

CITY OF NORFOLK, NEBRASKA

The Mayor and City Council of the City of Norfolk met in regular session in the Council Chambers, 309 West Madison Avenue, Norfolk, Nebraska on the 18th day of December, beginning at 7:30 p.m.

Following a moment of silence and the Pledge of Allegiance to the United States of America, Mayor Gordon Adams called the meeting to order. Roll call found the following Councilpersons present: Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss, and Saunders. Absent: None.

Staff members present were: City Administrator Mike Nolan, Director of Public Works Dennis Smith, City Attorney Clint Schukei, City Clerk Beth Deck, Prevention Manager Scott Cordes, Police Chief Bill Mizner and Operations Manager Gary Miller.

The Mayor presided and the City Clerk recorded the proceedings.

The Mayor informed the public about the location of the current copy of the Open Meetings Act posted in the City Council Chambers and accessible to members of the public.

Notice of the meeting was given in advance thereof by publication in the Norfolk Daily News, Norfolk, Nebraska, the designated method of giving notice, as shown by affidavit of publication.

Notice was given to the Mayor and all members of the Council and a copy of their acknowledgement of receipt of notice and agenda is attached to the minutes. 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 convened meeting was open to the public.

Councilperson Brenneman requested Items G-6 and G-8, related to the National Wild Turkey Federation, be removed from the consent agenda and considered on the regular agenda.

Councilperson Fauss moved, seconded by Councilperson Wilson to approve the consent agenda with the removal of Item G-6, consideration of an agreement with the Northeast Nebraska Beards and Spurs Chapter of the National Wild Turkey Federation for the use of the auditorium for their annual fund raiser banquet on February 3, 2007, and Item G-8, consideration of approval of a Special Designated Liquor License for the Northeast Nebraska Beards & Spurs Chapter of the National Wild Turkey Federation to sell beer, wine and distilled spirits at the city auditorium on Saturday, February 3, 2007, from the consent agenda. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

Councilperson Van Dyke moved, seconded by Councilperson Fauss to approve the regular agenda with the addition of Items G-6 and G-8. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

SPECIAL PRESENTATIONS

The Mayor accepted a plaque at the National League of Cities conference in Reno, Nevada presented by the National League of Cities to honor the City of Norfolk, Nebraska for fifty years

of membership and dedicated service in shaping and advocating national municipal policy and helping to strengthen and promote communities of all sizes.

A town hall meeting was held to receive comments on the Northeast Nebraska Solid Waste Coalition (NNSWC) budget and rates for fiscal year ending September 30, 2007. Finance Officer Randy Gates provided information to the Mayor and City Council. The Northeast Nebraska Solid Waste Coalition Interlocal Agreement requires town hall meetings be held in the three largest member communities each year to review the Coalition's proposed budget and rates.

Gates said the most significant change in the NNSWC budget is a decrease of \$2.30 in the tipping fee from the current rate of \$27.30 per ton to \$25.00 per ton effective for billings after February 1, 2007. The other big change in the fiscal year 2006-2007 budget is the \$6,695,000 refunding bond issue that was budgeted during 2005-2006. Due to increases in interest rates before the refunding, this refunding never occurred. The next largest change is the reduction in closure/post-closure funding -- \$200,000 was budgeted in fiscal year 2005-2006, and only \$12,000 in fiscal year 2006-2007. This is comparable to the actual 2005-2006 funding of \$11,894. The reason for the large decrease in closure/post-closure funding is the vertical expansion approved by the Department of Environmental Quality (DEQ) last year. This vertical expansion substantially increased landfill life and changed the expected closure date from 2027 to 2049. These funds will remain invested and earn interest 22 years longer than originally anticipated, reducing the annual funding requirements dramatically. Another significant change in revenues is an increase in interest income from \$105,500 last year to \$164,200 for 2006-2007. This is caused by both an increase in fund balance and an increase in budgeted interest rate from 4% to 5%. The closure/post-closure fund transfer decreases \$188,000 due to the vertical expansion approved last year by DEQ.

Councilperson Van Dyke stated the actual fee total is not decreasing because the City is increasing the Transfer Station fee.

Gates explained the City has had difficulty keeping the Transfer Station fund balance up because the packing plant closed. A \$1.00 increase in the Transfer Station fee was included in the budget and another \$1.00 increase was anticipated in FY 2007-2008. However, ratepayers, in general, like it better when rates are stable and this allows the City to maintain the rates.

Councilperson Lange questioned how close the costs of handling tonnage is related to the fees charged.

Gates stated the biggest variable cost at the landfill is the \$4.00/ton payable to Waste Connections to operate the landfill and \$1.25/ton paid to the State Department of Environmental Quality. Most of the budget is related to fixed costs that don't vary a lot based on tonnage, at least in the short term. Gates explained the fixed portion of Waste Connections fee is \$480,000 annually.

Councilperson Coy questioned how long the contract is with Waste Connections.

Public Works Director Dennis Smith stated the NNSWC can give Waste Connections a 90-day notice to terminate the contract and Waste Connections can do the same to the NNSWC. The \$4.00 variable rate fee is the same as when the landfill was opened.

City Administrator Mike Nolan said the rate fee is negotiable but the reality is that negotiations have constraints. The lack of flow control created an entirely new set of relationships in solid

waste and Waste Connections has a large presence in Nebraska. Nolan stated several NNSWC board members recently suggested the NNSWC try to recruit more flow for the landfill but that becomes a 2-sided process. Nolan stated the NNSWC doesn't want to take flow from Waste Connections because they could certainly do the same to the NNSWC.

No one else spoke regarding the Northeast Nebraska Solid Waste Coalition budget and rates for fiscal year ending September 30, 2007. This item was for informational purposes only.

CONSENT AGENDA

The City Council approved the minutes of the December 4, 2006 City Council meeting as printed.

The City Council adopted Resolution No. 2006-45 approving the correction of an erroneous legal description contained in Resolution No. 2001-47, which declared the **Braasch Avenue** Redevelopment Project area as blighted and substandard.

The City Council adopted Resolution No. 2006-46 releasing the ten foot sanitary sewer easement on each side of the common lot line between Lots 1 and 2, Block 2, of **Green Meadow Addition**, Madison County, Nebraska, being a part of the SE ¼ of the SW ¼ of Section 20, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska.

The City Council adopted Resolution No. 2006-47 clarifying the established setback requirements on Lots 1 through 5, Block 3 **Nor-Park** Industrial Area that was approved at the November 6, 2006 City Council meeting.

The City Council approved the appointments of Dale Coy and Jim Lange to the Public Safety **Subcommittee**; Vicki Saunders and Jim Brenneman to the Public Works Subcommittee; Karl Reeder and Ivan Van Dyke to the Planning & Community Development Subcommittee; and Erik Wilson and Dave Fauss to the Culture & Recreation Subcommittee.

The City Council approved the Mayor's reappointment of Karen Indra to the **Civil Service** Commission for a term expiring December 2011.

The City Clerk was authorized to advertise for the purchase of **composting equipment** for the transfer station at an estimated cost of \$100,000, and to submit a grant application to the NDEQ for reimbursement of expenditures.

The City Council authorized staff to negotiate an engineering services contract with Schemmer Associates to provide engineering and environmental services for the 16th Street from Monroe Avenue to **Affiliated Foods** Midwest project.

The City Council approved and authorized the Mayor to sign Change Order No. 1 with Elkhorn Paving of Norfolk, Nebraska for **Concrete** Improvements 2006-1 project resulting in a net decrease of \$116,970.11.

The City Clerk was authorized to advertise for bids for **demolition** of houses recently acquired by the City of Norfolk under the Community Revitalization grant program.

The City Council approved all bills on file in the amount of \$1,918,414.66.

REGULAR AGENDA

A public hearing was held to consider the **annexation** of land located generally north of **Monroe** Avenue and west of the present city limits line. Public Works Director Dennis Smith provided information to the Mayor and City Council. This area contains approximately 2.6 acres of which approximately 90% will be street right-of-way. This annexation is approximately a ¼ mile by 90 foot wide strip of land immediately west of the present city limits line from the north edge of the railroad right-of-way to Monroe Avenue. The west 80 feet of this 90 foot strip will be street right-of-way for which no taxes will be received. There may be minimal property tax from the 10 foot strip east of the street right-of-way. Affiliated Foods needs to expand to the south to move truck parking, which is planned for west of the proposed street. The street will provide access to the Affiliated Plant for truck parking and also a south exit off the Affiliated property. This project is necessary to retain Affiliated Foods, a large local employer, as well as provide for expansion. The street is expected to cost \$543,200 with half of the estimated cost planned to be paid with a Community Development Block Grant and the other half from the City Highway Allocation Fund.

No one appeared either in favor of or in opposition to the annexation and the Mayor declared the hearing(s) closed.

The Mayor requested consideration of Ordinance No. 4919 annexing a tract of land located generally north of Monroe Avenue and west of the present city limits line.

Councilperson Wilson introduced Ordinance No. 4919 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA, TO ANNEX TO SAID CITY A PART OF THE EAST ½ OF SECTION 33, TOWNSHIP 24 NORTH, RANGE 1 WEST OF THE 6TH PRINCIPAL MERIDIAN, MADISON COUNTY, NBRASKA. REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE THAT THIS ORDINANCE SHALL BE PUBLISHED IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Councilperson Brenneman seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 4919 passed on first reading only.

A public hearing was held to consider the **annexation** of land located generally south of Eisenhower Avenue and west of Victory Road. Public Works Director Dennis Smith provided information to the Mayor and City Council. This tract of ground is where the Arnold Engineering facility is currently located. Smith stated the Greater Norfolk Foundation is in the process of acquiring the vacant property on the site and has requested the property be annexed to allow the potential use of tax increment financing in the future. The City has worked with Arnold Engineering to annex the entire site.

The area contains 168.34 acres. The south portion of the property is the current Arnold manufacturing site. Specialty Protein Producers, Inc. (SPPI) plans to build a plant north of the Arnold plant to produce organic soy isolate. SPPI's plant is expected to be developed in two main phases over three years. The initial phase will consist of a 160,000 square foot building plus related manufacturing equipment with the second phase consisting of a 300,000 square foot building and equipment. SPPI requested annexation to take advantage of tax increment financing for a portion of the infrastructure cost. SPPI will be a large water user and annexation

will also allow the lower city water rates. Arnold Engineering has also agreed to this annexation.

Councilperson Van Dyke questioned who pays for the extension of streets, water and sewer to the property.

Smith stated the City will need to pay for any upgrades necessary on Eisenhower and Victory Road. There is water and sewer service to the site at this time; however, it may need to be upgraded depending on the industrial load.

No one appeared either in favor of or in opposition to the annexation and the Mayor declared the hearing(s) closed.

The Mayor requested consideration of Ordinance No. 4920 annexing land located generally south of Eisenhower Avenue and west of Victory Road

Councilperson Van Dyke introduced Ordinance No. 4920 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA, TO ANNEX TO SAID CITY A PART OF THE NORTH ½ OF SECTION 14; A PART OF THE NORTHWEST ¼ OF SECTION 13; A PART OF THE SOUTHEAST ¼ OF SECTION 11; AND A PART OF THE SOUTHWEST ¼ OF SECTION 12, ALL IN TOWNSHIP 24 NORTH, RANGE 1 WEST OF THE 6TH PRINCIPAL MERIDIAN, MADISON COUNTY, NEBRASKA. REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE THAT THIS ORDINANCE SHALL BE PUBLISHED IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Councilperson Lange seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Breneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 4920 passed on first reading only.

Public hearings were held simultaneously to consider amending Section 27-401 of City Code to allow **salvage yards** as conditional uses in Zoning District C-3 and Section 27-183 of the City Code to add salvage yards to the list of conditional uses allowed in Zoning District C-3. Prevention Manager Scott Cordes provided information to the Mayor and City Council. Cordes stated that in May of 2004, Speedway Auto (Kersten) made application to expand the operation. Speedway moved forward with a request to change the underlying zoning as well as seek a Conditional Use Permit to allow for the expansion. Controversy surrounded the process in 2004. A compromise was made to allow the I-1 original request to be modified to C-3. As part of the move to C-3 zoning, Speedway applied for a Conditional Use Permit and a City Code amendment was requested to allow that to happen. The City Council denied the request to allow a salvage yard as a Conditional Use in zoning C-3. Speedway Auto operates as a non-conforming use but is grandfathered into the City. Kersten purchased land next to Speedway Auto but the property is landlocked and Kersten wants to expand the operation. Kersten has fenced the property and made other improvements and desires to stay long-term in the community. Cordes stated meetings were held with property owners in the area regarding the request.

Cordes explained the City Attorney drafted language to accommodate Speedway Auto specifically. The language would forbid any new salvage yard; it only allows expansion of an existing salvage yard and no other salvage yards exist that would be affected by the ordinance. Cordes provided a map showing the area Kersten is desirous of expanding the operation into.

Councilperson Saunders questioned when the meetings were held with neighbors.

Cordes stated the most recent meeting was held about three months ago with area property owners. Cordes said Al Rajae was the most out-spoken person against the proposed expansion.

Al Rajae, 1706 Eldorado Road, spoke in opposition to the proposed expansion of Speedway Auto. Rajae stated elected officials should not be “taylor-making” an ordinance for a business that is operating under the grandfather clause. Rajae said other businesses in Norfolk would like to have their grandfather clause also changed. Rajae wants “to put a stop to this” to be able to “move on with the development on my property” which has been on hold for the past two years. Rajae said Kersten is operating the property without approval and the operation should not be at that location. Rajae owns a lot of property in that area and plans to make it a retail hub for Norfolk with the Highway 35 widening project. Rajae said the forefathers of Norfolk “saw that coming and did not want the salvage yard at that location”. Rajae will not develop the area if the salvage yard is allowed to expand.

Councilperson Coy visited with Kersten and said Speedway Auto has a fence completely surrounding the property. Kersten still has possession of the property, whether there are cars there or not.

Rajae said the area would be great for industrial development. Rajae said businesses do not want to be located next to a salvage yard. Rajae questioned why elected officials are allowing Speedway Auto “to stay at that location for good?”

Councilperson Saunders said neighbors object to the expansion. Saunders said the salvage yard is the first thing a person sees when coming to Norfolk from that direction and it is “somewhat of an eyesore.”

Rajae said the reason why businesses are grandfathered is to not promote expansion. Rajae said Kersten has “turned the salvage yard into one of the best in the area” and commended Kersten for improvements to the property. Rajae “can live the salvage yard being to the east” of the property and make the development work. However, Rajae can’t move forward with the development if the salvage yard expands.

Councilperson Reeder said the Speedway property “looks a lot better” but elected officials need to be as consistent as possible for everyone.

Coy walked the east side of Boxelder and visited door-to-door with the neighbors who would have a view of the salvage yard. None of the neighbors were opposed to the expansion. Coy said 75% of the people said Kersten made substantial improvements to the property.

Councilperson Fauss said elected officials have had a lot of discussion regarding the salvage yard. Fauss said Rajae wants to build on property located on East Norfolk Avenue and elected officials even looked at trying to find a different location for the salvage yard but nothing seemed to work.

Pat O’Gorman, 902 North 37th Street, is opposed to the salvage yard expansion. O’Gorman has concerns with extinguishing fires in the salvage yard. O’Gorman feels Kersten runs a good operation but should not be allowed to expand.

Fauss questioned who brought this issue forward.

Cordes said Kersten brought the issue forward. Cordes stated Kersten has done “what he said he would do” by putting up a privacy fence.

Councilperson Van Dyke commended Cordes and Schukei on trying to work with citizens. However, Van Dyke was not happy with changing the zoning to C-3 and a grandfathered property should not be allowed to expand.

Councilperson Lange said Kersten knew the property was grandfathered when the additional property was purchased three years ago. Lange is “totally against” expansion of the salvage yard. If expansion occurs, it needs to be done in the appropriate zoning area.

Councilperson Brenneman said Kersten has cleaned up the area; however, Brenneman is opposed to the expansion of a non-conforming use.

On December 5, 2006, the Norfolk Planning Commission held public hearings regarding the City Code amendments. The City Clerk read the Planning Commission’s recommendations for approval into the record.

No one else spoke either in favor of or in opposition to the City Code amendments and the Mayor declared the hearings closed.

The Mayor requested consideration of Ordinance No. 4917 amending Section 27-401 of the City Code to allow **salvage yards** as conditional uses in Zoning District C-3.

Councilperson Brenneman introduced Ordinance No. 4917 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 27-401 OF THE OFFICIAL CITY CODE TO ALLOW SALVAGE YARDS AS CONDITIONAL USES IN ZONING DISTRICT C-3; TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Councilperson Van Dyke seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Aye: Councilperson Coy. Nays: Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Absent: None. Motion failed. Ordinance No. 4917 failed on first reading.

The Mayor requested consideration of Ordinance No. 4918 amending Section 27-183 of the City Code to add **salvage yards** to the list of conditional uses allowed in Zoning District C-3.

Councilperson Van Dyke introduced Ordinance No. 4918 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 27-183 OF THE OFFICIAL CITY CODE TO ADD SALVAGE YARDS TO THE LIST OF CONDITIONAL USES ALLOWED IN ZONING DISTRICT C-3; TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Councilperson Wilson seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Aye: Councilperson Coy. Nays: Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Absent: None. Motion failed. Ordinance No. 4918 failed on first reading.

A public hearing was held to consider the appeal of Robert G. Thomas, on behalf of WJAG AM & KEXL FM, regarding the Conditional Use Permit for NE-Colorado Cellular, Inc., dba Viaero Wireless. This hearing was continued from the December 4, 2006 City Council meeting.

Prevention Manager Scott Cordes explained both parties have agreed to language added to the Conditional Use Permit resolution. The language takes away the concern raised by Robert G. Thomas. The language added was as follows: "Any interference to the STL links owned and operated by WJAG Incorporated whose cause is attributable to NE Colorado Cellular, Inc., d/b/a/ Viaero Wireless and/or co-located lessees on said tower shall be physically and financially remedied on an attributable basis by said party(s), and their assigns."

City Attorney Clint Schukei explained the City Council can either affirm, reverse or modify conditional use permits when an appeal is made. Therefore, the Council agenda packet contained three versions of the resolution. Version "A" affirms the Planning Commission Conditional Use Permit; Version "B" reverses the Conditional Use Permit; and Version "C" modifies the Conditional Use Permit.

The Mayor requested consideration of Resolution No. 2006-42 regarding the Conditional Use Permit for NE-Colorado Cellular, Inc., dba **Viaero Wireless**. Resolution No. 2006-42 was tabled at the December 4, 2006 City Council meeting.

Councilperson Lange moved, seconded by Councilperson Saunders to take Resolution No. 2006-42 from the table. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brennehan, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

Councilperson Van Dyke moved to adopt Resolution No. 2006-42, Version "C", approving the application of NE Colorado Cellular, Inc., d/b/a/ Viaero Wireless, for a Conditional Use Permit subject to terms and conditions outlined in the resolution with the following added language, "Any interference to the STL links owned and operated by WJAG Incorporated whose cause is attributable to NE Colorado Cellular, Inc., d/b/a/ Viaero Wireless and/or co-located lessees on said tower shall be physically and financially remedied on an attributable basis by said party(s), and their assigns", seconded by Councilperson Saunders. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brennehan, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Resolution No. 2006-42 was adopted.

The Mayor requested consideration of Ordinance No. 4915 amending Section 14-318 of City Code to alter the **curfew** hours for persons between the ages of sixteen (16) and seventeen (17) to coincide with the hours during which the holder of a provisional operator's permit can lawfully operate a motor vehicle and to remove the curfew for those seventeen (17) years of age. Ordinance No. 4915 passed on first reading at the December 4, 2006 City Council meeting.

Councilperson Van Dyke introduced Ordinance No. 4915 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 14-318 OF THE OFFICIAL CITY CODE TO ALTER THE CURFEW HOURS FOR PERSONS BETWEEN THE AGES OF SIXTEEN (16) AND SEVENTEEN (17) TO COINCIDE WITH THE HOURS DURING WHICH THE HOLDER OF A PROVISIONAL OPERATOR'S PERMIT CAN LAWFULLY OPERATE A MOTOR VEHICLE AND TO REMOVE THE CURFEW FOR THOSE SEVENTEEN (17) YEARS OF AGE; TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLICATION OF THIS

ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on second reading. Councilperson Lange seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 4915 passed on second reading.

Thereafter Councilperson Brenneman moved that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance which motion was seconded by Councilperson Fauss. The Mayor then stated the question "Shall Ordinance No. 4915 be passed and adopted?" Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 4915 as required by law.

The Mayor requested consideration of Ordinance No. 4916 amending Article III Section 10-28 paragraph (c), to provide for a change in the **Transfer Station operating fee**.

Councilperson Wilson introduced Ordinance No. 4916 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 10-28 OF THE OFFICIAL CITY CODE TO CHANGE THE TRANSFER STATION OPERATING FEE; TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Councilperson Fauss seconded the motion. Said ordinance was then read into the record by title by the City Clerk.

Public Works Director Dennis Smith explained Ordinance No. 4916 amends Article III Section 10-28 paragraph (c), to change the transfer station operating fee. Staff recommends an increase in the transfer station operating fee by \$1.00/ton for typical waste. This is the second annual \$1.00 increase, and a third is likely next year. Offsetting these increases is the decrease at the NNSWC landfill that occurred as a result of the recent re-permitting. The Coalition Board is scheduled to approve a \$2.30/ton rate reduction, effective February 1, 2007. The transfer station tonnage rate for typical waste is comprised of the transfer station operating fee and the landfill gate fee. Staff proposes maintaining the transfer station tonnage rate at the current \$50.55/ton by raising the station operating fee by an amount equal to the landfill gate fee reduction. This ordinance would raise the transfer station operating fee from \$23.25/ton to \$25.55/ton on February 1, at the same time the Coalition fee is reduced. This rate adjustment should not have any impact on customers as the overall rate remains unchanged.

Roll call on Ordinance No. 4916: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 4916 passed on first reading.

Councilperson Lange moved that the statutory rule requiring reading on three different days be suspended. Councilperson Wilson seconded the motion to suspend the rules. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said ordinance.

Thereafter Councilperson Lange moved that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance which motion was seconded by Councilperson Wilson. The Mayor then stated the question "Shall Ordinance No. 4916 be passed and adopted?" Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 4916 as required by law.

The Mayor requested consideration of Ordinance No. 4921 clarifying Ordinance No. 4872 as passed by the Mayor and City Council on April 17, May 1 and May 15, 2006, **annexing** the property located generally north of Eldorado Hills, Berry Hill and Westwood Additions.

Councilperson Van Dyke introduced Ordinance No. 4921 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO CLARIFY ORDINANCE NO. 4827 AS PASSED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORFOLK ON MAY 15, 2006 TO CLARIFY THAT ORDINANCE NO. 4872 ANNEXED THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ AND PART OF THE NORTHEAST $\frac{1}{4}$, ALL IN SECTION 17, TOWNSHIP 24 NORTH, RANGE 1 WEST OF THE 6TH P.M., MADISON COUNTY, NEBRASKA; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Councilperson Lange seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 4921 passed on first reading.

Councilperson Van Dyke moved that the statutory rule requiring reading on three different days be suspended. Councilperson Fauss seconded the motion to suspend the rules. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said ordinance.

Thereafter Councilperson Van Dyke moved that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance which motion was seconded by Councilperson Fauss. The Mayor then stated the question "Shall Ordinance No. 4921 be passed and adopted?" Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 4921 as required by law.

The Mayor requested consideration of Resolution No. 2006-48 amending Resolution No. 2006-31 regarding the City and Chamber **mediation** process to modify the provisions related to providing accountability during the mediation process.

Councilperson Van Dyke moved to adopt Resolution No. 2006-48 amending Resolution No. 2006-31 regarding the City and Chamber mediation to modify the provisions related to providing accountability during the mediation process, seconded by Councilperson Lange.

After the November 6, 2006 City Council meeting, Mayor Adams indicated the process would proceed to try to solve some of the issues regarding economic development issues with the Chamber of Commerce. Mayor Adams, City Attorney Clint Schukei, Chamber Board Chairman Don Polodna had a “great deal of discussion” about a mediator. The six participants have been individually interviewed by the mediator. This particular issue now comes down to whether or not a court reporter records the entire session or whether there is going to be flexibility with the three City participants and the three Chamber participants to modify that particular requirement.

Schukei stated Resolution No. 2006-28 contains four separate points with the first three points being identical to what was approved on November 6, 2006 in Resolution No. 2006-31. The six participants who have met with the mediator on December 7, 2006 were the Mayor, President of the City Council and City Administrator from the City and the Chamber Executive Director, Executive Board Chair and another Executive Board representative chosen by the Chamber of Commerce. The next paragraph of the proposed resolution talks about retaining a trained mediator and related expenses. The third paragraph provides for accountability and fairness for both sides, stating the mediation sessions will be conducted privately with the proceedings being kept by a certified court reporter and copies of the transcript will be available to the Chamber and the City.

After discussion with various participants, the proposed resolution will provide an alternative to the utilization of a court reporter as long as the alternative is agreed to in writing unanimously by the Mayor, President of the City Council and the City Administrator in advance of any mediation session.

Councilperson Fauss felt a court reporter wasn’t going to be used for the process.

Councilperson Lange felt a court reporter was going to be used for accountability with the process.

Councilperson Van Dyke agreed with Fauss and thought people wouldn’t feel free “to speak their mind” if a court reporter was present.

Fauss doesn’t think a court reporter is necessary because of the expense. Fauss feels an alternative method could be used if the meeting is going to be taped.

Councilperson Wilson feels some record of the process needs to be in place for accountability purposes. Wilson doesn’t want to pay for a court reporter. Wilson suggested an amendment to the resolution to replace the paragraph (second BE IT FURTHER RESOLVED) regarding “the proceedings kept by a certified court reporter”, as follows: “Be it further resolved that to assure accountability and fairness to both sides, the mediation sessions will be conducted privately with minutes of said sessions being kept by the Norfolk City Clerk who shall be allowed to utilize a tape recorder as is customary for preparation of the minutes. Copies of the minutes, which will be public records, will be available to the Chamber and the City.”

Councilperson Wilson moved, seconded by Councilperson Fauss to amend Resolution No. 2006-48 to replace the paragraph regarding “the proceedings kept by a certified court reporter”, as follows: “Be it further resolved that to assure accountability and fairness to both sides, the mediation sessions will be conducted privately with minutes of said sessions being kept by the Norfolk City Clerk who shall be allowed to utilize a tape recorder as is customary for preparation

of the minutes. Copies of the minutes, which will be public records, will be available to the Chamber and the City.” Coy fears this will not get resolved “because there will be handcuffs on” if the discussions are recorded.

Councilperson Coy said if the purpose of the mediation process is to resolve this issue than nothing needs to be recorded. Coy stated what “happens in that room should stay in that room”. Coy doesn’t feel a record of the process needs to be made.

Councilperson Saunders feels elected officials need a record of the process to be accountable to the public.

Mayor Adams said elected officials and Chamber staff had a meeting at First National Bank in August 2006, discussed the concerns, shook hands and “it didn’t solve anything.” Mayor Adams said the City is a public body and needs to be very transparent.

Councilperson Reeder agrees with Coy. Reeder fears the problem will not be solved if the process is recorded. Reeder said “it has to end in a handshake” and then the two people need to be held accountable for what was decided in the mediation session.

Wilson said the City Administrator is in a public position and needs to be accountable. If something has happened that the Chamber doesn’t want to be made public then there should be concern.

Van Dyke agrees with Coy and Reeder. People don’t necessarily say what they think if a meeting is recorded. Van Dyke said the parties need to be frank with each other and the results of the meeting should be made public but the mediation process should not be public.

Coy feels, as a City Councilperson, the first obligation is to see that the City Administrator is doing what he is supposed to be doing. Coy doesn’t feel the Council should start policing individual entities (Chamber). Coy said the Chamber of Commerce should have the same concerns about their employees and how their organization is perceived in the community.

Saunders doesn’t feel the City is trying to police the Chamber but rather bringing them together for a stronger working relationship.

Lange agrees with Saunders. An attempt was made in August to resolve this issue to no avail. Lange said “this will not go away if there isn’t some type of recording” made of the mediation meeting.

Mayor Adams said the City is not trying to police the Chamber. Economic development is a combined effort and elected officials need to present a unified community to the public. The perception is that of a divided community and the issue needs to be resolved. A common ground needs to be reached to be able to proceed with a well developed protocol so everyone knows where the City and Chamber stand and who has what role in economic development. Mayor said a record needs to be made “so there is a reference point to go back to.”

Fauss supports Councilperson Wilson’s amendment. However, Fauss will not support the use of a court reporter.

Mayor Adams is agreeable to having the Norfolk City Clerk record the proceedings in lieu of a court reporter.

Fauss questioned whether the use of the Norfolk City Clerk to record the proceedings in lieu of a court reporter is agreeable with the Chamber of Commerce.

Jared Faltys, Chamber Board of Directors, 1608 Troon Street, expressed the Chambers opinion on recording the mediation process. Faltys stated the Chamber Executive Committee met at noon on December 18, 2006 and “we strongly feel that these proceedings should not be recorded at all, in any form.” If all participants agree to a summary at the end of the process, the Executive Board will agree to a summary. Faltys stated the Executive Board talked to three local attorneys, one county judge, and three certified mediators from the Supreme Court offices and also to Deb Brownyard who all state that a court reporter should not be used and no recording should be made of the mediation process. Faltys stated Don Polodna talked with Deb Brownyard and Mayor Adams who indicated that tonight’s resolution would allow discretion and flexibility amongst all parties with regard to record this process. Subject to conditions stated, the Chamber is willing to proceed in good faith and trust that the City Council will not ignore the advice of these experts regarding recording of the mediation process. Faltys stated the meeting in August was only 45 minutes of discussion which was not long enough to resolve the issue.

Van Dyke feels a summary of the meeting, with each party signing off on the document, would be enough accountability.

Wilson agreed with having a summary of the meeting. However, it is important that specifics of economic development are defined so everyone knows what needs to be done.

Mayor Adams stated any recording would probably not be verbatim because the participants will be utilizing two different rooms. However, the main thing is an agreement in the beginning as to where things are going and what methods will be utilized; and in the end what the conclusions are, which needs to be solidly recorded.

Dan Mauk, 405 West Madison Avenue, President of the Norfolk Area Chamber of Commerce, read a paragraph from a letter sent to the City by Deb Brownyard regarding this issue, “I did further research on both the Uniform Mediation Act and the Nebraska Dispute Resolution Act in regard to the question of recording a mediation session. Both Acts provide for parties to express and waive confidentiality and to allow for a recording to happen.” Mauk wanted to make it clear to the Council that the Chamber of Commerce is not waiving the right to confidentiality or to allow a recording with the exception of having a joint statement recorded at the end of a successful meeting. Mauk questioned whether Mayor Adams remembers Don Polodna’s conversation that if it is not agreeable to the Council to not record this than Brownyard may just as well not come to Norfolk.

Mayor Adams understood that was Polodna’s position but that was modified as the conversation continued. Adams also pointed out that Polodna agreed to have a court reporter when the resolution was first adopted. Mayor Adams said the mediation session was set up with the criteria provided. Adams said this situation is different because it involves a public body and a private body.

Mauk continued reading from Brownyard’s letter, “These statutory provisions are contrary to my personal opinion and my prior experience as a mediator.” Brownyard has had 500 mediation sessions. Mauk had concerns that the agenda for the mediation session did not include any issue

raised by Mauk in the private conversations with the mediator. The agenda only contains issues raised by Nolan. Mauk is willing to proceed with the mediation session in good faith understanding that the recommendation of every attorney Chamber people talked to is that the meeting should not be recorded. Mauk said if the meeting is recorded, "it will be a short meeting."

City Administrator Mike Nolan said whenever people are dealing with issues regarding the stewardship of public funds and the fiduciary responsibility elected officials have when public funds are used, and because of the enormous amount of disinformation that occurred because of the consequence of what developed in the working relationships between the City and Chamber staff, the record should show that whatever the Council decides to do should be transparent to the public. The public has a right to know how public funds are managed.

Saunders questioned who would write a summary of the mediation session if no recording of the meeting is kept.

Mauk stated the proposal was that the summary should be written jointly and agreed to by all parties.

Nolan said Brownyard agreed that a court reporter should be brought into the process and record everything that occurred in terms of what goes into the summary. Nolan stated people should not be reluctant to have the meeting recorded.

Mayor Adams received the same proposal from Brownyard. Some private conversations are fine but when it comes to a conclusion, it should be accurately recorded.

Nolan agrees with Councilpersons Coy, Van Dyke and Reeder that this needs to be resolved and if everyone proceeds in a principled way, no one has to worry about "who said what to who and when in the past" but it needs to be done in a principled manner "without any acrimony and without anyone misrepresenting what brought us to this point." Nolan said participants need to look prospectively at what needs to be done, both in terms of defining a relationship and defining what kind of process should be put into place to resolve any further disagreements between the two bodies. Everyone needs to be accountable.

Reeder questioned why Mauk's items aren't listed on the mediation agenda. Reeder questioned who compiled the agenda for the mediation session.

Nolan had not seen the agenda until "this afternoon". Brownyard is a very skilled person and knows how to do mediation. "If it doesn't turn out, I just want to be accountable in the process." Nolan said "this should have been subject to public scrutiny from the start."

Van Dyke doesn't feel the mediation session needs to be recorded.

Coy stated a summary of the mediation session, signed by all six participants, should be good enough.

Faltys said "things need to be aired" without a recording. Faltys said a summary can be made public. The previous meeting was tape recorded and it didn't help.

Mayor Adams said Brownyard suggested the meeting be recorded. The proposed resolution says the three City participants have to unanimously agree to the recording, and obviously the three

Chamber participants need to agree, on what limitations are made in the process. Adams feels it is impractical to go back and forth between rooms during the mediation session to try to record everything that is said. However, a contemporaneous recording of the conclusions/summary at the end that all participants agree to should be made. Elected officials need to be accountable and that is accomplished with good records.

City Attorney Clint Schukei explained that after the City Council adopted the Resolution 2006-31 on November 6, 2006, Schukei contacted an attorney about a good mediator. The attorney suggested Deb Brownyard who is the Director of the Office of Dispute Resolution of the Supreme Court of Nebraska. Brownyard indicated a willingness to do the mediation. Brownyard made arrangements to meet separately with the six mediation participants and put together a draft list of agenda items from the information obtained in those separate discussions.

Reeder feels the items on the agenda are probably just as important as whether or not the meeting is going to be recorded.

Fauss feels the Chamber participants need to agree to the process. Fauss doesn't feel the session needs to be recorded but feels there needs to be "some way of writing down" what is said. Fauss stressed that the Norfolk staff need to work with the Chamber staff on items listed on the agenda for the mediation session.

Van Dyke said the mediator can take care of the agenda for the mediation session. Van Dyke suggested the motion be rejected to allow flexibility in how the session is handled.

Wilson agreed but the suggested amendment says the Norfolk City Clerk is available to do a summary of the meeting if necessary, or record the entire session.

Roll call on the amendment to Resolution No. 2006-48: Ayes: Councilperson Reeder. Nays: Coy, Lange, Van Dyke, Wilson, Brenneman and Fauss. Abstaining: Councilperson Saunders. Absent: None. Motion fails.

Mayor Adams requested consideration of Resolution No. 2006-48 as included in the agenda packet.

Councilperson Fauss wants to take out the paragraph regarding the use of a court reporter, which reads as follows, "BE IT FURTHER RESOLVED that the Norfolk Chamber of Commerce and City of Norfolk will share the cost of retaining a trained mediator to facilitate the process and related administrative expenses."

Councilperson Fauss moved to amend Resolution No. 2006-48 with the deletion of the following paragraph, "BE IT FURTHER RESOLVED that the Norfolk Chamber of Commerce and City of Norfolk will share the cost of retaining a trained mediator to facilitate the process and related administrative expenses", seconded by Councilperson Van Dyke. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

Roll call on Resolution No. 2006-48 as amended introduced earlier by Councilperson Van Dyke and seconded by Councilperson Lange: Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Resolution No. 2006-48 as amended is adopted.

The Mayor requested consideration of an agreement with the Northeast Nebraska Beards and Spurs Chapter of the National **Wild Turkey** Federation for the use of the auditorium for their annual fund raiser banquet on February 3, 2007.

Councilperson Van Dyke moved to approve and authorize the Mayor to sign an agreement with the Northeast Nebraska Beards and Spurs Chapter of the National Wild Turkey Federation for the use of the auditorium for their annual fund raiser banquet on February 3, 2007, seconded by Councilperson Wilson.

Operations Manager Gary Miller stated this is the Wild Turkey Federation's annual fundraising banquet. The agreement is the same the group has used when renting the facility over the last few years. Miller said the group previously used the National Guard Armory but that changed after September 11, 2001.

Councilperson Brenneman requested the items be taken off the consent agenda. Brenneman supports the group but doesn't support the consumption of alcohol in the City Auditorium.

City Administrator Mike Nolan said the group has used the Auditorium for the banquet for many years. The Pheasants Forever group made the first request for use of the Auditorium. Nolan said the Lifelong Learning Center also has functions that impact private businesses.

Councilperson Van Dyke feels a public facility should not be used when the private sector has a facility large enough to handle groups such as the Wild Turkey Federation.

Nolan suggested criteria be established for use of the City Auditorium because the facility is also used by several large groups for Christmas parties.

Roy Swoboda, 54487 843rd Road, spoke on behalf of the Wild Turkey Federation's in favor of using the Auditorium. Swoboda said money generated from alcohol sales in the Auditorium help fund various activities throughout the year, such as a children's mentoring hunt. Swoboda said the Wild Turkey Federation will move the banquet outside of Norfolk, probably to the Madison County Fairgrounds, in the future if the City Auditorium is not able to be used.

Nolan stated elected officials need to accommodate the Wild Turkey Federation group this year because of time constraints. However, discussions need to be held on future use of the Auditorium.

Mayor Adams supports the organization. Adams requested elected officials approve the agreement because the banquet is being held in February 2007 and there isn't enough time for the group to rent another facility. However, Adams said the City should not be competing with private business. However, the Council needs to make a policy decision on use of the Auditorium in the future.

Brad Glaser, banquet chair for the Turkey Federation, said the rent at Divots is about the same as the Auditorium. However, Divots charges about three times more for food than a caterer, plus 18% gratuity, and the group would not receive money from the alcohol sales.

Coy feels the City needs to establish guidelines and be consistent with rental of the Auditorium. Coy said staff needs to let citizens know what those guidelines are once they are established.

Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Fauss and Saunders.
Nays: Brenneman. Absent: None. Motion carried.

The Mayor requested consideration of a Special Designated Liquor License for the Northeast Nebraska Beards & Spurs Chapter of the National Wild Turkey Federation to sell beer, wine and distilled spirits at the city auditorium on Saturday, February 3, 2007.

Councilperson Van Dyke moved, seconded by Councilperson Fauss to approve a Special Designated Liquor License for the Northeast Nebraska Beards & Spurs Chapter of the National Wild Turkey Federation to sell beer, wine and distilled spirits at the city auditorium on Saturday, February 3, 2007. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Fauss and Saunders. Nays: Brenneman. Absent: None. Motion carried.

No comments were received regarding the monthly commercial and industrial building permit report for November 2006; the Police Division report for November 2006; and the Works-In-Progress report for the period November 29 through December 12, 2006. All the reports were included in the agenda packets.

Councilperson Brenneman moved, seconded by Councilperson Fauss to adjourn the meeting at 9:41 p.m. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

Gordon D. Adams
Mayor

ATTEST:

Elizabeth A. Deck
City Clerk

(S E A L)

I, the undersigned Clerk, hereby certify that the foregoing is the full, true and correct original document of proceedings of Monday, December 18, 2006, had and done by the Mayor and Council; that all of the subjects included in the proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to the meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Elizabeth A. Deck
City Clerk

(S E A L)