

## CITY OF NORFOLK, NEBRASKA

The Mayor and City Council of the City of Norfolk, Nebraska met in regular session in the Council Chambers, 309 West Madison Avenue, Norfolk, Nebraska on the 2nd day of March, 2009, beginning at 5:30 p.m.

Following a moment of silence and the Pledge of Allegiance to the flag of the United States of America, Mayor Sue Fuchtman 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 Al Roder, City Attorney Clint Schukei, Director of Public Works Dennis Smith, City Clerk Beth Deck, Transportation, Building & Grounds Director Jim Koch, Police Chief Bill Mizner, Wastewater Plant Superintendent Todd Boling, Prevention Manager Scott Cordes, Programmer/Analyst Leon Gentrup, and Personal Computer Specialist John Pospichal.

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.

### Agenda Motions

Councilperson Fauss requested Item #8, consideration of forwarding a letter of no recommendation on the Class B liquor license application of Western Oil, Inc., dba Roadrunner – Benjamin, be removed from the consent agenda and considered on the regular agenda.

Councilperson Van Dyke moved, seconded by Councilperson Fauss to approve the consent agenda with the removal of Item #8, consideration of forwarding a letter of no recommendation on the Class B liquor license application of Western Oil, Inc., dba Roadrunner – Benjamin. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

Councilperson Lange moved, seconded by Councilperson Wilson to adopt the regular agenda with the addition of Item #8, consideration of forwarding a letter of no recommendation on the Class B liquor license application of Western Oil, Inc., dba Roadrunner – Benjamin. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

### Consent Agenda Items Approved

*Minutes* of the February 17, 2009 City Council meeting

*Waive bicycle registration fee* for the annual Landon Bos Memorial Bike Rodeo on May 30, 2009 from 9:00 a.m. to 2:00 p.m.

*Advertise bids* for replacement ball field lighting in Ta-Ha-Zouka Park

*Bills on file* in the amount of \$919,683.27

### Regular Agenda

At the request of Councilperson Fauss, Item #8, consideration of forwarding a letter of no recommendation to the Nebraska Liquor Control Commission on the Class B liquor license application of Western Oil, Inc., dba Roadrunner – Benjamin, and the Corporate Manager Application of Michael Danielski, was considered on the regular agenda.

Councilperson Van Dyke moved, seconded by Councilperson Wilson to approve the Mayor signing and forwarding a letter of no recommendation to the Nebraska Liquor Control Commission on the Class B liquor license application of Western Oil, Inc., dba Roadrunner – Benjamin, and the Corporate Manager Application of Michael Danielski after correcting an error on the Manager Application.

Councilperson Fauss found an error on Page 3 of the Manager Application – Item #2, “*Have you or your spouse ever been approved or made application for a liquor license in Nebraska or any other state*” should have been answered “yes” instead of “no” because the applicant previously listed on the application other liquor licenses held in Nebraska.

Art Villemure, Western Oil Inc, was at the meeting and agreed to make the correction.

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

### Public Hearings and Related Action

#### Gokie Enterprises Inc dba Fast Mart liquor license

A public hearing was held to determine whether continuation of the liquor license should be allowed without submitting a new application for Fast Mart, 315 West Omaha Avenue. Per Section 53-135.01 of State Statutes, notice of renewal of retail liquor licenses for all non-Class C licensees was published in the Norfolk Daily News on January 22, 2009. The notice provides that “in the event protests are filed by three or more” persons a hearing will be held by the local governing body regarding the automatic renewal of the licenses. The required number of protests was received from citizens living in the Norfolk city limits to require a hearing on the Fast Mart liquor license renewal. The protests list numerous violations of selling alcoholic beverages to minors.

Kathryn Liebers, 2000 Sunset, spoke in opposition to the renewal of the liquor license for Fast Mart. Liebers stated Fast Mart received four separate violations of selling alcoholic beverages to

minors since 1999: February 9, 2000, December 6, 2006, December 12, 2007 and December 8, 2008. Liebers does not object to the business selling alcohol but does object to selling alcohol to minors. Other issues addressed by Liebers that relate to underage drinking were health problems, decision-making impairments, risk-taking behaviors and educational achievement impacts.

Katherine Cole, 84170 535th Avenue, Tilden, Nebraska, spoke in opposition to automatic renewal of the liquor license for Fast Mart. Cole is a sophomore at Lutheran High Northeast and a member of the Project Extra Mile Youth Group.

City Attorney Clint Schukei explained non-renewal of a liquor licenses is not a choice offered by State Statutes. The two options available to the Council are to allow the automatic renewal of the liquor licenses or to require a business to submit a new liquor license application.

Steve Shear, Project Coordinator for Project Extra Mile, restated the four violation dates for Fast Mart. Shear is concerned with the poor business practices of both Fast Mart and Merchants C Store. Shear stated underage drinking can have devastating effects on people and requested Fast Mart be required to submit a new liquor license application.

Councilperson Fauss feels the underage youth purchasing alcohol should receive a stiffer punishment from the State Liquor Control Commission. Fauss encouraged the efforts of Project Extra Mile.

DaNay Marx, manager of Fast Mart, is trying to educate employees about selling to minors. Marx said it is hard to find honest part-time, temporary employees. Marx would hope the \$500 fine imposed by the Liquor Commission on employees who sell to minors would make a difference. Fast Mart installed a machine on September 9, 2008 that scans driver's licenses to check the age of that person. Marx said Fast Mart does not want to sell to minors.

Richard Gokie, owner of Fast Mart since 1989, said DaNay Marx is a good manager. Fast Mart is taking extra steps to ID people trying to purchase both tobacco and alcohol.

Bill Marx, husband of DaNay Marx, is against underage drinking and feels it is a major problem but that education needs to start at home. Marx said that even though businesses train employees to not sell to minors it is difficult "to force low wage employees to not sell to minors."

Police Chief Bill Mizner said Fast Mart was cited on four separate occasions over the last 9-10 years for selling to minors. Three of those were during compliance checks. In 1999, a police officer, who was called to Fast Mart for a disturbance in the parking lot, asked an underage youth where alcohol in the vehicle was obtained and the youth indicated Fast Mart. During a compliance check in 2006, the store clerk asked the underage youth for identification but sold the alcohol anyway; in 2007 the ID was checked but the clerk sold alcohol anyway; and in 2008 the store clerk did not check ID but commented that the person looked old enough and sold the alcohol.

No one else appeared either in favor of or in opposition to the issue and the Mayor declared the hearing closed.

Resolution No. 2009-5  
(Gokie Enterprises Inc dba Fast Mart liquor license)

Councilperson Van Dyke moved, seconded by Councilperson Brenneman, to adopt Version B of Resolution No. 2009-5 providing that the liquor license of Gokie Enterprises, Inc., dba Fast Mart, 315 West Omaha Avenue, shall not renew automatically and they shall be required to submit a new application for a liquor license.

Councilperson Coy questioned how many times the City has dealt with this issue in the past.

Schukei stated this is the first time in 20 years this type of issue has been brought forward to the City Council.

Councilperson Van Dyke empathizes with the businesses but the law must be enforced.

Councilperson Fauss “doesn’t disagree” with Councilperson Van Dyke but is sensitive to the businesses that may be without a liquor license for a month or two if they need to complete a new application.

Mayor Fuchtmann feels the businesses are making a lot of effort to correct the problem of selling to underage persons.

Councilperson Wilson “applauds the efforts” of the business but feels a precedence may be set if the Council doesn’t follow through on this issue.

Councilperson Reeder stated liquor license holders need to be responsible.

Councilperson Lange doesn’t want to “rubber stamp” these types of issues and the businesses need to take efforts to properly manage their employees.

Roll call: Ayes: Councilpersons Lange, Van Dyke, Reeder, Wilson, Brenneman, and Saunders. Nays: Coy and Fauss. Absent: None. Motion carried. Resolution No. 2009-5, Version B, was adopted.

Merchants C Store liquor license

A public hearing was held to determine whether continuation of the liquor license should be allowed without submitting a new application for Merchants C Store, 314 West Omaha Avenue. Per Section 53-135.01 of State Statutes, notice of renewal of retail liquor licenses for all non-Class C licensees was published in the Norfolk Daily News on January 22, 2009. The notice provides that “in the event protests are filed by three or more” persons a hearing will be held by the local governing body regarding the automatic renewal of the licenses. The required number of protests was received from citizens living in the Norfolk city limits to require a hearing on the Merchants C Store liquor license renewal. The protests list numerous violations of selling alcoholic beverages to minors.

Steve Shear, Project Coordinator for Project Extra Mile, reiterated the same concerns for the Merchants C Store liquor license as for the Fast Mart liquor license. Shear stated Merchants C

has had four violations since 2000. Shear stated the businesses need to do due diligence and match IDs with the person presenting the driver's license. Shear stated Nebraska driver's licenses for minors are horizontal, but the driver's license is vertical for people over 21.

Brad Merchant, owner of Merchants C Store, is trying everything to stop employees from selling to underage persons. Merchant also has concerns with the time it takes to get fingerprinted for new liquor license applications.

Police Chief Bill Mizner said that Merchants C Store was cited on four separate occasions since 2000. The first citation was not during a compliance check but was reported to the Liquor Commission even though the clerk was not cited for selling to a minor. The violations in 2001 and 2006 were during compliance checks. The violation in 2008 was also during a compliance check and the clerk did not ask for identification.

No one else appeared either in favor of or in opposition to the issue and the Mayor declared the hearing closed.

Resolution No. 2009-6  
(Merchants C Store liquor license)

Councilperson Brenneman moved, seconded by Councilperson Wilson, to adopt Version B of Resolution No. 2009-6 providing that the liquor license of Merchants Inc., dba Merchants C Store, 314 West Omaha Avenue, shall not renew automatically and they shall be required to submit a new application for a liquor license.

Councilperson Fauss understands the process but is sensitive to businesses needing to apply for a new liquor license. Fauss stated the store clerks and licensees are already in "a lot of trouble with the Liquor Commission."

Councilperson Coy sympathizes with the business owners and feels the Liquor Control Commission will handle the situation. Coy does not want the City to be detrimental to any businesses, especially during these hard times.

Roll call: Ayes: Councilpersons Lange, Van Dyke, Reeder, Wilson, Brenneman, and Saunders. Nays: Coy and Fauss. Absent: None. Motion carried. Resolution No. 2009-6, Version B, was adopted.

**Regular Agenda Items**

Ordinance No. 5053  
(Planned Development Overlay Land Requirement)

Councilperson Fauss introduced, seconded by Councilperson Lange, Ordinance No. 5053 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 27-234 OF THE OFFICIAL CITY CODE TO CHANGE THE MINIMUM AMOUNT OF LAND REQUIRED FOR A PLANNED DEVELOPMENT OVERLAY; 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. 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. 5053 passed on second reading.

Thereafter Councilperson Fauss moved, seconded by Councilperson Van Dyke, that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance. The Mayor then stated the question "Shall Ordinance No. 5053 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. 5053 as required by law.

Councilperson Van Dyke moved, seconded by Councilperson Fauss to adjourn the meeting at 6:36 p.m. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

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Sue Fuchtman  
Mayor

ATTEST:

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Bethene A. Hoff  
Acting 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, March 2, 2009, had and done by the Mayor and City 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.

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Bethene A. Hoff  
Acting City Clerk

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