; MILLER, RACHEL, RE, 17.50; MUNICIPAL SUPPLY, SU, 1142.32; NDEE-FISCAL SERVICES, FE, 150.00; NE DEPT OF REVENUE-CHARITABLE GAMING, TX, 1400.00; NE FIREFIGHTERS MUSEUM, SU, 741.00; NE LIBRARY ASSOCIATION, FE, 115.00; NE POWER REVIEW BOARD, FE, 1119.17; NPPD, SE, 7767.76; NPPD, FE, 31.00; NILES, TYSON, RE, 17.50; NNEDD, FE, 30.00; NORTHEAST NE INS AGENCY, SE, 22333.01; NORTHEAST TIRE SERVICE, SE, 275.00; OCLC, SE, 551.61; OVERDRIVE, SU, 868.16; PAC N SAVE, SU, 54.88; PEARSON, HILDA, RE, 30.00; PLUNKETT'S PEST CONTROL, SE, 102.51; QHA CLEANING, SE, 1500.00; RUZICKA, JACKIE, RE, 200.00; SKARSHAUG TESTING LAB, SE, 247.29; STAPLES, SU, 217.71; TOTAL GRAPHICS, SU, 813.75; TRI AIR TESTING, SE, 442.00; TYLER TECHNOLOGIES, SE, 3008.75; US BANK, SU, 5748.77; US FOODSERVICE, SU, 2473.47; VAKOC, SU, 2217.26; VERIZON, SE, 584.43; WAYNE AUTO PARTS, SU, 134.44; WAYNE COMMUNITY SCHOOL FOUNDATION, RE, 250.00; WAYNE COMMUNITY SCHOOLS, SU, 20.00; WAYNE HERALD, SE, 95.00; WAYNE HERALD, SE, 140.00; WAYNE HERALD, SE, 929.03; WAYNE HERALD, SE, 319.50; WAYNE STATE COLLEGE, SU, 125.00; WAYNE VETERINARY CLINIC, SE, 238.00; WESCO, SU, 704.53; WRIGHT, SARA, RE, 17.50; ZACH HEATING & COOLING, SU, 580.50; ZILA, BRIAN, RE, 500.00; ZIMCO SUPPLY, SU, 1145.00; ALL-AMERICAN PUBLISHING, SE, 355.00; AMAZON, SU, 1050.65; AMERITAS, 161.94; AMERITAS, SE, 35.00; AMERITAS, SE, 3335.14; AMERITAS, SE, 72.00; AMERITAS, SE, 131.18; ASSOCIATION FOR RURAL & SMALL LIBRARIES, FE, 50.00; AUNTIE K'S PIZZA, SU, 185.38; BIG RIVERS ELECTRIC CORPORATION, SE, 250081.07; CARROLL DISTRIBUTING, SU, 17.09; CITY OF WAYNE, PY, 104767.53; CITY OF WAYNE, RE, 1439.55; DAS STATE ACCTG-CENTRAL FINANCE, SE, 67.79; DGR & ASSOCIATES, SE, 4462.23; DOESCHER REPAIR, SE, 89.00; ELKINS PORTABLE RESTROOMS, SE, 1050.00; FLOOR MAINTENANCE, SU, 1296.36; GERHOLD CONCRETE, SU, 2676.10; HILAND DAIRY, SE, 30.62; ICMA, SE, 174.75; ICMA, SE, 387.46; ICMA, SE, 339.92; ICMA, SE, 8893.30; ICMA, SE, 154.18; ICMA, SE, 1443.86; ICMA, SE, 105.79; ICMA, SE, 65.00; ICMA, SE, 132.14; ICMA, SE, 35.42; ICMA, SE, 119.12; IRS, TX, 4090.42; IRS, TX, 12268.67; IRS, TX, 17489.74; KOUATIL, ZAYNAB, SE, 150.00; KTCH, SE, 150.00; LAMP, MACKENZIE, SE, 250.00; NE DEPT OF REVENUE, TX, 5441.18; NE PUBLIC HEALTH ENVIRONMENTAL LAB, SE, 174.25; NIELSEN TREE FARM, FE, 434.40; OLSSON, SE, 9500.00; O'REILLY AUTOMOTIVE STORES, SU, 43.84; RUWE, JOSH, RE, 500.00; SCHULTZ, EVERETT, RE, 500.00; STAPLES, SU, 17.21; SURBER, RYAN, RE, 50.00; WAYNE AREA LEGACY FUND, FE, 160.00; Y & Y LAWN SERVICE, SE, 130.00

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

Joel Hansen, Zoning Administrator, stated Kyle and Leah Ahlers have purchased two lots in the Vintage Hill 3rd Addition subdivision. They would like to eliminate the 14' utility easement between the two lots so they can build over that lot line.

The Ahlers are requesting the three readings of the ordinance be waived.

Councilmember Eischeid introduced Ordinance No. 2022-13, and moved for approval thereof; Councilmember Pick seconded.

ORDINANCE NO. 2022-13

AN ORDINANCE AUTHORIZING THE RELEASE AND ABANDONMENT OF THE 14 FOOT UTILITY EASEMENT LOCATED BETWEEN LOTS 8 AND 9, BLOCK 6, VINTAGE HILLS 3RD ADDITION TO THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA, EXCLUDING THE REAR 7 FEET OF SAID EASEMENT.

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

Councilmember Eischeid made a motion, which was seconded by Councilmember Brodersen, 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 Karsky who was absent, the Mayor declared the motion carried.

Councilmember Eischeid made a motion, which was seconded by Councilmember Brodersen, to move for final approval of Ordinance No. 2022-13. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Karsky who was absent, the Mayor declared the motion carried.

In regard to the next agenda item, Council approved a Marketing Agreement with Utility Service Partners on November 5, 2019. This was a 3-year agreement. The City has received to date \$2,788.57 in license fees for this service. We should receive another payment in February 2023. This agreement will

automatically renew for one additional one-year term unless the City gives them written notice at least 90 days prior to the end of the initial term that it does not intend to renew the agreement.

Staff has been in contact with them, and they have another option for cities to use after the initial term. This would allow Wayne to continue to make the program available to its residents, but discontinue the marketing. This is what they refer to as “web/phone status of a partner,” and they would no longer send out letters to the homeowners. This allows residents to still enroll in the program if they so choose and allows the City to continue to receive the royalties. Staff is recommending this option.

No action will automatically place the City in the “web/phone status of a partner” as recommended by staff. No action was taken on the matter.

Mayor Giese declared the time was at hand for the public hearing to consider the Planning Commission’s recommendation in regard to amending the Zoning Text, specifically Section 152.139 Parking Regulations, specifically Section (F) Design Standards (6) Schedule of Minimum Off-Street Parking and Loading Requirements.

R. Perry Construction, Inc., the applicant, is requesting the Code be amended to change the parking requirements for multi-family residential in an R-4 District to 1.25 spaces per sleeping room. The Planning Commission has forwarded a recommendation to change the code to reflect the 1.25 spaces per sleeping room with the “Finding of Fact” being staff’s recommendation. R. Perry Construction, Inc., is requesting the Council waive the three readings of the ordinance.

Joel Hansen, Zoning Administrator, provided background on the parking ordinance and the changes that have taken place over the years.

The following changes are being recommended:

Residential structures (multiple family and townhouse):

- In R-4: 1.25 spaces per sleeping room
- In R-5: 1 space per sleeping room
- In any other zoning district, unless otherwise listed, 1 space per sleeping room, plus 1 space per dwelling unit.

Representatives from R. Perry Construction, Inc., were present to answer questions.

Lee Brogie spoke against the changes to Sec. 152.139 Parking Regulations, and asked Council to consider treating all similar structures in all zoning districts the same and come up with one parking plan for all districts.

City Clerk McGuire had not received any comments, either verbal or in writing, for or against this public hearing.

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

It was noted R. Perry Construction, Inc., was requesting the three readings be waived on said ordinance.

Councilmember Eischeid introduced Ordinance 2022-14, and moved for approval thereof; Councilmember Pick seconded.

ORDINANCE NO. 2022-14

AN ORDINANCE AMENDING TITLE XV LAND USAGE, CHAPTER 152 ZONING (SUPPLEMENTARY DISTRICT REGULATIONS), SECTION 152.139 PARKING REGULATIONS (F) (6); TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; TO PROVIDE FOR AN EFFECTIVE DATE; AND TO PROVIDE THAT SAID ORDINANCE BE PUBLISHED IN PAMPHLET FORM.

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

Councilmember Eischeid made a motion, which was seconded by Councilmember Pick, 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 Karsky who was absent, the Mayor declared the motion carried.

Councilmember Eischeid made a motion, which was seconded by Councilmember Pick, to move for final approval of Ordinance No. 2022-14. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Karsky who was absent, the Mayor declared the motion carried.

Mayor Giese stated it was now past 5:30 p.m., at which time a public hearing was to be held to obtain public comment prior to the consideration of a Resolution approving a redevelopment plan for an

area of the City previously declared blighted and substandard and in need of redevelopment pursuant to the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the "Act") for the following real estate:

Apartment Site: Lot Three (3), Southeast Addition to the City of Wayne, Wayne County, Nebraska. Parcel 0080238.00

Lake Site: Lot Five (5), Southeast Addition to the City of Wayne, Wayne County, Nebraska. Parcel 0080235.00

The notice of the public hearing was published in the Wayne Herald on June 30, 2022, and July 7, 2022, and was mailed by United States Certified Mail, return receipt requested, sufficient postage affixed, to all parties required by Section 18-2115 of the Act. Mayor Giese opened the public hearing and invited all interested persons to be heard.

R. Perry Construction, Inc., is requesting tax increment financing for a project consisting of two development activities, all being a part of the overall Project. The separate activities are designated as "Project One" and "Project Two." "Project One" of the Redevelopment Project is the development of an apartment complex on the apartment site by the Redeveloper, consisting of approximately 144 apartments in 4 apartment buildings with 36 apartments each. Project One is anticipated to include a clubhouse of approximately 4,000 sf and a pool area. The Redevelopment Project provides for the acquisition of the Apartment Site from the City pursuant to a purchase agreement.

"Project Two" of the Redevelopment Project is the creation of a four-acre (approximate) lake on the Lake Site. Project Two is to be constructed by the Redeveloper based on a design and in a location to be determined via the mutual agreement of the Redeveloper and the City.

The Redeveloper estimates the incurrence of approximately \$6,810,096 in TIF-eligible costs for the Redevelopment Project. The Redeveloper seeks a TIF grant in an amount of \$4,880,000 for the TIF-eligible costs that include, but are not limited to, site acquisition, site preparation, engineering and architecture, legal fees, infrastructure, utilities, lake development and capitalized interest. From the TIF grant of \$4,880,000, approximately \$2,200,000 will be utilized for the recreational lake development.

Construction of the apartment complex and commercial structure will require an estimated private investment of over \$23,000,000. The overall estimated total project cost will be \$31,426,724.

The redevelopment of the project is not economically feasible without assistance from tax increment financing. The Community Redevelopment Authority will issue a tax increment revenue bond in the total amount of \$4,880,000 to assist in the financing.

The Redevelopment Plan has gone before the Community Redevelopment Authority and then Planning Commission for review and approval. The recommendation of the Planning Commission is to approve the Plan. The next step will be to go back before the Community Redevelopment Authority for approval of the Redevelopment Contract and the issuance of the bond.

Representatives from R. Perry Construction, Inc., were present, as well as their Tax Increment Financing Attorney Michael Sands (via zoom).

Beth Porter, Finance Director, went over the schedule of the Tax Increment Financing process.

It was noted from the Community Redevelopment Authority, Mark Lenihan, School Superintendent, has shared concerns over the school being able to handle an increase in the student population as a result of this project. However, Mr. Lenihan has noted he is not against the project because Wayne needs more housing. Mayor Giese noted another concern of Mr. Lenihan is that the School pulls much of its levy from the Carroll School District, and he is also voting on behalf of those people who will not see a direct benefit from this for the next 15 years.

It was noted that that is looking at the here and now. You need to think about what happens in 15 years when this comes on line. What if the Oaks' project back in 1996 did not go? It is now valued at \$6.5 million dollars, and that was a \$250,000 TIF project.

BJ Woehler spoke in opposition to this Tax Increment Financing Application and requested the Council vote no on the Resolution. Lee Brogie and Brooke Sturm also spoke in opposition to this matter and requested the Council to vote no on the Resolution.

Administrator Blecke noted a letter had been received from Luke Virgil, representing Wayne Area Economic Development, in support of the project.

All persons desiring to be heard having been heard, the Mayor closed the public hearing.

Councilmember Brodersen introduced Resolution No. 2022-45 and moved for its approval; Councilmember Pick seconded the motion.

RESOLUTION NO. 2022-45

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WAYNE, NEBRASKA, APPROVING A REDEVELOPMENT PLAN AS CONTAINED IN A REDEVELOPMENT CONTRACT; MAKING FINDINGS WITH REGARD TO SUCH PLAN AND APPROVING OTHER ACTION THEREON (R. PERRY CONSTRUCTION, INC., PROJECT).

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

Mayor Giese stated the time was at hand for the public hearing to consider the Planning Commission's recommendation concerning a request to rezone property legally described as:

Part of the Northeast 1/4 of the Southeast 1/4 of Section 22, T26N, R3E of the 6th P.M., Wayne County, Nebraska, more particularly described as follows:

Beginning at the Northeast 1/4 corner of the Southeast 1/4 of Section 22, T26N, R3E of the 6th P.M., Wayne County, Nebraska; thence S 01°36'39" E, 791.91 feet; thence S 87°51'27" W, 550.87 feet; thence N 01°36'36" W, 792.26 feet; thence N 87°53'42" E, 550.86 feet to the Point of Beginning, containing 10.02 acres, more or less, from A-1 Agricultural to A-2 Agricultural Residential.

The applicants for the rezoning request are Nick and Jessica Hochstein, who wish to rezone the area to allow the property to be subdivided.

The Planning Commission reviewed the matter at their public hearing on July 11, 2022, and forwarded a recommendation to approve the same subject to the following "Findings of Fact:"

- Consistency with the Comprehensive Plan and the current and future land use map; and
- Staff's recommendation

Nick Hochstein was present to answer questions. He has built a house on this property. He wants to subdivide the property so that the house can be separate from what the company owns, etc. He also requested the three readings be waived on the ordinance.

City Clerk McGuire had not received any comments, either verbal or in writing, for or against this public hearing.

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

Councilmember Brodersen introduced Ordinance No. 2022-15, and moved for approval thereof; Councilmember Eischeid seconded.

ORDINANCE NO. 2022-15

AN ORDINANCE AMENDING THE ZONING MAP AND CHANGING THE ZONING OF PROPERTY FROM A-1 AGRICULTURAL DISTRICT TO A-2 AGRICULTURAL RESIDENTIAL DISTRICT.

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

Councilmember Brodersen made a motion, which was seconded by Councilmember Eischeid, 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 Karsky who was absent, the Mayor declared the motion carried.

Councilmember Brodersen made a motion, which was seconded by Councilmember Eischeid, to move for final approval of Ordinance No. 2022-15. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Karsky who was absent, the Mayor declared the motion carried.

Mayor Giese stated the time was at hand for the public hearing to consider the Planning Commission's recommendation in regard to "Hochstein Estates Subdivision," a part of the Northeast 1/4 of the Southeast 1/4 of Section 22, T26N, R3E of the 6th P.M., Wayne County, Nebraska, more particularly described as follows: Beginning at the Northeast 1/4 corner of the Southeast 1/4 of Section 22, T26N, R3E of the 6th P.M., Wayne County, Nebraska; thence S 01°36'39" E, 791.91 feet; thence S 87°51'27" W, 550.87 feet; thence N 01°36'36" W, 792.26 feet; thence N 87°53'42" E, 550.86 feet to the Point of Beginning, containing 10.02 acres, more or less. The applicant is Nick Hochstein of Sharp Construction.

The Planning Commission reviewed the matter at their public hearing on July 11, 2022, and forwarded a recommendation to approve the same subject to the following "Findings of Fact:"

- Consistency with the Comprehensive Plan and the current and future land use map; and

➤ Staff's recommendation

Joel Hansen, Zoning Administrator, stated the plat is showing three lots. Mr. Hochstein's house is on Lot 3. Lot 2 is the existing farmhouse, and Lot 1 corresponds with the protected corridor with the Nebraska Department of Transportation (NDOT) for the Highway 35 project. He contacted the NDOT and was advised that while the NDOT is no longer enforcing their corridor protection, they have not rescinded the same.

Nick Hochstein, representing Sharp Construction, was present to answer questions.

City Clerk McGuire had not received any comments, either verbal or in writing, for or against this public hearing.

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

Councilmember Eischeid introduced Resolution 2022-46, and moved for its approval; Councilmember Dorey seconded.

RESOLUTION NO. 2022-46

A RESOLUTION APPROVING "HOCHSTEIN ESTATES SUBDIVISION," WAYNE COUNTY, NEBRASKA.

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

Councilmember Brodersen introduced Ordinance No. 2022-8, and moved for approval of the third and final reading thereof; Councilmember Buck seconded.

ORDINANCE NO. 2022-8

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE TO THE CITY OF WAYNE AND EXTENDING THE CORPORATE LIMITS IN THE NORTHEAST QUADRANT OF THE CITY OF WAYNE TO INCLUDE SAID REAL ESTATE (KARDELL PROPERTY).

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

Councilmember Brodersen introduced Ordinance No. 2022-9, and moved for approval of the third and final reading thereof; Councilmember Buck seconded.

ORDINANCE NO. 2022-9

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE TO THE CITY OF WAYNE AND EXTENDING THE CORPORATE LIMITS IN THE NORTHEAST QUADRANT OF THE CITY OF WAYNE TO INCLUDE SAID REAL ESTATE (GREAT DANE TRAILERS).

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

Councilmember Brodersen introduced Ordinance No. 2022-10, and moved for approval of the third and final reading thereof; Councilmember Buck seconded.

ORDINANCE NO. 2022-10

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE TO THE CITY OF WAYNE AND EXTENDING THE CORPORATE LIMITS IN THE NORTHEAST QUADRANT OF THE CITY OF WAYNE TO INCLUDE SAID REAL ESTATE (DEPARTMENT OF TRANSPORTATION OFFICE).

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

Councilmember Brodersen introduced Ordinance No. 2022-11, and moved for approval of the third and final reading thereof; Councilmember Buck seconded.

ORDINANCE NO. 2022-11

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE TO THE CITY OF WAYNE AND EXTENDING THE CORPORATE LIMITS IN THE NORTHEAST QUADRANT OF THE CITY OF WAYNE TO INCLUDE SAID REAL ESTATE (HERITAGE HOMES).

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

Taylor Kube, Engineer with Olsson, presented Certificate of Payment No. 2 on the "Chicago Street Improvements Project" for \$72,103.00 to Robert Woehler & Sons Construction, Inc.

Chris Woehler, representing Robert Woehler & Sons Construction, Inc., updated the Council on the project.

Councilmember Brodersen made a motion, which was seconded by Councilmember Buck, approving Certificate of Payment No. 2 for \$72,103.00 to Robert Woehler & Sons Construction, Inc., for the “Chicago Street Improvements Project.” Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Karsky who was absent and Councilmember Woehler who abstained, the Mayor declared the motion carried.

Mayor Giese requested Council consideration to the following mayoral reappointments to the Planning Commission: Mark Sorensen, Jason Schulz and Jessie Piper. If approved, their terms will expire 6/30/25.

Councilmember Eischeid made a motion, which was seconded by Councilmember Pick approving the mayoral reappointments of Mark Sorensen, Jason Schulz and Jessie Piper to the Planning Commission (terms expiring 6/30/25). Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Karsky who was absent, Mayor Giese declared the motion carried.

Mayor Giese advised the Council and public that the Stool to Cool Task Force will be hosting an open house on July 26, 2022, from 5:30 p.m. to 7:00 p.m. at the Wayne Community Activity Center to look at the drafts prepared by Olsson for the lagoon development.

Mayor Giese stated the next item on the agenda was to have discussion regarding negotiations for the purchase of real estate — Lot 5, Kardell East 14th Street Addition and potentially more.

Councilmember Brodersen made a motion, which was seconded by Councilmember Dorey, to enter into executive/closed session for the purpose of protecting the financial interest of the City to discuss negotiations for the purchase of real estate and to allow Administrator Blecke, Attorney Miller, City Clerk McGuire, Finance Director Beth Porter, Street and Planning Director Joel Hansen, Electric Distribution Superintendent Tim Sutton, and Electric Production Superintendent Jeff Triggs to be in attendance. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Karsky who was absent, the Mayor declared the motion carried, and executive/closed session began at 6:17 p.m.

Mayor Giese again stated that the matter to be discussed in execution session relates to negotiations for the purchase of real estate.

Councilmember Eischeid made a motion, which was seconded by Councilmember Dorey, to resume open session. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Karsky who was absent, the Mayor declared the motion carried, and open session resumed at 6:37 p.m.

Councilmember Eischeid made a motion, which was seconded by Councilmember Buck, to allow City Staff to negotiate the terms on the land purchase – Lot 5, Kardell East 14th Street Addition and potentially more. Mayor Giese stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Karsky who was absent, the Mayor declared the motion carried.

The budget work session then took place.

Beth Porter, Finance Director, reviewed the proposed budget.

After discussion, the following changes were made to the proposed budget:

- \$500,000 in Sales Tax Capital Projects: to be used for East Park improvements, lagoon development, and old pool house project
- \$250,000 unallocated Sales Tax Capital Projects: a portion to go towards CAC pool improvements and a portion to go towards City Hall Council Chamber upgrades
- \$100,000 CAC reserve – put into a CAC expense line item to spend/utilize (maintenance, etc.)
- \$100,000 Keno Fund – to be used for new fields (community betterment)
- Levy – Decrease levy from \$.449046 to \$.438533 by lowering the tax asking from \$1,013,000 to \$985,000. The General Fund Reserves would be decreased by approximately \$28,000. The General Fund Reserves at this time are \$1.8 million. It was noted that the levy amount could be lower if the valuations come in higher than projected.

There being no further business to come before the meeting, Mayor Giese declared the meeting adjourned at 7:43 p.m.

**Council Approved 7/19/22**

Vendor	Payable Description	Payment Total
ROBERT WOEHLE & SONS	CHICAGO STREET	72,103.00
ACES	WIND ENERGY SERVICE AGREEMENT	1,021.15
AMERITAS LIFE INSURANCE	AMERITAS ROTH	165.31
AMERITAS LIFE INSURANCE	AMERITAS ROTH	35.00
AMERITAS LIFE INSURANCE	POLICE RETIREMENT 457 PERCENTAGE	94.18
AMERITAS LIFE INSURANCE	POLICE RETIREMENT 457 AMOUNT	72.00
AMERITAS LIFE INSURANCE	POLICE RETIREMENT	3,091.30
APPEARA	LINEN & MAT SERVICE	174.31
BENSCOTER, LOUIS	BUILDING PERMIT DEPOSIT REFUND	1,000.00
BLUE CROSS BLUE SHIELD	HEALTH PREMIUMS	46,376.21
BLUE VALLEY PUBLIC SAFETY, INC.	SIREN REPAIR LABOR AND TRAVEL	1,015.00
BOMGAARS	TOOLS/STOP VALVE/OIL/SPRAYER	709.35
BORDER STATES INDUSTRIES, INC	VOLTAGE CABLES	578.96
BROWN SUPPLY CO	GOLF COURSE/OLD POOL PROJECTS-ARPA	2,800.30
BROWN, SANDY	GREEN TEAM AD REIMBURSEMENTS	118.18
CARHART LUMBER COMPANY	FACIA/WOOD/CRA HOUSE MOVING SUPPLIES	1,627.10
CENTURYLINK	TELEPHONE CHARGES	400.44
CITY EMPLOYEE	MEDICAL REIMBURSEMENT	151.92
CITY EMPLOYEE	MEDICAL REIMBURSEMENT	902.74
CITY EMPLOYEE	VISION REIMBURSEMENT	161.00
CITY EMPLOYEE	MEDICAL REIMBURSEMENT	285.30
CITY OF WAYNE	PAYROLL	105,538.09
CITY OF WAYNE	UTILITY REFUND	325.49
CITY OF WAYNE	WAED MEDICAL REIMBURSEMENT	285.30
CITY OF WAYNE	WAED MEDICAL REIMBURSEMENT	281.49
COMFORT INN	LODGING-S PEARCY	374.85
DAS STATE ACCTG-CENTRAL FINANCE	TELECOMMUNICATION CHARGES	448.00
DEARBORN LIFE INSURANCE COMPANY	VFD INSURANCE	96.32
DEMCO INC	BOOKMARKS/STICKERS	375.08
DOESCHER REPAIR	ICE MAKER	185.00
DOSTALS CONSTRUCTION	INSTALL CLIMBER AT BRESSLER PARK	8,850.00
ED M. FELD EQUIPMENT CO INC	FIRE BOOTS	5,580.00
ELLIS HOME SERVICES	LIBRARY A/C	5,140.00
ELLIS HOME SERVICES	FIRE DEPT HEAT PUMP DEPOSIT	3,039.00
FLOOR MAINTENANCE	JANITORIAL SUPPLIES	378.29
FLOOR MAINTENANCE	FOAM CONTAINERS	186.54
FRENCH, TORI	AUDITORIUM DEPOSIT REFUND	200.00
GALE/CENGAGE LEARNING	BOOKS	49.38
GERHOLD CONCRETE CO INC.	CONCRETE	3,179.77
GERHOLD CONCRETE CO INC.	GOLF COURSE PROJECT-ARPA	381.58
GPM ENVIRONMENTAL SOLUTIONS LLC	CALIBRATE SIEMENS HYDRORANGER	515.00
GROSSENBURG IMPLEMENT INC	OIL FILTER/AXLE/WHEEL	251.72

GROSSENBURG IMPLEMENT INC	OIL FILTER	21.50
HAWKINS, INC	POOL CHEMICALS/CHLORINE/PUMP	6,428.68
HILAND DAIRY	SENIOR CENTER FOOD SERVICE	263.91
HOMETOWN LEASING	COPIER LEASES	436.02
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	ROTH IRA - ICMA	65.00
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	PAYROLL RETIREMENT	35.42
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	PAYROLL RETIREMENT	8,836.58
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	PAYROLL RETIREMENT	174.75
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	ICMA RETIREMENT	1,443.86
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	PAYROLL RETIREMENT	339.92
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	ROTH IRA -ICMA	119.12
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	PAYROLL RETIREMENT	154.18
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	PAYROLL RETIREMENT	105.79
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	ROTH ICMA	387.46
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	ROTH ICMA	132.14
INTERSTATE BATTERY SYSTEM	BATTERY	154.95
IRS	FICA WITHHOLDING	17,524.32
IRS	FEDERAL WITHHOLDING	11,946.14
IRS	MEDICARE WITHHOLDING	4,098.40
JEANETTE MARX	APPRECIATION MEAL	3,289.93
JEO CONSULTING GROUP	TRANSFER STATION PERMIT RENEWAL	5,337.81
JEO CONSULTING GROUP	AQUARIUS TANK DIFFUSER REPLACEMENT	127.50
JEO CONSULTING GROUP	MASTER AGREEMENT	3,656.31
LINCOLN WINWATER WORKS CO.	PVC CAP/CLEAN OUT COVER	357.10
MAIN STREET GARAGE, LLC	OIL CHANGE	217.00
MARCO INC	COPIER LEASE	175.92
MARCO TECHNOLOGIES LLC	COPIER LEASE	180.50
MICHAEL TODD & CO INC	SIGNS/POSTS	520.62
MILLER LAW	ATTORNEY FEE	5,416.67
MUNICIPAL SUPPLY INC	WATER METER	1,111.27
NE DEPT OF REVENUE	STATE WITHHOLDING	5,323.84
NE LAW ENFORCEMENT	PATROL RIFLE RECERTIFICATION COURSE	72.00
NORTHEAST NE INS AGENCY INC	INSURANCE	309.00
NORTHEAST POWER	WHEELING CHARGES	18,678.78
OLSSON	CHICAGO STREET	6,107.05
O'REILLY AUTOMOTIVE STORES, INC.	STARTER/ROTOCAP/BATTERY CLEANER	214.78
PINKELMAN, ELLIE	AUTORIUM DEPOSIT REFUND	200.00
POSTMASTER	POSTAGE ON UTILITY BILLS	995.94
ROBERT WOEHLER & SONS	CHICAGO STREET	72,103.00
SARGENT DRILLING	WELL/PUMP TESTING	1,200.00
STADIUM SPORTING GOODS	SHIRTS	49.00
STATE NEBRASKA BANK-PETTY CASH	LIBRARY PETTY CASH	107.24
US BANK	CONFERENCE/MEAL/LODGING/CONTAINERS/PROPANE TANKS/TECH SERVICES/FOOTBALL HELMETS	9,362.44
VIAERO WIRELESS	CELL PHONE	67.36
WAYNE AREA ECONOMIC DEVELOPMENT	CONTRIBUTION	8,592.41
WAYNE COMMUNITY SCHOOLS	PARKING TICKET REMITS	3,955.50
WESCO DISTRIBUTION INC	LIGHT BULBS/PHOTOCELL SWITCHES	526.44
WISNER WEST	FD GASOLINE	383.21
WYNIA, KATIE	GREEN TEAM POSTERS	310.00

Grand Total: 398,057.41



Pete Ricketts
Governor

STATE OF NEBRASKA

NEBRASKA LIQUOR CONTROL COMMISSION

Hobert B. Rupe

Executive Director

301 Centennial Mall South

P.O. Box 95046

Lincoln, Nebraska, 68509-5046

Phone (402) 471-2571

Fax (402) 471-2814 or (402) 471-2374

TRS USER 800-833-7352 (TTY)

Web Address <https://www.lcc.nebraska.gov/>

- ADDITION
- DELETION
- CHANGE OF LOCATION
- RECONSTRUCTION

LICENSING STAFF: HY 7/27/22

TO: WAYNE CITY CLERK

LICENSE #: LK-121870, C-122487, Z-124797

LICENSEE: JOHNNIE BYRD BREWING COMPANY

TRADE NAME: JOHNNIE BYRD BREWING COMPANY

ADDRESS: 121 N PEARL STREET

CITY/COUNTY/ZIP: WAYNE/WAYNE/68787

CONTACT PERSON/PHONE #: GREGORY PTACEK 402.640.1989

CONTACT EMAIL: greg@johnniebyrd.beer

REQUEST: ADDITION OF INDOOR AREA APPROX 70 X 40

MAKING THE NEW DESCRIPTION:
ONE STORY BLDG APPROX 44 X 87 WITH ADDITIONAL INDOOR AREA TO THE EAST APPROX
70 X 40 AND INCLUDING OUTDOOR AREA APPROX 34 X 20

- APPROVED
- NO LOCAL RECOMMENDATION
- DENIED

Clerk's Name: _____ Date: _____

Kim Lowe
Commissioner

Bruce Bailey
Chairman

Harry Hoch
Commissioner

**APPLICATION FOR ADDITION
TO LIQUOR LICENSE**

NEBRASKA LIQUOR CONTROL COMMISSION
301 CENTENNIAL MALL SOUTH
PO BOX 95046
LINCOLN, NE 68509-5046
PHONE: (402) 471-2571
FAX: (402) 471-2814
Website: www.lcc.nebraska.gov



Application:

- **Must include processing fee of \$45.00 check made payable to the Nebraska Liquor Control Commission or you may pay online at www.ne.gov/go/NLCCpayport**
- **Must include a copy of the lease or deed showing ownership of area to be added. This is still required even if it's the same as on file with original application**
- **Must include simple hand drawn sketch showing existing licensed area and area to be added, must include outside dimensions in feet (not square feet), show direction north.
NO BLUE PRINTS**
- **May include approval from the local governing body; no addition shall be approved unless endorsed by the local governing body**
- **Check with your local governing body for any additional requirements that may be necessary in making this request for addition**

LIQUOR LICENSE # LK-121870 C-122487 Z-124797 CLASS TYPE LK; C; Z
LICENSEE NAME ~~Gregory Ptacek~~ Johnnie Byrd Brewing Company
TRADE NAME Johnnie Byrd Brewing Company
PREMISE ADDRESS 121 N Peal Street
CITY Wayne ZIP CODE 68787 COUNTY Wayne
CONTACT PERSON Gregory Ptacek
PHONE NUMBER OF CONTACT PERSON 402.640.1989
EMAIL ADDRESS OF CONTACT PERSON greg@johnniebyrd.beer

7.22.22 Pay Port



1. **What is being added?**

Explain the type of addition that is being requested, i.e. beer garden, adding to building

We would like to expand our current space into the newly leased space next door.

The new leased space has a contiguous entrance to our current licensed space.

2. **Will this addition cause the location to be within 150 feet of a church, school, hospital, home for the aged or indigent persons or for veterans, their wives, and children; or within 300 feet of a college or university campus?**

YES NO

If yes, provide name and address of such institution and where it is located in relation to the premises (Neb. Rev. Stat. 53-177)(1).

Must include supplemental Form 134 found at this link: <http://www.lcc.ne.gov/formsdiv.html>

If proposed location is within 300 feet of a campus, the Commission may waive this restriction upon written approval from the governing body of the college or university. (Rev. Stat. 53-177)(1).

Must include supplemental Form 135 found at this link: <http://www.lcc.ne.gov/formsdiv.html>

3. **Include a sketch of the area to be added showing:**
- ✓ existing licensed area with length & width in feet
 - ✓ area to be added with length & width in feet
 - ✓ direction north

4. **If adding an outdoor area explain:**
- ✓ type of fencing
 - ✓ height of fence
 - ✓ length & width of outdoor area in feet

12.07 Outdoor area shall mean an outdoor area included in licensed premises, which is used for the service and consumption of alcoholic liquors and which is contained by a permanent fence, wall or other barrier approved by the Commission and shall be in compliance with all building and fire, or other applicable local ordinances. Rule Chapter 2-012.07

I acknowledge under oath that the premises as added to comply in all respects with the requirements of the act. Neb Rev Stat §53-129

Signature of Licensee or Officer

State of Nebraska

County of Wayne

July 20, 2022

Date

The foregoing instrument was acknowledged before me this

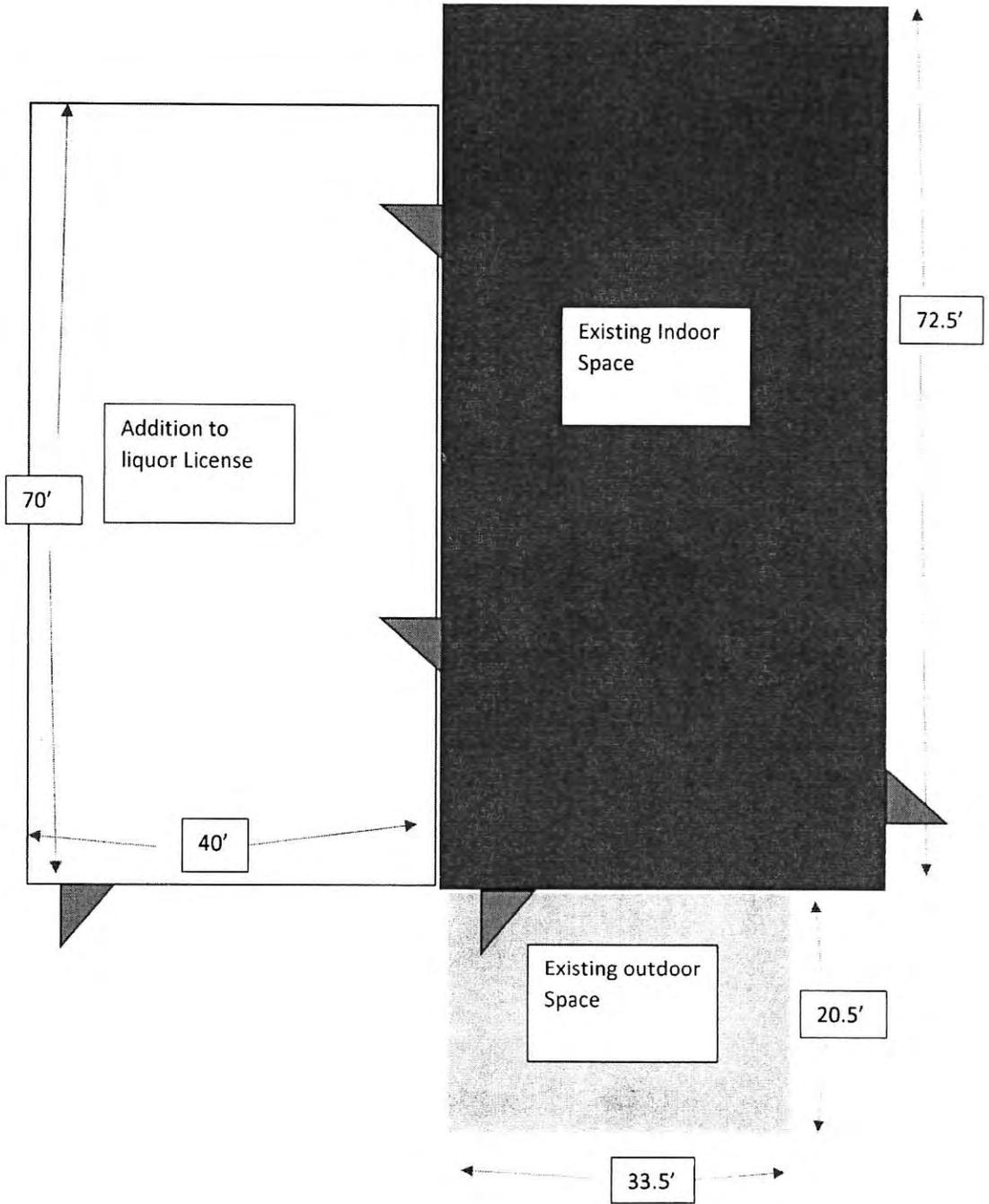
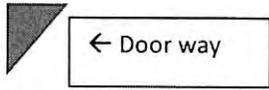
by Gregory Ptacek

name of person acknowledged (individual(s) signing document)

Notary Public signature

Affix Seal





LEASE AGREEMENT THIS LEASE AGREEMENT is entered unto as of July 5, 2022 by Flintless, LLC, by and through its Member Greg Ptacek, as Landlord, and Johnnie Byrd Brewing Company, as Tenant. 1. LEASED PREMISES. The Landlord hereby leases to the Tenant, and the Tenant hereby leases from the Landlord, certain business space located on the real property of 117 W 2nd Street, in Wayne, Nebraska, ("property"), commonly known as Suite 1, which shall be known as the "premises," including the right to use the common areas of the remainder of the property, including hallways, restrooms, and a parking lot reserved for the use of the tenants of the property and their customers, to be used for any lawful purpose. Said premises is approximately 2000 square feet. Landlord represents it owns such property and premises, and the premises is properly zoned for the Tenant's desired use. 2. TERM. This Lease Agreement shall run for a term of 120 months, or until said term shall sooner cease under the provisions hereof, to commence on July 5, 2022 and to end July 5, 2032. Landlord shall deliver possession of the premises to Tenant on the lease commencement date, unless Landlord gives permission to Tenant to enter the premises to prepare the premises for Tenant's operation. 3. OPTION TO RENEW. There shall be a mutual option to renew this Lease Agreement for a period of 24 months at the conclusion of the original lease term. Each party shall inform the other, in writing, at least six months prior to the conclusion of the original lease term of its desire to exercise this option to renew. If both parties exercise this option to renew the Lease Agreement for an additional 24 months, the terms and conditions of the extended lease term shall be the same as those terms and conditions which exist at the conclusion of the original lease term, other than the rental rate, which shall be negotiated in good faith by the parties and agreed upon prior to the extended lease term. 4. RENT. Tenant shall pay as base rent the sum of \$1.00 per month for the lease term. All payments under this section shall be paid no later than the fifth day of each month during this lease term to the Landlord at 1001 W 2nd Street, Wayne, Nebraska, 68787, or at such other place as Landlord may designate in writing. 5. ASSIGNMENT AND SUBLETTING. Tenant may not assign its interest in this Lease, nor shall Tenant sublease the leased premises or any portions thereof, without prior written consent from the Landlord. If Tenant is allowed to Assign and/or 2 Sublease any interest in this Lease, Tenant shall remain primarily liable for discharge of the Lease duties, including, but not limited to, the payment of rent on the dates herein specified. 6. UTILITIES. As utilities (water, electricity, and natural gas) are used for the entire property, Landlord shall pay all utilities when due. Tenant shall then reimburse Landlord 35% of the total utility cost (for water, electricity, and natural gas) the following month, to be paid at the same time as the rent. Landlord shall inform Tenant of its share of the utility cost at least 10 days prior to the due date. Tenant shall have the right to review the utility bills for the property. 7. TAXES. Landlord shall pay all real estate taxes associated with the property. 8. LAWN AND SIDEWALKS. Landlord shall be responsible for any mowing and landscaping on the property. Tenant shall be solely responsible for removal of snow and ice from the property's sidewalk (in front of entry to Suite 2) in a timely manner and as required by local law. This responsibility includes the use of ice melt when there is ice on the sidewalk. 9. MAINTENANCE AND IMPROVEMENTS. A. Landlord shall maintain the premises at its cost and expense and shall keep the same in good condition. Further, Landlord shall perform all necessary maintenance, repair, and replacement to the premises including, but not limited to, the roof, all paved areas, foundation, floors, walls, HVAC, all interior and exterior utility lines and pipes, and all other structural portions of the property during the lease. B. Tenant shall maintain the interior of the premises at its cost during the term of this Lease and shall return the premises to Landlord thereafter in its same condition, ordinary wear and tear excepted. C. Landlord has the right and responsibility to enter the premises periodically, at any reasonable time, to inspect the condition of the premises and to make

necessary repairs. All repairs, restorations, or payments which are obligations of Landlord shall be completed or made within a reasonable time. Any repairs or other work caused to be performed by Landlord shall be performed to cause the least interference possible with Tenant's business operation.

D. Prior to delivery of possession, Tenant shall have the right to inspect the premises and, subject to repair or correction of any items which are identified to need correction, shall accept the premises in its then current condition. Tenant may make alterations, additions, or improvements to the premises with Landlord's written approval, provided Tenant repairs and corrects any damage thereby caused to the premises or property. All alterations, additions, and improvements (except furniture, counters, storage facilities, shelves, and office equipment which are installed at Tenant's expense and are removable without defacing or injuring the property or premises) shall become the property of the Landlord and shall remain upon the premises and be surrendered as part thereof at the conclusion of the lease term, without disturbance, molestation, or injury. Improvements to the premises sought by Tenant, and approved by Landlord, shall be paid for by Tenant.

10. DAMAGES. A. All damage to the property or premises, or its fixtures, caused by the Tenant or its agents, employees, customers, or guests, shall be repaired by the Tenant to the approval of the Landlord. In the event Tenant fails to make such repairs within ten 10 days, Landlord may give written notice of such failure and may proceed with such repairs and charge Tenant for the actual costs thereof. Said costs, if not paid within 30 days of Tenant's receipt of written statement thereof, shall become and be collectable as additional rent for the next applicable month.

B. Landlord shall carry such insurance as it chooses, including fire and extended coverage, insuring Landlord's interest in the property and premises.

C. Tenant shall carry renter's insurance on its property. Tenant shall provide proof of this insurance to Landlord upon request. Tenant acknowledges Landlord will carry no insurance on the personal property placed upon premises by the Tenant, or any third person.

D. Tenant shall, at all times during its occupancy, carry insurance protection against liability for injury to any one person or persons on the premises, and Landlord shall be an additional insured on all such policies. The limits hereon shall not be less One Million Dollars (\$1,000,000.00) combined single limit for any one accident. The premium thereon shall not be paid by Landlord. Tenant shall keep the Landlord informed of the existence of such policy, the name of the insurance company, and the number of the policy.

E. In the event the premises or any part thereof shall be slightly damaged by fire or other peril, Landlord shall promptly repair the damage and restore the premises to the condition prior to such damage, provided Tenant's improvements shall be promptly repaired by Tenant, and an abatement of rent shall be allowed corresponding to the time during which and the extent to which the premises shall have been untenable. If the premises shall be so damaged by fire or other peril insured against it becomes necessary to rebuild, the Landlord may at its option terminate this Lease, or may rebuild and restore the premises, in which event this Lease shall continue but with abatement of rent for the time during which and the extent to which the premises are untenable. If this Lease is not terminated, rebuilding shall commence within 45 days from the occurrence of the damage and shall be completed within a reasonable time.

4 F. Landlord reserves the privilege of stopping the service of heat, electricity, and water at such times as may be necessary or desirable for repairs, alterations, or improvements, but Landlord shall make reasonable efforts to inform Tenant and prevent undue interruption of Tenant's business.

G. No compensation or claim (other than an abatement of rent) shall be allowed or paid to Tenant by reason of inconvenience, annoyance, or injury to business arising from necessity of repairing any portion of the property or premises, however the necessity may occur.

11. INDEMNITY. Tenant shall save harmless and indemnify Landlord from and against all loss, liability, or expense that may be incurred by reason of any claim arising out of or in connection with Tenant's occupancy and use of the

property and premises. 12. DEFAULT AND TERMINATION. Failure by Tenant to perform any provision of this Lease promptly within the time specified (or within a reasonable time, where none is specified) shall constitute a breach of this Lease and shall entitle the Landlord to terminate this Lease and take possession of the premises, remove the Tenant or other occupants and their said effects, and hold the premises as if this Lease had not been made. 13. MISCELLANEOUS PROVISIONS. A. Tenant shall allow Landlord or its agents to enter the premises at reasonable hours in the day to examine the same or to make alterations or repairs. B. Tenant shall respect and not interfere with the rights of other tenants and those having business with them. C. Tenant shall not bring anything to the premises which may in any way increase the rate of fire insurance on the building or the property kept therein, and shall not do anything in conflict with any insurance policy upon the property or any part thereof. D. Tenant shall, at its expense, comply with the requirements of all governmental authorities pertaining to the Tenant's use and occupancy of the premises and shall obey all local, state, and federal laws and regulations. E. Tenant shall keep the leased premises and the real property on which said premises are situated free from all liens arising out of work performed for, materials furnished to, or obligations incurred by the Tenant. The filing of a claim of lien shall constitute a default. 5 14. NOTICES. Notices under this lease shall be given in writing and shall be sent by registered or certified mail, addressed as follows: to Tenant at: And to Landlord at: _____ Flintless, LLC _____ Greg Ptacek _____ 1001 W 2nd St. _____ Wayne, NE 68787 or such other address where rent is then currently being paid to Landlord. Notices shall be deemed to have been given when mailed. 15. BINDING FORCE. All the terms of this Lease shall inure to the benefit of and be binding upon respective heirs, successors, and assigns of the Landlord and Tenant. 16. SEVERABILITY. If any term or provision of this Lease shall, to any extent, be determined by court of competent jurisdiction to be invalid or unenforceable, the remainder of this lease shall not be affected thereby, and each remaining term and provisions shall be valid and enforceable.

[Signature page to follow]

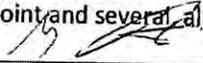
LANDLORD: FLINTLESS, LLC By: _____



Greg Ptacek, Member

Date: 7/5/22

TENANT (joint and several) d/b/a as Johnnie Byrd Brewing Company



Greg Ptacek

Date: 7/5/22



Work Change Directive No. 1

Date of Issuance: 7/27/22

Effective Date: 8/2/22

Project: Chicago St., Wayne, NE.

Date of Contract: 4/11/22

Owner: Wayne, NE.

Contractor: Robert Woehlers & Sons Construction Inc.

Engineer: Taylor Kube

Engineer's Project No.: 021-07991

Contractor is directed to proceed promptly with the following change(s):

Description:

Water main was exposed during the construction phase and ended up being too shallow. The water main is required to be lowered to maintain a 4' bury to avoid freezing temperatures.

Attachments: [List documents supporting change]

CHANGE ORDER NO. 1

Purpose for Work Change Directive:

Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is issued due to: [check one or both of the following]

- Non-agreement on pricing of proposed change.
- Necessity to proceed for schedule or other Project reasons.

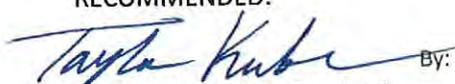
Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price \$12,406 increase

Contract Time 14 day increase

Basis of estimated change in Contract Price:

- Lump Sum
- Unit Price
- Cost of the Work
- Other

RECOMMENDED:
 By: 
 Title: Associate Engineer
 Date: 07/27/2022

AUTHORIZED BY:
 By: _____
 Title: Owner (Authorized Signature)

RECEIVED:
 By: _____
 Title: Contractor (Authorized Signature)

Approved by Funding Agency (if applicable)
 By: _____
 Title: _____

Date: _____

[Back to Top](#)

April 8, 2022

Marlen Chinn
Chief of Police
City of Wayne
306 Pearl St.
Wayne, NE 68787

Dear Chief Chinn:

On behalf of the Cruise Main in Wayne Committee, please accept this letter as a formal request for a street closure on Saturday, September 17, 2022, for the 2nd Annual Burnout Competition.

To prepare for and accommodate the Burnout Competition, on Saturday, September 17, 2022, the Committee is requesting the closure of the Logan Street for the following times/areas: from Fairgrounds Avenue to 2nd Street and for the hours of 8:00 a.m. through 10:00 p.m.

We ask that the street closure be properly identified prior to the street closing so that event set-up is not delayed. The committee suggests that barricades be installed early Saturday morning.

The Cruise Main in Wayne Committee appreciates your assistance during this event. Please contact us at 402-375-2240 if you have any questions or concerns regarding these requests.

Sincerely,

Luke Virgil
WAED Executive Director

Dustin Soden
Chairman, Cruise Main in Wayne

**6-Month Report to the Wayne City Council
RLF Funds Committed (as of 06/30/2022)**

<u>Applicant</u>	<u>Amount</u>	<u>Type of funding</u>	<u>Purpose</u>	<u>Committee Review</u>	<u>Council Approval</u>
Talon Capital, LLC (dba Eyre-Tec)	\$ 250,000.00	performance based loan	purchase existing business/expand business	1/10/2019	2/5/2019
Ace Hardware & Home	\$ 200,000.00	no-interest loan	start retail store/purchase inventory	9/18/2019	10/1/2019
Johnnie Byrd Brewing Company	\$ 40,000.00	low-interest loan	purchase real estate	12/13/2019	12/17/2019
DSF Wayne Short Stop, LLC	\$ 85,000.00	low-interest loan	property improvements/business expansion	4/14/2021	4/20/2021
Sanctuary Apartments, LLC	\$ 400,000.00	low-interest loan	historic preservation/housing development	10/13/2021	11/2/2021
Nix Wayne, LLC	\$ 300,000.00	low-interest loan	property improvements/business expansion	6/16/2022	6/21/2022
TOTAL RLF COMMITMENTS (as of Dec. 31, 2021)	\$ 1,275,000.00				
<p>a On 01/10/2019, RLF Committee recommended approval: \$250,000 loan for 10 yrs with interest rate set at 50% of the interest rate set by primary lender (Midwest Bank - 5.7%); On 02/05/2019, Council approved loan of \$250,000 for 10 years with interest rate of 2.85%, plus a job creation requirement of 5 FTE within 3 years;</p>					
<p>b On 09/18/2019, RLF Committee recommended approval: \$200,000 loan for 15 years with interest rate set at 0% for years 1-5 and 2% for years 6-15; On 10/01/19, Council approved loan of \$200,000 for 15 years with interest rate of 0%</p>					
<p>c On 12/13/2019, RLF Committee recommended approval: \$40,000 loan with repayment term to match the primary lender with interest rate set at 50% of the interest rate set by the primary lender (State Nebraska Bank & Trust - TBD); On 12/17/2019, Council approved loan of \$40,000 for 10 years with repayment term to match the primary lender with an interest rate set at 50% of the interest rate set by the primary lender</p>					
<p>COVID-19: In April 2020, Council provided LB840 Loan and RLF Program recipients a grace period until Feb. 28, 2021 to make their payment obligations due in 2020. Through June and July 2020, Council discussed the potential of adding funds to the LB840 Program for business loans specific to Covid-19 relief. In Jan. 2021, Council approved a motion to re-evaluate the LB 840 discussion and authorize city staff, upon request, to allow businesses to extend their payment(s) pursuant to negotiations with each business owner, but set a deadline of Feb. 28, 2021 for businesses to pursue negotiations. WAED contacted LB840 Loan and RLF recipients to notify them of their new latitude and the deadline.</p>					
<p>d On 04/14/2021, the RLF Committee recommended approval: \$85,000 loan with a repayment term of 10 years with the interest rate set at 50% of the interest rate set by the primary lender (since the primary loan was via the U.S. Small Business Administration and the primary lending rate was set at 2.75% plus prime, which is variable, the RLF Committee recommended 3% as the fixed rate for the LB840 Loan); On 04/20/2021, Council approved loan of \$85,000 with a repayment term of 10 years and an interest rate set at 3%.</p>					
<p>e On 10/13/2021, the RLF Committee recommended approval: \$400,000 loan with a repayment term of 10 years, based on a 20-year amortization, with the interest rate to be set at one-half the rate set by the primary lender. On 11/02/2021, Council approved loan of \$400,000 with a repayment term of 10 years, based on a 20-year amortization, and an interest rate to be set at one-half the rate set by the primary lender. The Council also stipulated that the project was approved because the project intends to preserve a historic building, as well as provide additional housing units in downtown Wayne.</p>					

6-Month Report to the Wayne City Council

LB 840 Funds Committed (as of 06/30/2022)

LB840 GRANTS

Applicant	Amount	Type of funding	Purpose	Committee review
Digital Blue	\$ 30,600.00	performance based loan	relocation/expansion	5/27/2009
Louis and Jevonah Benscoter	\$ 36,000.00	performance based loan	land development	8/13/2009
Interactive Impact	\$ 30,000.00	performance based loan	intellectual property development	8/13/2009
Jim Milliken (Godfathers)	\$ 2,500.00	grant	parking lot (rain garden)	10/8/2009
Wayne Area Economic Development	\$ 10,000.00	grant	marketing (general)	11/12/2009
Wayne Area Economic Development (Project Majestic)	\$ 200,000.00	grant	theater renovation/remodel	11/12/2009
Wayne Veterans Memorial Project	\$ 72,686.00	grant	memorial completion	2/11/2010
Farmers Market and Community Garden	\$ 2,750.00	grant	marketing	4/15/2010
Wayne Hospitality Group LLC	\$ 250,000.00	grant	hotel project	10/19/2010
Wayne Area Economic Development	\$ 10,000.00	grant	marketing (general)	12/21/2010
City of Wayne	\$ 13,285.00	grant	water/sewer for Western Ridge III	8/1/2011
Windom Ridge	\$ 5,000.00	grant	housing study targeting 55+	8/11/2011
Miss Mollys Coffee Company	\$ 30,000.00	performance based loan	purchase building/new coffee shop	10/13/2011
Wayne Area Economic Development on behalf of WCNCG	\$ 250,000.00	[info only]	compressed natural gas car	10/13/2011; 07/12/12
Wayne Area Economic Development	\$ 5,000.00	loan guarantee	marketing (general)	11/7/2011
Wayne Community Theater	\$ 5,000.00	grant	overhead doors replaced	12/8/2011
Wayne Area Economic Development (Chicken Show)	\$ 12,050.00	grant	marketing for Wayne Chicken Show	3/8/2012
Rainbow World Child Care Center	\$ 25,000.00	grant	facility addition	10/11/2012
Wayne Area Economic Development	\$ 5,000.00	grant	marketing (general)	11/8/2012
City of Wayne	\$ 17,500.00	grant	water/sewer for Western Ridge III	1/10/2013
Wireit Properties	\$ 33,000.00	grant	trailer relocation	2/14/2013
Angel Village	\$ 240,000.00	performance based loan	senior village; common space	2/14/2013
City of Wayne	\$ 30,000.00	grant	Welcome to Wayne signs (4)	11/14/2013
Wayne Area Economic Development	\$ 5,000.00	grant	general administration	12/12/2013
Darrin Barner (WSC Rugby)	\$ 1,600.00	[info only]	to replace goal post pads	1/9/2014
Ken Jorgensen / 4th Jug Bar and Grill	\$ 125,000.00	performance based loan	build a bar and grill/package liquor	4/10/2014
Jen and Chad Claussen	\$ 23,765.00	performance based loan	purchase Swans and building	11/13/2014
Wayne Area Economic Development	\$ 5,000.00	grant	admin/marketing	11/13/2014
Rezurrected Rod and Kustom	\$ 25,000.00	performance based loan	building addition and fiber glass car manu	8/4/2015
Wayne Area Economic Development	\$ 5,000.00	grant	admin/marketing	11/3/2015
City of Wayne	\$ 240,000.00	[info only]	housing cost buy down	3/10/2016
<i>Subtotal of "grant"</i>	\$ 981,136.00	30.66%		

6-Month Report to the Wayne City Council

LB 840 Funds Committed (as of 06/30/2022)

Applicant	Amount	Type of funding	Purpose	Committee review
LB840 LOANS				
City of Wayne	\$ 7,132.00	zero percent loan	housing downpayment match	10/8/2009
Jim Milliken (Godfathers)	\$ 35,500.00	zero percent loan	parking lot	10/8/2009
Inet Library	\$ 86,038.00	3 percent interest loan	expansion/start up expenses	2/10/2011
RBDK LLC	\$ 70,000.00	3 percent interest loan	new dental clinic at 7th & Pearl	8/11/2011
City of Wayne	\$ 160,000.00	[info only]	housing incentives (0% loans)	4/12/2012
Rainbow World Child Care Center	\$ 75,000.00	zero percent loan	facility addition	10/11/2012
Mandy Benscoter and Louis Benscoter	\$ 50,000.00	zero percent loan	commercial bldgs on Jaxon St	1/10/2013
John and Molly Temme	\$ 65,000.00	3 percent interest loan	commercial property at 7&Dear	6/27/2013
Geno's Steakhouse	\$ 37,000.00	3 percent interest loan	renovation/windows/etc	7/28/2013
Paulson Construction	\$ 39,750.00	3 percent interest loan	purchase building/move bus. to city	7/28/2013
City of Wayne - SCPB; OCC Bldrs, IPI	\$ 240,900.00	zero percent loan	disaster recovery loans (15 yrs. % payroll)	10/10/2013
Brent L. Pick	\$ 50,000.00	zero percent loan	15 yrs - buy&rebuild Estes/DB/NAPA	11/14/2013
Lutt Oil and Service (Rod L. and Christin E. Cook-Lutt)	\$ 50,000.00	3 percent interest loan	Buy and update Zach's/expand services	12/12/2013
NAPA - Wayne	\$ 50,000.00	zero percent loan	15 yrs - rebuild NAPA	1/9/2014
NAPA - Wayne	\$ 25,000.00	zero percent loan	to rebuild; require annexation	1/9/2014
Leseberg Masonry and Construction	\$ 75,000.00	0% loan; 3% loan	rebuild \$40k at 0%; build \$35k at 3%	1/9/2014
Pat Garvin / Innovative Protectives	\$ 40,000.00	0% loan for 15 yrs	rebuild buildings lost to tornado	2/13/2014
Ken Jorgensen / 4th Jug Bar and Grill	\$ 125,000.00	3% loan for 15 yrs	build a bar and grill/package liquor	2/13/2014; 4/10/14
Dollar Plus	\$ 125,000.00	0% loan for 5 yrs	open Dollar Plus in Downtown Wayne	4/10/2014
Heft Trucking	\$ 50,000.00	0% loan for 15 yrs	rebuild building lost to tornado	6/12/2014
Tim Fertig	\$ 50,000.00	3% loan for 15 yrs (10yr bin)	buy 2nd&Main prop and open fitness	7/28/2014
Jen and Chad Claussen	\$ 23,765.00	3% loan for 15 yrs	purchase Swans and building	11/13/2014
Rezurrected Rod and Kustom	\$ 25,000.00	3% loan for 10 yrs	building addition and fiber glass car manu	8/4/2015
Beck Ag Inc	\$ 50,000.00	3% loan for 3 yrs	build out and business growth	12/10/15; 1/14/16
Adam Manoucheri/Crossroads-Atoll Productions LLC	\$ 40,000.00	3% loan for 15 yrs	purchase and remodel 200&202 Main St	1/14/2016
Josh Hopkins - Hopkins Eyecare	\$ 35,000.00	0% loan for 2 yrs	purchase property for new eye clinic	6/9/2016
Lukas Rix - Rustic Treasures	\$ 55,000.00	0% loan for 5 yrs	purchase and rehab 1912 City Hall	7/14/2016
Wayne Country Club	\$ 150,000.00	0% loan for 15 yrs	addition/remodel club house	10/13/2016
Wayne Country Club	\$ 60,000.00	0% loan for 15 yrs	addition/remodel club house	10/30/2017
Wayne Area Event Center	\$ 350,000.00	new terms below	s new event center construction	10/13/2016; 7/2/18
<i>Subtotal of revolving</i>	\$ 2,135,085.00	66.72%		
TOTAL FUNDS COMMITTED (as of December 31, 2017)	* \$ 3,116,221.00	97.38%		
TOTAL AVAILABLE FOR 15 YEARS (to collect)	\$ 3,200,000.00			

6-Month Report to the Wayne City Council

LB 840 Funds Committed (as of 06/30/2022)

LB840 PROJECT NOTES

- * Interest accrued/paid on the Fund's borrowed money is NOT included in this total
- a Committee recommended \$38,000 zero percent interest loan; Council granted \$2500 of this after the City requested a rain garden in the parking lot.
- b Committee recommended \$75,000; only \$72,686 was spent.
- c Committee recommended \$1,250; Council approved \$2,750.
- d Legally, this is a grant (not required to be paid back); however, the Wayne Hospitality Group LLC plans to honor their previous request's terms of 15 years at 0% interest.
- e Committee recommended only an interest bearing loan for \$43,019; Council approved \$43,019 for an interest bearing loan and \$43,019 for a performance based loan. (all is now a loan)
- f Committee recommended and Council approved \$64,200; only \$7,132 was used after the program closed.
- g Committee recommended a 5 yr loan; Council approved the grant request.
- h Initial housing request from the City was approved; further action by Council allocated housing funds from a different source
- i Revision of previous approval (10/2011) - increased loan guarantee from \$150,000 to \$250,000 (07/2012); allocation became void after 12/31/12 if no company was in Wayne
- j Committee/Council approved \$26,000 for wastewater improvements - only \$13,285 was used
- k Committee recommended \$75,000 loan with interest half of its conventional rate; Council changed the loan to 0% interest
- l \$500,000 was set aside for tornado relief (up to 10% of payroll); only \$241k was used
- m Committee recommended a set number of \$28,000; the Council allowed the request of "up to" \$30,000 for signage
- n Committee recommended approval but believed other sources of funds might be available; Council took no action on this recommendation.
- o Originally a performance based loan; FTE requirement not met so is now a loan
- p Committee recommended approval; City Council did not approve
- q Committee and Council approved; projects were never completed
- r Committee originally recommended \$100,000 loan for 5 yrs at 3%; City of Wayne approved \$150,000 loan for 15 yrs at 0%; Wayne Country Club re-applied to reflect changes to the project scope/bid received; Committee recommended \$210,000 for 15 yrs at 0%; Council approved new loan of \$210,000 for 15 years at 0%;
- s Committee recommended \$250,000 loan for 10 yrs at 3%; Council approved loan of \$350,000 at 3% for 10 years on 10/18/2016; Council approved new terms on 07/03/2018:
 - A \$350,000 loan;
 - 3% interest rate;
 - Defer principal payments for 3 years, but require interest payments throughout the deferment period, with the first deferred interest payment being delayed until November 1, 2018;
 - Changing the loan repayment period from 10 years to 15 years;
 - Deferment period would be from March 1, 2018, to February 28, 2021;
 - Repayment period for principal and interest would begin on March 1, 2021; and
 - Final payment would be due March 1, 2035.

RESOLUTION NO. 2022-47

**A RESOLUTION APPROVING THE ACQUISITION OF REAL ESTATE
LOCATED IN THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA, FROM
VIRGIL KARDELL.**

WHEREAS, City staff has concluded negotiations for the acquisition of land located in the City of Wayne, Wayne County, Nebraska, legally described as follows:

Lot 5, Kardell East 14th Street Addition to the City of Wayne, Wayne County,
Nebraska

from Cornerstone, LLC (Virgil Kardell) for the sum of \$1.00 and other valuable consideration, and that the Mayor is hereby authorized to execute the necessary documents to carry out the acquisition thereof.

PASSED AND APPROVED this 2nd day of August, 2022.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

PRELIMINARY LEVY ALLOCATION FROM CITY OF WAYNE
RESOLUTION NO. 2022-1

WHEREAS, Nebraska Statute 77-3443 (3) requires all political subdivisions subject to city levy authority to submit a preliminary request for levy allocation to the city council; and

WHEREAS, the Wayne City Council is the levy authority for the Wayne Municipal Airport.

NOW, THEREFORE BE IT RESOLVED that the following is said Board's tax request for budget year 2022-2023:

FUND TAX REQUEST	
General Fund	<u>\$ 69,337</u>
TOTAL	<u>\$ 69,337</u>

BE IT FURTHER RESOLVED that said Public Airport has repayment of Interest-Free Loans from the Department of Aeronautics for \$30,876 and this amount is not included in the above tax request as allowed by law.

NOW, THEREFORE BE IT RESOLVED that the following is said Board's tax request for budget year 2022-2023:

TOTAL

Motion by David Ley to adopt Resolution NO. 2022-1. Seconded by Mark Putnam.

Voting yes were: Meyer, Ley, Hammer, Schmitz, Putnam

Voting no were: — none —

Motion carried.

Date this 11th day of July, 2022.



Chairman



Secretary

RESOLUTION NO. 2022-48

A RESOLUTION AUTHORIZING THE ALLOCATION OF PROPERTY TAXES TO THE WAYNE AIRPORT AUTHORITY.

WHEREAS, the Governor signed LB989 of the 1997 Session into law, and this law authorizes the City Council to allocate property taxes to the Wayne Municipal Airport Authority; and

WHEREAS, LB 1114 allows Airport Authorities to adopt a resolution requesting that the governing body of the city include their tax levy in the city budget; and

WHEREAS, the Wayne Municipal Airport Authority has requested \$69,337 in property tax allocation; and

WHEREAS, the Mayor and Council of the City of Wayne, Nebraska, hereby finds and determines that it is in the best interest of the City to allocate \$69,337 in property taxes to the Wayne Municipal Airport Authority.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Wayne, Nebraska, that the City of Wayne allocates \$69,337 to the Wayne Municipal Airport Authority.

PASSED AND APPROVED this 2nd day of August, 2022.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

RESOLUTION NO. 2022-49

**A RESOLUTION ADOPTING THE DRUG AND ALCOHOL TESTING POLICY
- ZERO TOLERANCE AS RECOMMENDED BY THE NEBRASKA
DEPARTMENT OF TRANSPORTATION.**

WHEREAS, the Nebraska Department of Transportation (NDOT) has informed the City of Wayne that Federal drug and alcohol regulations have recently changed; and

WHEREAS, the NDOT is recommending that the Drug and Alcohol Testing Policy for Zero Tolerance be amended to conform to the new regulations.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wayne, Nebraska, that the "Drug and Alcohol Testing Policy for Zero Tolerance," which is attached hereto and incorporated herein by reference, is hereby approved, and shall be effective upon the passage of this Resolution.

APPROVED AND ADOPTED this 2nd day of August, 2022.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

DRUG AND ALCOHOL TESTING POLICY

Wayne Public Transit

Adopted as of : Date _____

PURPOSE

- 1) The Wayne Public Transit provides public transit and paratransit services for the residents within the City Limits of Wayne, Nebraska. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, Wayne Public Transit declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.
- 2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath/saliva alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result, including an alcohol concentration of 0.04 or greater, or a refusal to test. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath/saliva specimens.
- 3) Any provisions set forth in this policy that are included under the sole authority of Wayne Public Transit and are not provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of Wayne Public Transit will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

A. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties. This includes applicants or transferee's, who performs or will perform safety sensitive functions. See Attachment A for a list of employees and the authority under which they are included.

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A safety-sensitive function includes:

- Operating a revenue service vehicle including when not in revenue service.
- Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License (CDL).
- Controlling dispatch of movement of a revenue service vehicle.
- Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used in revenue service.
- Carrying a firearm for security purposes.

A volunteer is a covered employee if:

- The volunteer is required to hold a commercial driver's license to operate the vehicle; or
- The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

An individual will be considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform or immediately available to perform such functions.

Contractors subject to the requirements if:

- An individual or organizations that provide services for an FTA covered "employer" is consistent with a specific understanding or arrangement, which can be evidenced by a written agreement and such contractors are also considered employers within the FTA definition of "employer".

B. DEFINITIONS

Accident: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

- a. An individual dies;
- b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- c. With respect to an occurrence in which the public transportation vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

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- d. With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation.

Adulterated specimen: A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

Aliquot: A fractional part of a specimen used for testing, it is taken as a sample representing the whole specimen.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Covered Employee Under FTA Authority: An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function. A volunteer is a covered employee if the volunteer is required to hold a commercial driver's license to operate the vehicle or performs a safety-sensitive function and receives remuneration in excess of his or her actual expenses incurred while engaged in the voluntary activity. (See Attachment A for a list of covered employees).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

DOT, The Department, DOT Agency: These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the

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Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.

Dilute specimen: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling damage: Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- (1) Inclusion. Damage to a motor, where the vehicle could have been driven, but would have been further damaged if so driven.
- (2) Exclusions.
 - a. Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
 - b. Tire disablement without other damage even if no spare tire is available.
 - c. Headlamp or taillight damage.
 - d. Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

Evidentiary Breath Testing Device (EBT): A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid

Invalid Result: The result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

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Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT.

Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO): A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has creatinine and specific gravity values that are lower than expected for human urine.

Negative result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug, or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative test result: A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites, and or invalid.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function): A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive result: The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

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Prohibited drug: Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service.

- (1) vehicle and
- (2) Carrying a firearm for security purposes.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Substituted specimen: A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Vehicle: A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit vehicle is a vehicle used for public transportation or for ancillary services.

Verified test: A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

C. EDUCATION AND TRAINING

- 1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms

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of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use. This information will include the following:

- a. Display and distribution of informational material
 - b. Display and distribution of community service hot-line number for employee assistance.
- 2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

D. PROHIBITED SUBSTANCES

- 1) Prohibited substances addressed by this policy include the following.
- a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana and/or recreational ma, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

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- b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Wayne Public Transit supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.
- c. Alcohol: The use of beverages containing alcohol (including mouthwash, medication, food, candy) or any other substances containing alcohol in a manner which violates the conduct listed in this policy is prohibited.

E. PROHIBITED CONDUCT

- 1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.
- 2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.
- 3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol
- 4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.
 - a. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee hasn't consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, if a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT-FTA regulations require the

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employee to be removed from the performance of safety-sensitive duties until:

- i. The employee's alcohol concentration measures less than 0.02; or
 - ii. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.
- 5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
 - 6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
 - 7) Wayne Public Transit, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.
 - 8) Consistent with the Drug-free Workplace Act of 1988, all Wayne Public Transit employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including transit system premises and transit vehicles.

F. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the Wayne Public Transit management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

G. TESTING REQUIREMENTS

- 1) Analytical urine drug testing and breath/saliva testing for alcohol will be conducted as required by 49 CFR Part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.
- 2) A drug test can be performed any time a covered employee is on duty. A reasonable suspicion, random, or follow-up alcohol test can only be

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performed just before, during, or after the performance of a safety-sensitive job function. Under Wayne Public Transit authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

- 3) All covered employees will be subject to urine drug testing and breath/saliva alcohol testing as a condition of ongoing employment with Wayne Public Transit. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

H. DRUG TESTING PROCEDURES

- 1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.
- 2) The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected by a trained collection site person using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form (CCF) and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at an HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) or Liquid Chromatography/Mass Spectrometry (LC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS or LC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.
- 3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer (MRO). An MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will

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attempt to contact the employee to notify the employee of the non-negative laboratory result and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to Wayne Public Transit. If a legitimate explanation is found, the MRO will report the test result as negative.

- 4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.
- 5) Any covered employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Wayne Public Transit will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample, however Wayne Public Transit will seek reimbursement for the split sample test from the employee.
- 6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.
- 7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so, requested by the employee through the MRO, or by the employer, by the MRO, or by the relevant DOT agency.

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8) Observed collections

- a. Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:
 - i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Wayne Public Transit that there was not an adequate medical explanation for the result;
 - ii. The MRO reports to Wayne Public Transit that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
 - iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).
 - iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
 - v. The temperature on the original specimen was out of normal range;
 - vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
 - vii. Directed by the DER to perform an observed collection.
 - viii. All follow-up-tests; or
 - ix. All return-to-duty tests

I. ALCOHOL TESTING PROCEDURES

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- 1) Alcohol testing will be performed at locations determined by the Company in a private setting. The testing technician, who has been trained, will ask the donor to verify their identity and the information will be recorded on a DOT Alcohol Testing Form (ATF).
- 2) A breath or saliva testing device approved by the federal government will be used for all alcohol testing. Two tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted after at least a 15-minute waiting period from the completion of the screening test. The driver and the individual conducting the confirmation breath test (the BAT) complete the alcohol testing form to ensure that the results are properly recorded.
- 3) The confirmation test, if required, must be conducted using an Evidential Breath Testing device (EBT) that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results.
- 4) A confirmation test result under 0.02 means the driver has passed. A confirmation alcohol concentration level of 0.02 or higher will result in the driver's removal from safety-sensitive functions. The DOT prohibits any driver whose confirmation test registers 0.02 or greater but less than 0.04 from performing or from continuing to perform safety-sensitive functions until the driver's next regularly scheduled duty period, but no less than twenty-four (24) hours. If the confirmation level is 0.04 or more, or if the driver refuses to cooperate, the driver is in violation of DOT alcohol regulations and subject to the Consequences for Policy Violation as described in section Q of this policy and Post-Violation/Return-to-Duty Procedures as outlined in the regulations. Certified BATs and STTs will conduct all alcohol tests.
- 5) If a driver tries but fails to provide a breath specimen adequate for testing, the driver will be asked to try again. If the driver still does not provide an adequate specimen, the driver's failure will be noted on the ATF and the Company's DER will be informed. The driver will be removed from performing "safety-sensitive" functions and required to see a physician, acceptable to the Company, within five days for an evaluation. If a physician determines that there was no medical reason for not providing the sample, this will be considered a refusal to test, and the employee will be immediately removed from performing safety-sensitive functions and could result in termination of employment.

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- 6) Wayne Public Transit affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.
- 7) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

J. PRE-EMPLOYMENT TESTING

- 1) All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.
 - a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.
 - b. An employee shall not be placed, transferred, or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.
 - c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded, and the applicant will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
 - d. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA authority or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.

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- e. If a pre-employment test is canceled, Wayne Public Transit will require the applicant to take and pass another pre-employment drug test.
- f. In instances where an FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
- g. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- h. Applicants are required (even if ultimately not hired) to provide *Wayne Public Transit* with signed written releases requesting USDOT drug and alcohol records from all previous, USDOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. *Wayne Public Transit* is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a USDOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a USDOT covered employer, the applicant must provide *Wayne Public Transit* proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

K. REASONABLE SUSPICION TESTING

- 1) All Wayne Public Transit FTA covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol

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misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under Wayne Public Transit authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

- 2) Wayne Public Transit shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.
- 3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the Wayne Public Transit.
- 4) If a reasonable suspicion alcohol test is not administered within two (2) hours following the reasonable suspicion determination, the Company will document the reasons why the test was not promptly administered. If the test is not administered within eight (8) hours following the reasonable suspicion determination, the Company will no longer attempt to administer an alcohol test and will document the reasons or its inability to do so.
- 5) Notwithstanding the above testing requirements, a covered employee may not report for duty or remain on duty requiring the performance of a safety-sensitive function if that employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse. Any such covered employee will not be allowed to perform or continue to perform a safety-sensitive function until the employee undergoes an alcohol test yielding an alcohol concentration level of less than 0.02; or the start of the employee's next regularly scheduled duty period, but not less than eight hours following the reasonable suspicion determination.

L. POST-ACCIDENT TESTING

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- 1) FATAL ACCIDENTS – A covered employee will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle, whether or not the vehicle is in revenue service at the time of the accident, that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

- 2) NON-FATAL ACCIDENTS - A post-accident test of the employee operating the public transportation vehicle will be conducted if an accident occurs and at least one of the following conditions is met:
 - a. The accident results in injuries requiring immediate medical treatment away from the scene unless the covered employee can be completely discounted as a contributing factor to the accident.
 - b. One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision, will be tested.

As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

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An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

The decision not to administer a drug and/or alcohol test will be based on the company's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that Wayne Public Transit is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), Wayne Public Transit may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

M. RANDOM TESTING

- 1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees. Employees who may be covered under company authority will be selected from a pool of non-DOT-covered employees.
- 2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA administrator. The current year testing rates can be viewed online at: [Random Testing Rates | US Department of Transportation](#).

- 3) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an

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equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

- 4) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under Wayne Public Transit authority.
- 5) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can only be performed just before, during, or just after the performance of a safety sensitive duty. However, under Wayne Public Transit authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.
- 6) Employees are required to proceed immediately to the collection site upon notification of their random selection.

N. RETURN-TO-DUTY TESTING

Wayne Public Transit will terminate the employment of any employee that tests positive or refuses a test as specified in section Q of this policy. However, in the rare event an employee is reinstated with court order or other action beyond the control of the transit system, the employee must complete the return-to-duty process prior to the performance of safety-sensitive functions. All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety. The SAP will determine whether the employee returning to duty will require a return-to-duty drug test, alcohol test, or both.

O. FOLLOW-UP TESTING

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing

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following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion, and return-to-duty testing.

In the instance of a self-referral or a management referral, the employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-USDOT follow-up tests and all paperwork associated with an employee's return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations will be conducted under company authority and will be performed using non-DOT testing forms.

P. RESULT OF DRUG/ALCOHOL TEST

- 1) Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals (SAP) for assessment, and will be terminated.
- 2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- 3) Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result and a direct act of insubordination and shall result in termination and referral to a list of USDOT qualified SAPs. A test refusal includes the following circumstances:
 - a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
 - b. Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
 - c. Fail to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.

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- d. In the case of a directly observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- e. Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- f. Fail or decline to take a second test as directed by the collector or the employer for drug testing.
- g. Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
- h. Fail to cooperate with any part of the testing process.
- i. Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly observed test.
- j. Possess or wear a prosthetic or other device used to tamper with the collection process.
- k. Admit to the adulteration or substitution of a specimen to the collector or MRO.
- l. Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- m. Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

- 4) An alcohol test result of ≥ 0.02 to ≤ 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder or the workday whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to a NONDOT alcohol test with a result of less than 0.02 BAC.
- 5) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
 - a. Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return-to-work agreement.
 - b. Failure to execute or remain compliant with the return-to-work agreement shall result in termination from Wayne Public Transit employment.
 - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as

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described in Section P of this policy; however, all follow-up testing performed as part of a return-to-work agreement required under section Q of this policy is under the sole authority of Wayne Public Transit and will be performed using non-DOT testing forms.

- c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return-to-work agreement will be conducted under company authority and will be performed using non-DOT testing forms.**
 - d. **A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.**
 - e. Periodic unannounced follow-up drug/alcohol testing conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy.
 - f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Wayne Public Transit.
 - g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- 6) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

Q. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

R. PROPER APPLICATION OF THE POLICY

Wayne Public Transit is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

S. INFORMATION DISCLOSURE

- 1) Drug/alcohol testing records shall be maintained by the Wayne Public Transit Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.
- 2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.
- 3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need-to-know basis.
- 4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- 5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.
- 6) Records will be released to the National Transportation Safety Board during an accident investigation.
- 7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
- 8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- 9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Wayne Public Transit or the employee.

- 10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken
- 11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This Policy was adopted by the _____ on
Date: _____

Wes Blecke – City Administrator _____

Cale Geise – City of Wayne Mayor _____

Attachment A

Job Title Job Duties Testing Authority

Attachment B Contacts

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

Wayne Public Transit Drug and Alcohol Program Manager

Name:

Title:

Address:

Telephone Number:

Medical Review Officer

Name:

Title:

Address:

Telephone Number:

Substance Abuse Professional

Name:

Title:

Address:

Telephone Number:

HHS Certified Laboratory Primary Specimen

Name:

Address:

Telephone Number:

HHS Certified Laboratory Split Specimen

Name:

Address:

Telephone Number:

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July 26, 2022

City Police Department
City of Wayne
306 Pearl Street
PO Box 8
Wayne, NE 68787

To whom it may concern;

On behalf of the Office of Student Activities at Wayne State College, I am writing to request a parade permit for the College's annual Homecoming Parade/Band Day Competition scheduled for Saturday, October 8th, 2022.

We are requesting that Main Street (Hwy 15) between 1st Street and 11th Street be closed on October 8th for the parade. The parade line-up on 1st Street will begin at 8am with the parade beginning promptly at 9:30am. We anticipate the parade will conclude at approximately 11:30am.

Wayne State Campus Security will assist the City Police Department with securing the parade route and the affected street crossings. Please contact me by email at palevin1@wsc.edu or by phone at 402-375-7013 if you have any questions or concerns regarding our request.

Thank you for your time and consideration. We look forward to working with the City Police Department to facilitate another eventful parade.

Respectfully,

A handwritten signature in black ink, appearing to read 'Pammy J. Levinson'. The signature is fluid and cursive, written over a light blue horizontal line.

Pammy Levinson
Student Activities Coordinator
Wayne State College
Palevin1@wsc.edu
402-375-7013

RESOLUTION NO. 2022-50

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

WHEREAS, the annual Wayne State College Student Activities Board Wildcat Days (Homecoming) Parade, which will include Band Day, will be held on Main Street from 1st Street to 11th Street on Saturday, October 8, 2022, from 8:00 a.m. to approximately 11:30 a.m. or until immediately after the parade, at which time the City will relinquish control of this section of Highway 15 back to the Nebraska Department of Transportation; and

WHEREAS, Wayne State College and Wayne Area Economic Development, in compliance with City of Wayne policy for events held on public right-of-way, will provide special events insurance coverage to indemnify, defend, and hold harmless the City of Wayne and the State of Nebraska from all claims, demands, actions, damages, and liability, including reasonable attorney's fees, that may arise as a result of the special event; and

WHEREAS, during the above time periods of these events, the City of Wayne acknowledges all duties set out in subsection (2) of LB589/N.R.S. Section 39-1359; and

WHEREAS, advanced warning signs and/or barricades will be used to notify motorists of closure and detour traffic and control officers will be placed at all major intersections to reroute traffic.

NOW, THEREFORE, BE IT RESOLVED, that during the above time periods of these events, the City of Wayne, Nebraska, accepts and will carry out all duties set out in subsection (2) of LB589/N.R.S. Section 39-1359.

BE IT FURTHER RESOLVED, by the Mayor and Council of the City of Wayne, Nebraska, that if a claim is made against the State, it shall indemnify, defend, and hold harmless the State from all claims, demands, actions, damages, and liability, including reasonable attorney's fees, that may arise as a result of the special event.

PASSED AND APPROVED this 2nd day of August, 2022.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

Note: Contracts for Services are public records which are generally subject to statutory public disclosure and public website posting requirements.

CONTRACT FOR SERVICES

(Short Form)

Board of Trustees of the Nebraska State Colleges
Chadron State, Peru State, and Wayne State Colleges

This Contract is made by and between the Board of Trustees of the Nebraska State Colleges doing business as Wayne State College (the "College"), and the City of Wayne, (the "Contractor").

The parties agree that the Contractor will perform the following work for the College as described herein in exchange for the financial consideration set forth below.

Note: The Contractor shall be an independent contractor and not a College employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any Nebraska revenue and taxation law, Nebraska workers' compensation law and Nebraska unemployment insurance law.

Contract Terms.

Description of Services

The City of Wayne will grant a parade permit and assist in the closing of Highways 15 and 35 for the College's Homecoming/Band Day Parade. The parade will start at 1st Street and Main Street at 9:30 am and continue down Main Street, ending at the Willow Bowl (11th and Main). Parade will be done at approximately 11:30 am.

Payment Amount

No charge from the Contractor

Payment Terms

N/A

Dates for Service Commencement and Completion

Saturday, October 8th, 2022 from approximately 9:30 am until 11:30 am.

Liability Insurance Requirements.

The College is required to carry liability insurance in the amount of (1) one million dollars (\$1,000,000) per occurrence with a (3) three million dollar (\$3,000,000) umbrella. The College's insurance policy shall be primary and non-contributory. The Contractor shall be named as an additional insured party on the policy and the certificate of insurance shall reflect that the policy waives its right of subrogation against the College. A copy of the certificate shall be provided to the Contractor.

New Employee Work Eligibility Status. One box below must be selected and marked.

- ✓ **Employee Work Eligibility Status.** The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
- The Contractor is an individual, LLC or sole proprietorship. The Contractor must complete the "United States Citizenship Attestation Form," available on the Department of Administrative Services website at <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20State%20Attestation%20Form%20English%20and%20Spanish.pdf>. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide US Citizenship and Immigration Services (USCIS) documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. *The attestation form and USCIS documents (if applicable) must be attached to the Contract.*

The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the Contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

Prompt Payment Act. In the event any amount due under this Contract remains unpaid for forty-five (45) days after the due date, the unpaid amount shall bear interest from the 31st day after the due date at the rate specified in the Prompt Payment Act, Neb. Rev. Stat. §§81-2401 to 81-2408.

Non-Discrimination. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended, the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, as amended, and Board Policy 5000 in that there shall be no discrimination against any employee who is employed in the performance of this Contract, or against any applicant for such employment, because of age, color, national origin, race, religion, disability, sex, sexual orientation, or gender identity. This provision shall include, but not be limited to employment, promotion, demotion, transfer, recruitment, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor further agrees to insert a similar provision in all subcontracts for services allowed under this Contract.

ADA & Drug-Free Workplace Requirements. All provisions of this Contract are subject to the Americans with Disabilities Act (ADA). Further, the Contractor certifies that the Contractor operates a drug-free workplace and, during the term of this Contract, will be in compliance with the provisions of the Drug-Free Workplace Act of 1988.

Technology Access. All contracts, that include provisions of technology products, systems, and services, including data, voice, and video technologies, as well as information dissemination methods, shall comply with the Nebraska Technology Access Standards adopted pursuant to Neb. Rev. Stat. §73-205. These Standards are available for viewing on the Web at <https://nitc.nebraska.gov/standards/index.html>, and are incorporated into this Contract as if fully set forth herein.

Confidentiality. Contractor acknowledges that performance under the terms of this Contract may involve receipt of user data from the College. Contractor will utilize user data from the College only in the furtherance of this Contract. Contractor will notify College within twenty-four (24) hours of becoming aware of any data breach of its systems which expose confidential College user data. Contractor will reimburse the College for any and all expenses incurred by the College as a result of a data breach of Contractor's systems.

If the user data consists of confidential student information protected by The Family Educational Rights and Privacy Act (FERPA) the Contractor agrees and acknowledges that Contractor is acting as an officer of the College

for the purposes of this Contract as defined by Nebraska State College Board Policy 3650 (at the time of this writing available at: <https://www.nscs.edu/policy-manual/detail/39-3650-student%20records>) and will take necessary steps to safeguard the confidential student information.

The Contractor further acknowledges the obligation and agrees to comply with the General Data Protection Regulation (GDPR) privacy laws in regard to the collection, processing, storage, security, management, transfer and erasure of user data.

Designated College Representative. The designated College representative for purposes of monitoring and oversight of this Contract is:

<u>Amy White</u> Typed or Printed Name	<u>402-375-7322</u> Telephone	<u>Amfran01@wsc.edu</u> Email Address
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Signatures:

CONTRACTOR	COLLEGE	SYSTEM OFFICE
<u>Signature</u>	<u>Signature</u>	<u>Signature</u>
<u>Printed Name</u>	<u>Angela Fredrickson</u>	<u>Printed Name</u>
<u>Title</u>	<u>Vice President for Administration and Finance</u>	<u>Title</u>
<u>Date</u>	<u>Date</u>	<u>Date</u>