

CITY OF NEBRASKA CITY, NEBRASKA
MINUTES OF CITY COUNCIL REGULAR MEETING
May 20, 2013

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Nebraska City was conducted in the Council Chambers at City Hall, 1409 Central Avenue, on May 20, 2013. Notice of the meeting was given in advance thereof by posting in at least three public places, the designated method for giving notice, as shown by the Certificate of Posting Notice attached to these minutes. Availability of the agenda was communicated in advance to the media, Mayor and Commissioners of this proceeding and said meeting was open to the public.

Mayor Hobbie called the meeting to order at 6:00 p.m. The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held. Mayor Jack Hobbie then led in the Pledge of Allegiance. Upon roll call the following answered present: Jim Stark, Jeff Crunk, Dean Handy, and Mayor Hobbie. Absent: Mark Mercer. The following City Officials were present: City Administrator Joe Johnson, City Clerk-Treasurer Arnold M. Ehlers, City Attorney William Davis, Police Chief David Lacy, and Public Properties Director/Zoning Director Dan Giittinger.

Commissioner Handy moved to approve the minutes of the May 6, 2013, City Council Regular Meeting, seconded by Commissioner Stark. Upon roll call the following voted YES: Crunk, Stark, Handy, and Mayor Hobbie. Voting NO: None. Motion adopted.

Commissioner Handy moved to pay all claims as presented, seconded by Crunk. Upon roll call the following voted YES: Stark, Crunk, Handy, and Mayor Hobbie. Voting NO: None. Motion passed and approved.

Moved by Mayor Hobbie and seconded by Commissioner Handy to approve the appointment of Joshua Medeiros as a probationary member of the Nebraska City Volunteer Fire and Rescue Department. Upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Mayor Hobbie proclaimed May 25, 2013 as National Missing Children's Day.

Mayor Hobbie proclaimed June 1, 2013 as Buddy Poppy Day and urged all citizens to support our veterans on that day.

Mayor Hobbie proclaimed the week of May 19 – 25, 2013 as EMS Week.

Rescue Chief Rodney Turpel presented awards to Jerry Thede, Manager of Fareway Foods for his company's support of NCVF&RD and Grant Welsh for his assistance in helping an elderly community member in a time of emergency. Chief Turpel presented American Heart Association "Lifesaver Awards" to Dr. Stacy Blum, Wendy Wielechowski and Gregg Goebel for their exemplary assistance in saving the life of a young man who went into cardiac arrest during transport.

Mayor Hobbie opened the Public Hearing on the rezone request from Tom Farrell and Bill Hayes. Dan Giittinger explained the rezone request made by representatives of Mayhew Cabin to change the zoning on 1.02 Ac. Of land on the north boundary of Mayhew Cabin property from C-3 Commercial to R-2 Residential for use as residential property. No one else spoke in support or opposition to the request. Moved by Commissioner Handy and seconded by Mayor Hobbie to close the Public Hearing. Upon roll call the following voted YES: Crunk, Stark, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Mayor Hobbie opened the Public Hearing on the grant application for Comprehensive Investment Stabilization Program Funds. Joe Johnson reminded the Council that this is the program presented by Jen Olds at a previous meeting. The grant would be in the amount of \$18,500.00 with the City's match of \$8,500.00. No one else spoke in support or opposition to the grant application. Moved by Commissioner handy and seconded by Crunk to close the Public Hearing. Upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Joe Johnson provided copies of the City Administrator's Report to each Council member. The Treasurer reported a beginning balance on hand as of April 1, 2013 of \$158,309.06; receipts of \$914,932.54; expenses of \$828,266.70 leaving a cash balance on hand as of April 30, 2013 of \$244,974.90. Mayor Hobbie asked that the reports be placed on file.

Mayor Hobbie introduced Ordinance No. 2912-13 entitled AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF NEBRASKA CITY, AS REFERRED TO IN SECTION 403 OF ORDINANCE NO. 2576-03, BY CHANGING THE ZONING CLASSIFICATION OF THE PROPERTY DESCRIBED IN SECTION 1 HEREOF, FROM C-3 GENERAL COMMERCIAL DISTRICT TO R-2 RESIDENTIAL; TO PROVIDE FOR INCORPORATION INTO THE OFFICIAL ZONING MAP OF THE CITY; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE; and moved that the statutory rule requiring reading on three different days be suspended. Commissioner Handy seconded the motion to suspend the rules and upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. The motion to suspend was adopted by three-fifths of the Council and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Mayor Hobbie moved for final passage of the ordinance, which motion was seconded by Commissioner Handy. The Mayor then stated the question: "Shall Ordinance No. 2912-13 be passed and adopted?" Upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the Clerk attested the passage and approval of the same and affixed his signature thereto. A true and correct copy of said ordinance is as follows:

ORDINANCE NO. 2912-13

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF NEBRASKA CITY, AS REFERRED TO IN SECTION 403 OF ORDINANCE NO. 2576-03, BY CHANGING THE ZONING CLASSIFICATION OF THE PROPERTY DESCRIBED IN SECTION 1 HEREOF, FROM C-3 GENERAL COMMERCIAL DISTRICT TO R-2 RESIDENTIAL; TO PROVIDE FOR INCORPORATION INTO THE OFFICIAL ZONING MAP OF THE CITY; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Whereas, application for a change of zoning classification has been made by Thomas Farrell, Agent for John Brown's Cave, and said application has been referred to the Planning Commission for a recommendation,

Whereas, the Planning Commission held a public hearing on said application and has recommended to the City Council approval of the requested change in zoning classification, and

Whereas, the City Council has held a public hearing on the matter, after giving due notice thereof as required by law,

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF NEBRASKA CITY, NEBRASKA:

SECTION 1. That the Official Zoning Map of the City of Nebraska City, Nebraska, as adopted by Ordinance No. 2576-03 of the City of Nebraska City, Nebraska, is hereby amended from C-3 General Commercial District to R-2 Residential, insofar as the same relates to the property legally described as:

Lot B-1, John Brown's Cave Subdivision to Nebraska City, Otoe County, Nebraska..

SECTION 2. That the City Clerk be and is hereby authorized to amend the Official Zoning Map of the City of Nebraska City by designating the zoning classification therein as provided by this ordinance.

SECTION 3. All Ordinances or parts of Ordinances in conflict with this ordinance are hereby repealed.

SECTION 4. That this Ordinance shall take effect and be in force from and after its passage, approval, and publication, as provided by law.

Passed and Approved this 20th day of May, 2013.

Jack Hobbie, Mayor

Joe Johnson explained that this agenda item is the formal application to complete the grant process outlined during the Public Hearing earlier tonight. Moved by Commissioner Handy and seconded by Commissioner Stark to approve the grant application for Phase I of Comprehensive Investment Stabilization (CIS) Program Funds. Upon roll call the following voted YES: Crunk, Stark, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Mayor Hobbie introduced Resolution 2600-13 authoring the Mayor to sign all documents associated with the CIS Grant application. Moved by Commissioner Handy and seconded by Commissioner Stark to approve Resolution 2600-13. Upon roll call the following voted YES: Crunk, Stark, Handy and Mayor Hobbie. Voting NO: None. A true, correct and complete copy of said resolution is as follows:

Resolution 2600-13

Whereas, the City of Nebraska City, Nebraska, is an eligible unit of a general local government authorized to file an application under the Housing and Community Development Act of 1974 as amended for Small Cities Community Development Block Grant Program; and,

Whereas, the City of Nebraska City, Nebraska, has obtained its citizens' comments on community development and housing needs; and has conducted public hearing(s) upon the proposed application and received favorable public comment respecting the application which is for an amount of \$18,500.00 for Comprehensive Investment & Stabilization Phase I – Planning Project;

NOW, THEREFORE, BE IT RESOLVED BY

the City Council of the City of Nebraska City, Nebraska, that the Mayor be authorized and directed to proceed with the formulation of any and all contracts, documents or memoranda between Nebraska City and the Nebraska Department of Economic Development so as to effect acceptance to the grant application.

Signed

Jack Hobbie, Mayor

Printed Name and Title

Margaret Spiers addressed the Council requesting that 9th Avenue between Blocks 20 and 21; Elmwood Addition be vacated. Her organization Hope Gardens and Cancer Survivor Park owns the property on both sides of 9th Avenue. Dan Giittinger stated that he had no objection to the request as there could never be a street in that area. Moved by Commissioner Handy and seconded by Commissioner Stark to approve the request to direct the City Attorney to draft an ordinance vacating 9th Avenue between Blocks 20 and 21; Elmwood Addition. Upon roll call the following voted YES: Crunk, Stark, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Joe Johnson provided background information and reminded the Council of the grant Nebraska City received to update portions of the City's Comprehensive Plan. Mr. Johnson prepared an Request for Qualifications (RFQ) for a firm to provide a Comprehensive Plan update with Energy Element and Long Range Transportation Plan. Moved by Commissioner Stark and seconded by Commissioner Handy to approve the RFQ and authorize staff to advertise for RFQ. Upon roll call the following YES: Crunk, Handy, Stark and Mayor Hobbie. Voting NO: None. Motion passed.

Bill Davis explained the Settlement Agreement from attorney's representing Eric Conrad owner of 611 Central Avenue. The Council questioned whether the agreement as presented had been approved by the owner. Mr. Davis assured the Council that the property owner had approved the agreement as presented. Moved by Commissioner Handy and seconded by Commissioner Stark to approve the Settlement Agreement on 611 Central Avenue on the condition that a Building Permit be applied for within 60 days after final approval of said agreement and that construction be completed within 6 months and authorize the Mayor to sign. Upon roll call the following voted YES: Crunk, Stark, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Mayor Hobbie introduced Ordinance No. 2910-13 entitled AN ORDINANCE TO AMEND CHAPTER 15, ARTICLE I, SECTION 15-10 SIZE, OF THE FIRE PREVENTION AND PROTECTION CODE OF THE CITY OF NEBRASKA CITY, NEBRASKA, BY AMENDING SECTION 15-10; TO REPEAL ANY ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE; and moved that the statutory rule requiring reading on three different days be suspended. Commissioner Handy seconded the motion to suspend the rules and upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. The motion to suspend was adopted by three-fifths of the Council and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Mayor Hobbie moved for final passage of the ordinance, which motion was seconded by Commissioner Handy. The Mayor then stated the question: "Shall Ordinance No. 2910-13 be passed and adopted?" Upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the Clerk attested the passage and approval of the same and affixed his signature thereto. A true and correct copy of said ordinance is as follows:

ORDINANCE NO. 2910-13

AN ORDINANCE TO AMEND CHAPTER 15, ARTICLE I, SECTION 15-10 SIZE, OF THE FIRE PREVENTION AND PROTECTION CODE OF THE CITY OF NEBRASKA CITY, NEBRASKA, BY AMENDING SECTION 15-10; TO REPEAL ANY ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT

WITH THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF NEBRASKA CITY, NEBRASKA, as follows:

Section 1. That Chapter 15 Fire Prevention and Protection, Article I, Section 15-10 Size, be amended to read as follows:

“Chapter 15, Fire Prevention and Protection.

Section 15-10 Size

The maximum size of the fire pit shall be three feet (3') in diameter and the maximum height of combustible materials used in said pit shall be no more than two (2') feet in height.”

Section 2. That all Ordinances, or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 3. That this Ordinance shall be effective from and after its adoption, approval and publication, as required by law.

PASSED and APPROVED this 20th day of May, 2013.

Jack Hobbie, Mayor

Mayor Hobbie read the agenda item a request by Dan Kelly of St. Mary’s Hospital to place temporary sign at 11th Street and Grundman Blvd to assist contractor’s and deliveries to the new St. Mary’s Hospital construction site. Moved by Commissioner Stark and seconded by Crunk to approve the request to place a temporary sign at 11th Street and Grundman Blvd for St. Mary’s Hospital. Upon roll call the following voted YES: Handy, Crunk, Stark and Mayor Hobbie. Voting NO: None. Motion passed.

Mayor Hobbie introduced Ordinance No. 2911-13 entitled AN ORDINANCE TO AMEND SECTION 33, STREETS AND SIDEWALKS, OF THE CODE OF THE CITY OF NEBRASKA CITY, TO RESERVE SECTION 33-148 – 33-149 AND PROVIDE PROVISIONS RELATING TO INFRASTRUCTURE PERMITS FOR USE OF PUBLIC SPACE AND FRANCHISE REQUIREMENTS; TO REPEAL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE; and moved that the statutory rule requiring reading on three different days be suspended. Commissioner Crunk seconded the motion to suspend the rules and upon roll call the following voted YES: Stark, Handy, Crunk, and Mayor Hobbie. Voting NO: None. The motion to suspend was adopted by three-fifths of the Council and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Mayor Hobbie moved for final passage of the ordinance, which motion was seconded by Commissioner Handy. The Mayor then stated the question: “Shall Ordinance No. 2911-13 be passed and adopted?” Upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the Clerk attested the passage and approval of the same and affixed his signature thereto. A true and correct copy of said ordinance is as follows:

ORDINANCE NO. 2911-13

AN ORDINANCE TO AMEND SECTION 33, STREETS AND SIDEWALKS, OF THE CODE OF THE CITY OF NEBRASKA CITY, TO RESERVE SECTION 33-148 – 33-149 AND PROVIDE PROVISIONS RELATING TO INFRASTRUCTURE PERMITS FOR USE OF PUBLIC SPACE AND FRANCHISE REQUIREMENTS; TO REPEAL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has determines that it is in the best interest of Nebraska City to control placement of infrastructure in public spaces, and

WHEREAS, the City Council held a public hearing on the matter, after giving the public due notice as required by law.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF NEBRASKA CITY, NEBRASKA:

SECTION 1. That Section 33 of the Code of the City of Nebraska is hereby amended to read as follows:

ARTICLE IX – SIDEWALK CAFES

Sec. 33-148 -33-149. Reserved.

ARTICLE X. – INFRASTRUCTURE PERMIT FOR USE OF PUBLIC SPACE

Sec. 33-150. - Permit required.

It shall be unlawful for any person to use, permanently occupy, or place any permanent improvement or fixture in any space on, above or underneath the surface of any public street, public alley, public sidewalk, public right of way, or other public ground within the city for the installation, operation, or maintenance of any telecommunication cable, fiber optic cable, coaxial cable, or other communication cables, wires, lines, or conduits, or any appurtenance or support thereof, for the selection or use of video programming, data transmission, or other programming or broadcast services, including but not limited to interactive services, enhanced services, information services, high speed data services, cable modem services, and internet access and services, unless such person has received a permit therefor granted by resolution of the city council as provided in this article. Any telephone franchise, cable franchise, or telecommunication franchise secured from the city in accordance with Section 33-157, shall be excluded from this permit requirement.

Sec. 33-151. - Application for permit.

Application for the permit described in Section 33 150 shall be made in writing to Nebraska City Utilities, and such application shall include a site plan which shall specifically describe the space desired, its length, breadth, and height or depth, and the use intended to be made thereof; and Nebraska City Utilities shall then refer said application to the city council. Any additions or changes to the uses or structures permitted shall require a new permit. If the cable is proposed to be located above ground on new poles to be installed by the applicant, the applicant must show to the satisfaction of the city that no existing poles are reasonably available to otherwise support the cable and that the applicant has acquired the right to use all such existing poles as are reasonably available.

Sec. 33-152. - Construction specifications.

The work shall be constructed in accordance with plans and specifications approved by the Nebraska City Utilities. The cable shall be attached to poles in accordance with the National Electrical Code adopted as the official electrical code for the city or laid to a minimum depth of forty-two (42) inches from the top of the cable to the surface of the ground. All land surfaces and all pavement shall be restored to or better than their original condition after the work is completed on each segment of the project. "As built" drawings shall be furnished to the Nebraska City Utilities and the city by the permittee showing the precise locations, depths, and the nature of all materials installed in accordance with the permit. The city shall have the right at any time when in its judgment it becomes necessary or advisable to require a change of location of said cable as a matter of safety, or on account of a change of grade, resurfacing, repair, reconstruction of any public street, public alley, public sidewalk, public right of way, or other public ground or the construction of any structure thereon, or for any other reason, all of which shall be done at the cost and expense of the permittee in a good and workmanlike manner.

Sec. 33-153. – Fee

Every permittee shall pay a fee to the city for the use of any space above or underneath the surface of any public street, public alley, public sidewalk, public right of way or other public ground within the city for the installation, operation, or maintenance of any fiber optic cable, coaxial cable, telecommunication cable, or other communication cables, wires, lines, or conduit. Such fee shall be an annual rental fee of one dollar eighty cents (\$1.80) per lineal foot of occupied public street, public alley, public sidewalk, public right of way or other public ground and shall be calculated by the city. The city council may waive all or a portion of the annual rental fee if the permittee installs, at its cost, an innerduct conduit and provides the city with the right to use one (1) or more innerducts within that conduit on terms and conditions agreeable to the city council.

Sec. 33-154. - Bond and public liability insurance.

Every applicant for such permit shall file with the application a continuing bond in the sum of not less than ten thousand dollars (\$10,000.00), but in the event that the city council in the resolution authorizing the permit shall fix a different sum, then a bond for such sum so fixed shall be substituted and filed with the application. All bonds and sureties shall be approved by the city attorney before such permit becomes effective. All bonds shall be conditioned that the person or entity to whom such permit shall be issued and such person's or entity's heirs, successors, or assigns shall strictly comply with all applicable laws and regulations and all conditions of the permit and which shall save and keep the city free and harmless from any and all loss or damages or claims for damages arising from or out of the use of the space therein mentioned and for the maintenance of the public street, public alley, public sidewalk, public right of way or other public ground, facilities or poles in such condition that said public street, public alley, public sidewalk, public right of way or other public ground, facilities or poles shall at all times after installation, be safe for the public use; for the full and complete protection of the city against any and all litigation growing out of the granting of such permit or anything done under such permit and for the removal of any cable permitted above or underneath the public space by such permit at the sole expense of the permittee and the permittee's heirs, successors, or assigns; for the faithful performance and observance of all the terms and conditions of this article; and such bond shall also be conditioned for the prompt and full payment of the compensation required by this article, or any other ordinance required to be paid during the period said permit shall be outstanding. Following the issuance of such permit and as long as the use continues above or underneath such public space, the owners of such property from time to time shall also be responsible to the city for the performance of all of the conditions of said bond above described.

Whenever the city council shall be of the opinion that the surety on such bond given has become insufficient for such permit issued herunder and shall so declare by resolution, [a] new bond for such permit shall thereupon be filed with a new surety to be approved by the city attorney. In addition to the bond, the applicant shall be required to:

- (a) At all times maintain public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by the city attorney, with a minimum combined single limit of one million dollars (\$1,000,000.00) aggregate for any one occurrence. The coverages required herein shall be subject to review and approval by the city attorney for conformance with the provisions of this section;
- (b) At all times keep on file with the city clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the city attorney for conformance with the provisions of this section evidencing the existence of valid and effective policies of insurance naming the city as an additional insured for the coverage required by subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and a copy of an endorsement placed on each policy requiring thirty days' notice by mail to the city clerk before the insurer may cancel the policy for any reason, and upon request of the city clerk or the city attorney, a copy of any endorsements placed on such policies or the declarations page of such policies. Any termination or lapse of such insurance shall automatically revoke any permit issue pursuant to this article.

Sec. 33-155. - Interference with Public Infrastructure.

No person shall ever access, operate or construct within, or use the space above or under any such public street, public alley, public sidewalk, public right of way or public ground in such manner as to interfere with any public infrastructure, which is defined as but not limited to: traffic-control cable, wastewater collector, gas line, water line, electrical line, any cable, wire, line, main or conduit installed or operated by the holder of any franchise or other authorization granted by the city, or any other public works utilities lawfully in such public street, public alley, public sidewalk, public right of way, or other public ground, unless by consent of the city council especially granted by resolution; and no such permit shall be granted until the applicant therefor has deposited with the Nebraska City Utilities a sum of money equal to the estimated cost prepared by the Nebraska City Utilities to defray the cost and expense of removing, replacing, and relaying such public infrastructure and making the necessary connections therewith. Each and every applicant disturbing any public infrastructure, shall, within ten (10) days after disturbing it, restore the same to such condition as will meet with the approval of the Nebraska City Utilities. When public infrastructure are so restored by said applicant, the sum so deposited with the Nebraska City Utilities shall be refunded to such applicant less any sums which may be necessary to defray any damages which might arise from such disruption. If such applicant shall fail to restore such public infrastructure within ten (10) days after the same is disturbed, then the Nebraska City Utilities and/or holder of any franchise shall cause the same to be restored in a manner meeting with the board's approval, and the cost thereof shall be paid out of the sum thus deposited plus any deficiency and amounts referred to in section 33-157.

Sec. 33-156. - Revocation of permit; removal of structure.

A permit issued under this article may be revoked by resolution of the city council upon a finding by them of such fact and the giving of five (5) days' written notice to such person or entity by the city clerk, for the following reasons:

- (a) Failure of the permit holder to pay the fee, occupation tax or other compensation required within thirty (30) days after the date for payment is due;
- (b) Failure or neglect of the permit holder to comply with the provisions of this article or any of the provisions of the Nebraska City Code or provisions of the permit;
- (c) Failure to use the space for which the permit was granted for a continuous period of six (6) months or more; or
- (d) Upon a determination by the city that the space for which the permit was granted is needed for public use.

Within thirty (30) days of revocation of a permit, the permit holder shall forthwith remove or abandon the telecommunication cable, fiber optic cable, coaxial cable, or other communication cable, wire, line, and any conduit(s) or other appurtenances, from the space for which the permit was granted at his/her own cost and expense and return that space to the city free and clear of all encroachments of any type, at no expense to the city. Such space shall be filled to the satisfaction of the City at the expense of the permit holder. If a removal, abandonment, or fill has been requested and the said removal, abandonment, or fill is not completed within six (6) months after revocation of such permit, the city council may cause such removal, abandonment, or fill to be so done, and the costs of such work shall become a lien against the property of the permit holder.

Sec. 33-157. - Franchise requirements; Fees.

- (a) Persons whose lines and facilities are placed in the public street, public alley, public sidewalk, public right of way or other public ground and are used to derive revenue from

- third party retail customers, and who wish to serve more than five (5) retail customers in the city, shall secure a telephone franchise, cable franchise, or telecommunication franchise from the city prior to serving any retail customer(s) in the city.
- (b) Persons desiring to obtain a franchise from the city shall file written communication with the City Administrator containing the following information: (i) the availability of space within the proposed public property for the proposed facilities; (ii) the effect of installing and operating the proposed facilities on existing public property, public infrastructure and public services; (iii) the ability of the grantee to post and support necessary bonds or other sureties and to obtain and maintain necessary insurance; (iv) the public interest in the proposed facilities and services and in maintaining existing services; (v) the economic benefits and costs to the city and its residents; and (vi) applicable law. The city council shall consider such written communication and shall determine whether to accept the application and commence negotiating a franchise agreement based on the criteria listed above. The city council shall make its determination by a resolution adopted after a public hearing.
 - (c) The grant of any franchise shall be contingent upon the execution of a franchise agreement between the city and the grantee of the franchise and strict and ongoing compliance by the grantee with all terms and conditions of the franchise agreement and applicable law. The grantee shall pay to the city an annual fee in the amount established in the agreement, but in no case shall such annual fee be less than three (3) percent of gross revenues generated by the facility, unless otherwise proscribed by law, throughout the life of the lines or facilities. The city council may determine the term of any such franchise agreement, but in no case shall the term exceed twenty five (25) years.
 - (d) The grantee shall, within thirty (30) days after written demand therefor, reimburse the city for all direct and indirect costs and expenses, including those incurred by city personnel and attorneys as well as outside consultants, engineers, and attorneys, in connection with any issuance, review, grant, modification, amendment, renewal or transfer of a franchise under this section. All payments made under this section shall be made to the city treasurer and he/she is the collector thereof. The city shall have all remedies at law and at equity available to it to enforce the provisions of this section and of any franchise agreement executed pursuant to this section. The City Administrator is authorized to establish regulations and procedures to implement this section.

SECTION 2. That the original Ordinance of Section 33 and all Ordinances, or parts of Ordinances, in conflict with this Ordinance are hereby repealed.

SECTION 3. That this Ordinance shall take effect and be in full force from and after its passage, approval, and publication as provided by law.

PASSED and APPROVED this 20th day of May, 2013.

Jack Hobbie, Mayor

Dan Giittinger asked the Council to declare a 1988 Dodge pickup from the Parks Dept. as surplus and authorize staff to advertise for sale. Moved by Commissioner Handy and seconded by Crunk to declare the 1988 Brown Dodge pickup surplus and authorize staff to advertise for sale. Upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Leroy Frana addressed the Council with a recommendation from the Board of Public Works. Mr. Frana summarized Work Order #256 in the amount of \$29,792.00 which will construct a 6" – 100# Natural Gas Main approximately 1000' south of King Road. Moved by Commissioner Stark and seconded by Commissioner Handy to approve the recommendation by the BPW to construct a 6" – 100# Natural Gas Main south of Nebraska City along Highway 75. Upon roll call the following voted YES: Crunk, Handy, Stark and Mayor Hobbie. Voting NO: None. Motion passed.

Leroy Frana addressed the Council with a recommendation from the Board of Public Works. Mr. Frana summarized Work Order #258 in the amount of \$83,316.00 which will construct a 3" – 100# Natural Gas Main south on County Road 52 approximately four (4) miles. Moved by Commissioner Stark and seconded by Commissioner Handy to approve the recommendation by BPW construct a 3" – 100# Natural Gas Main 4 miles along County Road 52. Upon roll call the following voted YES: Crunk, Handy, Stark and Mayor Hobbie. Voting NO: None. Motion passed.

Mayor Hobbie presented his appointment for the position of City Attorney. Mayor Hobbie moved to appoint David Partsch at \$48,000.00 per year plus benefits as the new City Attorney seconded by all commissioners present. Upon roll call the following voted YES: Crunk, Stark, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Evan Wickersham, City Engineer presented the Plans and Specifications for the 15th Street Improvement Project from Industrial Road to 13th Corso. The plans call for replacing the current

water main with a 12" main along with street paving and storm sewers. Moved by Commissioner Stark and seconded by Commissioner Handy to approve the Plans and Specifications as presented and authorize advertising for bids for the South 15th Street Improvement Project. Upon roll call the following voted YES: Crunk, Handy, Stark and Mayor Hobbie. Voting NO: None. Motion passed.

Arnold Ehlers informed the Council that a proper owner had paid the assessment for mowing on 928 4th Corso and requested the Council approve releasing the lien on the property. Moved by Commissioner Handy and seconded by Crunk to approve the Lien Release for 928 4th Corso. Upon roll call the following voted YES: Stark, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

ACCO	Supp	881.01	Mead Lbr	Supp	138.98
Alamar Uniforms	Unif	161.75	Mercer's	Supp	1172.99
Allied Insurance	Ins	100.00	Meredith, H	Rfnd	25.00
Almostgolf LLC	Mdse	241.12	Miller Monroe	Ins	8357.00
American Red Cross	Dues	300.00	Mullenax	Supp	1039.43
Arbor Mart	Fuel	3444.21	Nationwide	Inv	15839.51
Arbor Outdoor Power	Rep	33.99	NC Treasurer	Misc	75.00
Beacon Athletics	Supp	313.74	NC Utilities	Util	9480.28
Bill Walters Shop	Rep	163.12	NE Arborists Assoc.	Dues	75.00
Bohl Plumbing	Rep	784.48	NE Dept of Rev	Tax	1257.45
Bound Tree Med	Supp	980.70	NE Golf & Turf	Chem	220.08
Branting, D	Rfnd	25.00	NE Law Enforce	Trng	355.00
Breathing Air Sys	Supp	404.66	NE Life Magazine	Advert	300.00
Brown's Shoe Fit	Unif	229.00	NE Turf Prod	Chem	932.40
Callaway Golf	Msde	221.98	Medicaid	Rfnd	1340.17
Card Services	Misc	950.37	Nebraskaland Glass	Rep	179.00
Cintas	Contr	62.42	O'Reilly	Supp	18.97
Consolidated Mgmt	Trng	31.75	Orschlen	Supp	118.25
Danko Emergency	Equip	457.56	Otoe Co Clerk	Contr	5752.59
Double Eagle	Conc	266.90	Otoe Co Court	Contr	48.00
Douglas Tire	Rep	2401.85	Payroll	Payroll	89571.58
Enterprise Publ	Adv	255.00	Pepsi-Cola	Conc	96.00
Fareway	Conc	204.28	PGA	Dues	496.00
File of Life Foun.	Adv	30.62	Recreation Supply	Supp	101.25
Fire Protection Svc	Rep	72.00	Repco Marketing	Supp	39.75
Food Pride	Supp	2.09	River View	Contr	362.00
Galeton Gloves	Supp	155.35	SAT/Tech	Postage	7.89
Gatehouse Media	Adv	1139.05	SEND D	Contr	1875.15
Hireright Solutions	Med	52.80	Shell	Fuel	2277.56
Hobbie, J	Mileage	51.98	Sirchie Finger Print	Supp	175.10
Holman, J	Mileage	200.50	Smith, G	Rfnd	25.00
Hopkins	Supp	320.18	St. Mary's	Med	62.00
Hotsy Equip	Supp	140.16	State Chemical	Supp	102.93
ICC	Dues	125.00	Stott, E	Mileage	506.24
Ideal Pure Water	Contr	58.92	Thurman's	Supp	189.00
Johnson, J	Mileage	485.06	Tielke's	Conc	78.43
K & Z Dist	Conc	147.15	Tim Engel	Rfnd	25.00
KNCY	Advert	39.59	Tri-State Office	Supp	188.36
Knook & Kranny	Contr	2300.00	Tyco Integrated	Contr	544.46
Landis Engine	Supp	56.44	Verizon	Tele	14.10
Larson Motors	Rep	510.56	Wage Works	Contr	72.00
Larue Coffee	Supp	86.05	Watkins	Supp	166.27
Laser Link Golf	Mdse	564.00	Wick Buildings	Contr	500.00
Lifeguard Auto	Rep	874.17	Windstream	Tele	2389.26
Loveland Grass Pad	Supp	215.84	Winn Inc	Mdse	127.46

Matheson-Linweld	Supp	163.37	Zook, A	Rfnd	25.00
MD Aquatics	Contr	1178.00			

Meeting adjourned at 7:02 p.m.

Arnold M. Ehlers, City Clerk – Treasurer

AFFIDAVIT

I, the undersigned City Clerk for the City of Nebraska City, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Board of Commissioners, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said 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 from which the foregoing proceedings have been extracted 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.

Arnold M. Ehlers, City Clerk-Treasurer