

**THE OFFICIAL PROCEEDINGS OF THE REGULAR MEETING OF THE GERING CITY COUNCIL,  
MAY 8, 2017**

A regular meeting of the City Council of Gering, Nebraska was held in open session on May 8, 2017 at 6:00 p.m. at Gering City Hall, 1025 P Street, Gering, NE. Present were Mayor Kaufman and Councilmembers Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison and Cowan. Also present were City Administrator Lane Danielzuk, Administrative Secretary Carol Martin and City Attorney Jim Ellison. Absent was City Clerk Kathy Welfl. Notice of the meeting was given in advance by publication in the Star-Herald, the designated method of giving notice. All proceedings hereafter were taken while the meeting was open to the attendance of the public except as otherwise indicated.

**CALL TO ORDER**

Mayor Kaufman called the meeting to order at 6:08 p.m. The Mayor stated that there was a quorum of the Council and City business could be conducted.

1. Recital of the Pledge of Allegiance and Prayer
2. Roll Call
3. Excuse councilmember absence (There were no absences).

**OPEN MEETINGS ACT - NEB.REV.STAT. CHAPTER 84, ARTICLE 14**

Mayor Kaufman stated: As required by State Law, public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room. Agenda items may be moved up or down on the agenda at the discretion of the Mayor. As required by State Law, additions may not be made to this agenda less than 24 hours before the beginning of the meeting unless they are considered under this section of the agenda and Council determines that the matter requires emergency action.

**CONSENT AGENDA:**

1. Approve minutes of the April 24, 2017 Regular City Council meeting
2. Approve Claims and Financials

**Claims:**

4-15-17 to 4-28-17

24/7 FITNESS \$130.00 WELLNESS, AC ELECTRIC MOTOR SRV \$178.96 HEATER MOTOR, ACCELERATED RECEIVABLES \$301.53 GARNISHMENT 2, ACCUSTAR SURVEYING \$2,925.00 SURVEY, ACTION COMM INC \$523.00 UHF PAGER, ACUSHNET CO \$416.35 HEADWEAR - HATS/GOLF BALLS, ALBERS JOHN \$170.00 LEFT RV PARK EARLY, ALEXANDER JAMES \$380.00 LEFT RV PARK EARLY, ANTIGUA GROUP INC \$2,300.65 LADIES CLOTHING, ARMADA MEDIA CORP \$600.00 RADIO ADVERTISING, ATLAS LAWN EQUIP CO \$461.53 RPR HOWARD, B & C STEEL \$503.36 HYDRANT RPR, BAKER & ASSOC INC \$11,457.00 PLAN - DESIGN PARK PLAZA, BKD RENTALS LLC \$2,154.20 APR RENT SUBSIDY PRAIRIE PINES, BLACKSTONE AUDIO INC \$439.99 (9) AUDIOBOOKS, BLUFFS SANITARY SUPPLY \$248.99 RR SUPPLIES, BRANDT APPRAISAL CO INC \$3,250.00 APPRAISAL FOR SWC OF U STREET, BROADWAY OFFICE CENTRE \$1,025.80 COPY /PAPER/LETTER OPENER/MANILLA FOLDERS/BINDER CLIPS/POST ITS/ADHESIVE TAPE/SHARPIE MARKERS/OFFICE SUPPLIES/BINDER - ACCOUNTING/LABELS/LEGAL PAPER/COPY CNT CHR/CANNED AIR/PEN/CALENDAR/PHONE/DRY BOARD/REGISTER TAPE, C & M GOLF & GROUNDS \$131.35 BRAKE & PARTS - CUSHMAN, CALLAWAY GOLF CO \$187.32 GOLF BALLS, CEMENTERS MOBILE MIX \$3,560.63 (32.25) YDS CONCRETE/2.25 YDS 47B CONCRETE, CENTER POINT LARGE PRINT \$45.54 (2) LARGE PRINT BOOKS, CG POWER USA INC \$40,406.60 D STREET SUBSTATION, CITY INSURANCE FUND \$138,735.29 HEALTH PREM 125, CITY OF GERING \$562.25 WELLNESS GOLF, CITY OF GERING GENERAL AC \$65,000.00 ACH PAYROLL TRANSFER, CITY PAYROLL TRUST \$3,173.58 FSA MEDICAL 125, CNA SURETY \$175.00 BOND RENEWAL - K WELFL, COBRA PUMA GOLF INC \$78.56 GOLF SHAFT, CONNECTING POINT \$154.84 MARCH COPIER SRV CONTRACT, COOLEY TAMMY \$327.76 TRAVEL EXP COOLEY MEAN MTG, CRESCENT ELECTRIC SUPPLY \$231.37 ELECT RPR'S 17<sup>TH</sup>, CULLIGAN WATER CONDITIONING \$850.91 DRINKING WATER FOR WWTP/SALT/RPR WATER SOFTENER, DANKO EMERGENCY EQUIPMENT \$237.00 BOOTS, DEMCO \$1,255.65 SUPPLIES - SUMMER READING PROGRAM, DENTON TONYA \$100.00 OVERPAID FINAL, DIAMOND VOGEL PAINT CENTR \$41.99 HYDRANT RPR, DOOR CLOSURE SRV \$260.00 (2) DEADBOLT LOCKS, DUTTON - LAINSON CO \$2,741.86 METERS/D STREET SUBSTATION, ECOLAB \$255.78 PEST CONTROL, ELLIOTT EQUIPMENT CO \$331.46 EQUIPMENT RPR, ENVIRO SRV INC \$870.00 WATER/WW LAB, FASTENAL CO \$1,888.55 GLOVES/BATTERIES/SAW BLADES/CLEANER/BOLTS/SUPPLIES/TOOLS/BRASS HARDWARE, FIRST NATIONAL BANK \$3,393,258.05 REINVEST MATURED CD, FIRST STATE BANK \$337.76 IBEW UNION DUES, FISHER WELL SRV INC \$45.75 (1) SHRINK SET/22'12/3 WIRE, FORT DEARBORN LIFE INS CO \$120.40 FIREFIGHTER LIFE INS, FRANK PARTS CO \$1,046.49 OIL & AIR FILTER - LOADER/FUEL FILTER/VEHICLE MAINTENANCE/BATTERY/AIR FILTER/AIR TERMINATOR/JACK MOUNTS/SNAP RINGS/PARTS/BATTERY CORE/OIL FILTERS/CABIN FILTER - TRUCK/WORK 631-121/SHOP SUPPLIES/STROBE FOR TRUCKS/VEHICLE RPR/HYD HOSE & FITTINGS, FRASER STRYKER PC LLO \$1,775.00 LEGAL SRV - PERSONNEL, GALE \$50.23 (2) LRG PRINT BOOKS, GALLS INC \$486.01 CUPHOLDER & CONSOLE - NEW PATROL VEHICLE, GENERAL TRAFFIC CONTROLS \$3,490.00 CROSSWALK SIGNS, GERING HIGH SCHOOL \$100.00 YEARBOOK AD, GERING U-SAVE PHARMACY \$166.18 TEST STRIPS, GERING VALLEY PLUMBING \$1,432.80 RPR HVAC/RPR ON URINAL/RPR DISHWASHER, GERING VOLUNTEER FIRE DEPT \$535.00 REGISTRATION S212-11 MEMBERS FIRE/REGISTRATION S390 M HESSLER, HAWKINS INC \$2,945.00 FLUORIDE FOR WATER SYSTEM, ICMA ELECTRONIC RETIREMENT \$552.14 ICMA CITY ADMIN, IDEAL LINEN SUPPLY INC \$653.97 EXCHANGED

MATS/RAGS/MOPS, INFINITY CONSTRUCTION INC \$3,500.00 CONTRACTOR LABOR, INGRAM LIBRARY SRV \$868.80 (55) BOOKS, INTERNAL REVENUE SERVICE \$42,851.94 FED/FICA TAX, INTRALINKS TECHNICAL SOL \$3,410.51 COMPUTER SUPPORT/REPLACE 2 DRIVERS ON PD SERVER, IRBY TOOL & SAFETY \$443.78 DEAD ENDS, JIRDON \$1,482.90 SPRAY & GRASS SEED MIX/WEEK KILLER, JOHN HANCOCK USA \$14,051.93 JH RETIRE 1-10%, JOHNSON CORROSION ENGINEER \$667.00 TANK MAINTENANCE, JOHNSON CASHWAY CO \$2,401.62 CONSTRUCTION SUPPLIES/SPREADER/TOOLS & CONCRETE SUPPLIES/ LUMBER FOR GARDEN SHED/13 BLADE CUTOFF/2X4 STUDS/NUT DRIVER/PIPE THREAD COMPOUND/ALK BATTERY/REMOTE CLICKER/LATHE/SUPPLY/ SAW BLADES/SAND DISC/TOOLWASHER/BIT/2 CANS PRIMER/PINE BOARDS/PLANTER BOX/ HINGE/ 4 ALK BATTERIES/QUICK CRETE/4 CANS SPRAY PAINT/BIT/THREE WATERPROOFING/WAFERBOARD/PAINT ROLLER, HANDLES, TRAYS & PAINT SUPPLIES/1/2" & 3/4" FITTINGS/BALL VALVE/RIVETS & RIVET TOOL/NUTS/BOLTS/SNIPS/SPRAY BOTTLES/SHOP SUPPLIES/3/4: ELBOW, KARENS CLEANING \$425.00 APRIL JANITORIAL SRV, KAWASAKI KORNER \$20.32 (4) GASKETS, KNEB \$717.05 ADVERTISING, KOVARIK ELLISON MATHIS \$5,266.25 HENKEL LAND PURCH - INDUSTRIAL PARK/INDUSTRIAL PARK - SIMON/LB840 HOTEL, INDUSTRIAL PARK MATERIALS REVIEW BY CITY ATTY, KRIZ - DAVIS CO \$1,263.51 BALLAST/2 PUSH BUTTON CHIPPERS/WIRE/BOLTS/LAMPS, LEAL NOHEMI \$70.00 SPANISH INTERPRETING, LOGOZ LLC \$27.50 JR FIRE AWARDS, MARRUFO DEYANIRA \$75.00 RV ROOM DEPOSIT REFUND, MATHESON TRI - GAS INC \$112.88 SHOP, MAXX SUNGLASSES \$144.21 SUNGLASSES, MEAT SHOPPE \$31,024.60 CATERING COST/MANAGEMENT CONTRACT, MENARDS \$876.60 KEYPAD/SPRAY PAINT/ELECTRICAL TAPE/WINDSHIELD WASH/RPR'S/LEAF RAKE/CUTTING WHEEL/GRATE COVER/MOUSE BAIT/PORTABLE AC UNIT - ACCOUNTING/RPR'S/FLAD POLE HARDWARE/CLEANING SUPPLIES, MG TRUST CO LLC \$6,227.16 MG T - POLICE, MICHAEL TODD & CO \$110.12 SIGN HOLDER, MONEY WISE OFFICE SUPPLY \$372.28 PEN/ BINDERS & INK CARTRIDGES - ACCOUNTING/PRINTER CARTRIDGE - UTILITY/CORRECTION TAPE/RIBBONS, MONUMENT GRILL \$1,090.00 REIMB - MEALS COLLECTED WENTRY, MORENO ERIKA \$75.00 SPANISH INTERPRETING, MOUNTAIN VISION PIZZA \$50,000.00 LB840 JOB CREATION 10 FTE'S, MUNICIPAL ENERGY AGENCY O \$350,018.75 POWER BILL/RITA DUES, MUNICIPAL SUPPLY INC OF \$2,905.38 FIRE HYDRANT RPR/CREDIT BACK SALES TAX/ STORM WATER PIPE FROG POND PRJ/ WATER MAIN RPR, NATIONAL INSURANCE SRV \$1,119.98 VISION INSURANCE, NDEQ - FISCAL SRV \$8,675.94 QTRLY SOLID WASTE PYMT, NDOR - LODGING \$564.67 MARCH COUNTY LODGING TAX, NDOR - LOTTERY \$11,105.91 JAN - MAR 2017 LOTTERY TAXES, NE CHILD SUPPORT PYMT \$627.56 CHILD SUPPORT 1, NE DEPT OF REV (PR) \$11,830.01 STATE TAX, NE DEPT OF REVENUE \$68,049.01 MARCH SALES & USE TAX, NE PUBLIC POWER DISTRICT \$118.63 UTILITES/240066 HIGHWAY 92, NEBRASKA CEMETERY ASSOC \$40.00 MEMBERSHIP, NORTHWEST PIPE FITTINGS \$264.29 PEX FITTINGS/PVC FITTINGS/SRV LINE RPR/4" PVC FITTINGS, OCLC INC \$144.21 APR CAT & ILL SUB, ONE CALL CONCEPTS INC \$144.21 LOCATE FEES, PANHANDLE COOP ASSOC \$11,581.83 GAS/PROPANE/FUEL/DIESEL, PAYROLL CHECKS \$116,637.47 PAYROLL CHECKS ON 4-28-17, PERALES CHRISTOPHER \$105.00 MEAL ALLOWANCE FOR TRAINING, POWERPLAN OIB \$129.79 FILTER FOR 344J/SWIVEL G11, PRO'S CHOICE AUTOMOTIVE \$254.95 PAINT FOR PICNIC TABLES/3 CANS PRIMER, PROTEX CENTRAL INC \$118.75 REPLACE BATTERIES - SMOKE DETECT, PT HOSE & BEARING \$673.40 BOLTS/SEWER JET RPR/ORING G10, RANDALL LORETTA \$75.00 RV ROOM RENTAL REFUND, RESPOND FIRST AID SYSTEMS \$105.78 FIRST AID SUPPLIES, ROBINSON ELECTRIC \$1,819.87 CONNECTING LIBRARY AC/BALER RPR, SCOTTS BLUFF COUNTY COURT \$20.00 COURT COSTS, SCOTTSBLUFF GERING UNITED \$116.75 UNITED WAY CTRB, SEACREST & KALKOWSKI PC \$14,472.50 LB840 COBBLESTONE HOTEL, SIMMONS OLSEN LAW FIRM \$1,500.00 CITY PROSECUTOR BILL, SIMON CONTRACTORS \$1,525.86 CRUSHED CONCRETE/DRY SAND/COLD MIX/4 YDS CONCRETE, SOLUTIONS EAP \$244.55 COUNSELING, STAR HERALD \$1,351.00 ELECTRIC DEPT JOB NOTICE, STOTZ EQUIPMENT \$73.00 PIVOT ARM, SUGAR VALLEY FEDERL CRD \$1,078.37 CREDIT UNION, TAYLOR MADE GOLF CO \$55.95 GOLF SHOES, TEAM CHEVROLET \$698.51 WING VEHICLE LEASE/BERING & HUB - 2012 GMC, TERRACON \$41,028.45 EPA BROWNSFIELD HSA, TEST AMERICA \$3,106.50 WATER WELL, UNITED CHAMBER OF COMMERCE \$400.00 CHAMBER DUES, US AUTO FORCE \$356.32 TIRE - DUMP TRUCK/TIRE JD/6-20 X 10 X 10 TIRES, VERIZON WIRELESS \$344.70 IPAD FEES, WAREHOUSE FITNESS CENTER \$90.00 WELLNESS, WESCO DISTRIBUTION INC \$288.90 POLE FOAM, WESTCO \$6,181.48 GAS/PROPANE - GAP MACHINE/DIESEL/CLAMPS/SPRAYER PARTS, WESTERN PATHOLOGY CONSULTANTS \$ 228.80 DRUG TESTING, WESTERN PLAINS BUSINESS \$162.54 COPIER MAINTENANCE, WESTERN STATES BANK \$26,969.37 GERING/SCB SINKING FUND, WESTERN STATES BANK - POL \$320.00 PO UNION DUES, WESTERN UNITED ELECTRIC \$16,722.09 TRANSFORMERS D ST SUBSTATION, WINCHELL CLEANING SRV \$830.00 CLEAN HALLS/BATHS & OFFICE, WINTER EQUIPMENT CO INC \$295.61 WEAR PLATES - SNOW PLOWS, YMCA \$506.08 WELLNESS, ZM LUMBER CO DIST \$1,925.04 FENCE REPLACEMENT AT WWTP

**Motion by Councilmember Gillen to approve the Consent Agenda. Second by Councilmember Cowan. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.**

#### **BIDS:**

##### **1. Oregon Trail Park Ball Field Fence Bid**

City Engineer, Paul Snarr, stated that two bids were received; one from Van Pelt Fencing and one from Duinick Golf. Staff recommends awarding the bid to the low bidder, Van Pelt Fencing, in the amount of \$25,450.00. Councilmember Wiedeman asked why there was such a big gap between the two bids. Mr. Snarr didn't know why; the Engineer's Estimate was \$26,900.00. He said some of these contractors that have a lot of work scheduled will bid projects high.

**Motion by Councilmember Morrison to award the Oregon Trail Park Ball Field Fence bid to Van Pelt Fencing in the amount of \$25,450.00. Second by Councilmember Gillen. There**

**was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.**

## **2. Sanitary Sewer Slip Lining Repair Bid**

Public Works Director, Pat Heath, stated this is to reline the sanitary sewer that was installed prior to 1928 behind the Cobblestone Hotel and this is part of the upgrade for the hotel. The developer of the Cobblestone Hotel is paying for the sewer liner as part of the Redevelopment Agreement using Tax Increment Financing. The City may pay initial funds because of it being contracted with the City but the developer will reimburse us. We received two bids; one from Midlands Contracting and one from Lining & Coating Solutions Upchurch Services. The low bid was Midlands Contracting in the amount \$20,950.00 and staff recommends awarding the bid to Midlands Contracting out of Kearney, Nebraska.

Councilmember Morrison asked if this is just for that block. Mr. Heath stated it is just for this block and it is about 550 feet to reline; this is a trenchless technology. We did some about five to six years ago under the Fresh Foods building and did a piece about 300 feet between 10<sup>th</sup> & 11<sup>th</sup> Streets south of K Street. Johnson Service Company is associated with Midlands Contracting and the company that did those. Mr. Heath said he does have some samples prior to those being done. Basically it creates a new pipe inside the old existing pipe with epoxy material, steam and air pressure. It adds strength and life to the pipe. On the agenda item summary the amount budgeted should state "non-applicable" because the contractor is going to pay for this through TIF funding for the hotel project.

Councilmember Holliday asked if we were to have failure on that line, does it make it more difficult to do a full replacement at that time or is it just cut and repair. Mr. Heath replied that it's not any more difficult than what we have. We can cut through it with our existing saw and our existing coupling would also attach to that pipe and we most likely would add a PVC pipe to replace it. The issue is finding the problem if we need to replace. Issues include 1) 20 feet alley and 2) the sewer drain is anywhere from 13 to 15 feet deep and you have a three story building 10 feet away. The cost in just the excavation is going to cost much more than what it takes to reline. City Engineer, Paul Snarr, said it is basically a pipe in itself.

Councilmember Morrison asked if there was any digging. Mr. Heath stated there is no digging and when they are done the camera will reline it for them. Down time is about two hours. Our completion date is 8-18-17 and the contractor's completion date is 12-31-17 which is not a problem with the City. It can be done in the middle of the day or at night; we can work around the schedule with everybody. Councilmember Morrison asked how long the process takes. Mr. Heath said about four to five hours but because of the condition of the old pipes it may require a little extra time.

**Motion by Councilmember Wiedeman to award the Sanitary Sewer Slip Lining bid to Midlands Contracting Inc. in the amount of \$20,950.00. Second by Councilmember Gillen. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.**

## **CURRENT BUSINESS:**

### **1. Update on Landfill's Free Cleanup Day and possible grant for proper disposal of household waste/chemicals**

Environmental Services Director, Darrell Vance, stated that they ended up with 265 loads: 107 yards from Gering, 202 yards from Scottsbluff, 33 yards from Mitchell, a total of 22 appliances, 90 tires, 27 loads of trees, 193.5 gallons of oil and 130 gallons of paint that came in that day. He said with our free dump passes that we offer it is actually going down. We used to have to run a full two weeks, now we only have one Saturday. The free dumps are working well in Scottsbluff and Gering.

Mr. Vance went on to say he was in Omaha two weeks ago; Lincoln just got awarded a grant for \$175,000 for a building to recycle paint and household hazardous waste. He said he would like to ask for permission from the Council to apply for this grant to build a building in the Scottsbluff/Gering area. Councilmember Wiedeman asked how these would be disposed, through normal channels? Mr. Vance

replied yes and they would tell him how to dispose of them. The total cost of this project is \$225,000. He said we are shredding tires now and they are currently, on a daily basis, taking tires from Panhandle Coop and Dales Tire. Councilmember Wiedeman stated that Darrell is now on the Board of Keep Scottsbluff/Gering Beautiful and he is a very valuable asset. She stated that Darrell has had some great ideas at the meetings and is getting the roll-off boxes there to deal with items such as bicycle parts which is a great improvement during Earth Day. As far as household hazardous waste, Darrell and Councilmember Wiedeman have been involved with that and they know how much of that is brought back and it can only be brought back once a year. From her standpoint it is a great idea to have him do this and there is a venue to do this on a continuous basis. Mr. Vance said he will get the information and get back with the Council.

**Motion by Councilmember Morrison to enter Director Vance's report on free cleanup day into the public record. Second by Councilmember Cowan. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.**

## **2. WING Update**

Police Chief, George Holthus, thanked everyone for coming out. He stated that the WING grant that was just submitted last July was denied because the drug task force is not a priority. The WING grant is a year-to-year application and has been going on for 28 years; we have been receiving funding. The funds trickle down through the crime commission; they told us early in the application process that the task force is no longer a priority and if we want funding we would need to do something other than a multi-agency drug task force. He said they tried to modify the grant sufficiently to meet their requirements but not to lose the identity and effectiveness. Chief Holthus said we didn't meet the threshold that the crime commission thought was necessary. The financial impact to the GPD this fiscal year is just under \$18,000. That money is already budgeted. The process is that it would pay a portion of the Investigators salary and then we would request reimbursement and they would pay that portion. The money is already budgeted and we will continue to do the things that make the WING drug task grant successful. That is the option of the WING Drug Taskforce Board and the Investigators that are working it. Staff wanted the Council to hear the information and staff would be available for questions.

Councilmember Morrison inquired if all the money is gone. Chief Holthus replied that is correct, the entire grant that we would have received from the commission was around \$77,000 and when they divided that by the number of agencies that have full-time personnel it is about \$18,000 for the City of Gering. Councilmember Smith asked what their priority is and what is their goal. Chief Holthus replied looking at more of the evidence-based programs that effectively keep people out of contact with law enforcement. Councilmember Wiedeman asked if there are other grants besides those of the crime commission. Chief Holthus stated the other big one is the High Intensity Drug Trafficking Grant. It is another federal money source and those folks wrote a letter urging the Crime Commission to rethink this and to support our program because they recognize the need, importance, and the work that those folks are doing; unfortunately it did not help. Councilmember Morrison asked is it because of the size of our community, is it state-wide or is more money going to the other end of the state? Chief Holthus said he is not sure; there is definitely a high concentration of people and some of the programs they are looking to use or fund work better in the Lincoln/Omaha and Metropolitan area just because of population. Councilmember Backus encouraged Gering PD to apply for Keno funding since we already have Keno funds that can be used for a wide range of things; he doesn't think any citizen would be fond of the meth problem.

**Motion by Councilmember Wiedeman to enter the Police Chief's WING Update into the public record. Second by Councilmember O'Neal. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.**

**3. Request for a Personnel Committee meeting, agenda items 1. ASI (Advanced Services Inc) Agreement, 2. RCI HSA /Flex Claim Policy, and 3. Review final results of Pay & Compensation Study**

Motion by Council member O'Neal to approve request for a Personnel Committee meeting, agenda items 1. ASI (Advanced Services Inc) Agreement, 2. RCI HSA /Flex Claim Policy, and 3. Review final results of Pay & Compensation Study. Second by Councilmember Morrison. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.

**4. Approve Ordinance 2047 - AN ORDINANCE OF THE CITY OF GERING, NEBRASKA, AMENDING TITLE IX: GENERAL REGULATIONS, CHAPTER 92: FIRE REGULATIONS; REPEALING ALL ORDINANCES IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.**

Councilmember Smith stated that the Public Safety Committee met last Friday to discuss new wording to the fireworks ordinance. It does not change the hours that people can shoot off fireworks, they just clarified the language. They added that people can now come to Council and make a request to discharge fireworks on City property, such as the Member/Guest Golf Tournament and the baseball league. Special Event permits for this must be submitted 30 days in advance of the event.

Councilmember Gillen made a motion to introduce Ordinance No. 2047 - AN ORDINANCE OF THE CITY OF GERING, NEBRASKA, AMENDING TITLE IX: GENERAL REGULATIONS, CHAPTER 92: FIRE REGULATIONS; REPEALING ALL ORDINANCES IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE. Seconded by Councilmember Backus. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.

Councilmember Holliday moved that the Ordinance be designated as Ordinance No. 2047 and the title thereof approved, and that the Statutory Rule requiring Ordinances to be fully and distinctly read on three different days be dispensed with, which motion was seconded by Councilmember Wiedeman. There was no discussion. The Clerk called the role. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.

The motion to suspend the statutory rule having been concurred in by three-fourths of all members elected to the Council, was, by the Mayor declared to have carried. Whereupon Ordinance No. 2047 was read by title only, Councilmember O'Neal moved that the Ordinance be passed as read, which motion was seconded by Councilmember Morrison. The question is shall Ordinance No. 2047 be passed? There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.

The passage and adoption of the Ordinance having been concurred in by a majority of all members elected to the Council was by the Mayor declared passed.

**PUBLIC HEARINGS:**

1. Continuation of a Public Hearing to consider an application to amend zoning from Rural Residential Estates District (RRE) to Neighborhood Commercial District (BNC) on Lot 1, Block 2, Pappas Northwest Addition located on the Northwest corner of Five Rocks Road and Country Club Road containing approximately 4.6 acres. The property is situated in the Northeast Quarter of Section 34, T22N, R55W of the 6<sup>th</sup> PM in the City of Gering, Scotts Bluff County, Nebraska.

Notation: This public hearing was opened at 6:06 p.m. on March 27, 2017 and continued to April 10, 2017. It was continued on April 10, 2017 to April 24, 2017. It was continued again at the April 24, 2017 regular City Council meeting to a date and time certain, approximately May 8, 2017 at 6:00 p.m. This public hearing will be continued to May 22, 2017 at approximately 6:00 p.m. at the request of the City of Gering.

Councilmember Holliday stated that he is looking for some clarification and wants to make sure he is doing the right thing and would like the opinion of the rest of the Council present tonight. Recently he and Councilmember Cowan were asked to hold a community input forum at the library. During the course of the forum many topics were brought up and discussed as several of their constituents submitted a list of questions to them that evening. One of the topics was the rezoning of a piece of property on Country Club Road. He said as a Councilman, he should have a good understanding of the Open Meetings Act. Unfortunately in this setting he failed to have that understanding and should have known that they were in a precarious position with this specific topic. Recently, because of this conversation during the input session and media news story indicating that the topic of the meeting was the rezoning, it has been requested from him and Councilmember Cowan that they voluntarily recuse themselves from voting on this matter. After considering it over the weekend, Councilmember Holliday does not feel that he should have to recuse himself, thus the reason for wanting further input. Where his confusion comes from, and where he would like the opinion of the other Council Members, starts with this being an input session that the City put on, not he and Troy, and it was indicated to them that they would have to host it. The Monday before the input session he asked a City employee what he needed to do to be prepared for the session and what they needed to avoid. At that time he was told that there was nothing that he needed to be prepared for other than a pad of paper and a pen. At the meeting there was no one from the City to lead the community input session or to indicate what was to be discussed or what was not. There was no notice before hand from the City Attorney stating what should not have been talked about. He said it feels like they were given nothing and expected to guess what they should do. He is sure Council can start to see where his frustration stems from and maybe understand why he feels that he should not have to recuse himself. As he stated in the beginning, he just wants to make sure that he is doing what is right by Council and if it is Council's opinion that he and Troy need to recuse themselves, then that is what he will do. He would like to put that in Council's hands and ask their opinion of that.

Councilmember Smith asked who from the City asked them to do that. Councilmember Holliday replied that he believes they were contacted by the assistant at the library and the Library Director is the one that set this up. Councilmember Smith said those aren't City meetings are they? Mayor Kaufman stated that they are called Community Conversations.

Councilmember Morrison asked the Mayor to tell her what the difference is between a quasi-legislative event and a community conversation. Mayor Kaufman stated that he thinks the purpose, and we can ask Diane to back him up on this if he is off-base, the thought behind Community Conversations is for community access to our elected officials and in a somewhat informal setting and to utilize the library as a setting for that. He thinks that it is to get more participation in the library; it is a place of knowledge and access and it is a fitting setting. He has participated in one as well; so far there has been poor participation and the thought going forward was to rotate times and try some different things to rotate around to the different boards, and let the different Council men and women have opportunities to have a community conversation.

Councilmember Morrison stated so you have to walk a thin line as far as a community conversation and information and answer to questions. Mayor Kaufman replied in this particular instance it is unique from the stand point of the topic that was brought up, which was discussed with both Councilmember Holliday and Cowan. The interesting piece is that we were basically in a suspended hearing so because of that it is fair for people to come and ask questions. However, that suspended hearing has taken a course of weeks going on a month plus and so we just have to be mindful of that. The difficult piece on that is a perceived position was taken and recorded. We have to make sure we are being true to the process and so we felt through legal guidance that that was the high road to take. Understanding it is a frustration, it could happen to anyone, it wasn't done in a malicious act; they were simply trying to have a community conversation. But nonetheless, the information did transpire and was perceived as such and so again the City's position is to try to be true to all parties involved on both sides and be as impartial going into the final hearing segment as possible.

Councilmember Morrison stated that it was tabled here and it should have been tabled there also? Is that what you are saying? Or not tabled so much as continued. Mayor Kaufman replied the hearing didn't continue there, they just had a community conversation. The hearing here and the community

conversation are not linked. Councilmember Morrison said but they became one. Mayor Kaufman stated right just because of the information and the positions that were recorded by the Council.

Councilmember Cowan stated that he doesn't feel they did anything wrong. He doesn't feel they should be able to abstain on this; they addressed their point. He doesn't think this is anything that needs done like that. He said they will do what the rest of the Council tells them to do. He doesn't think the media got that down right when they talked about it. Like he said he will take 51% of the peoples' vote and that is the way it is. If it goes the other way that is the way he will go. He said he thinks it got marked down that they were going to vote that way.

Councilmember Backus stated that he has a couple of procedural questions. How many votes will be needed for the rezone to pass? City Attorney Ellison replied that it takes a majority of the Council. Councilmember Smith said what about the Ordinance. City Attorney Ellison replied for waiver of the three readings, in the one setting, it takes six votes to do that. But if you go three readings, one at a time, it just takes a normal vote. Councilmember Backus asked if a rezone is just a simple majority. City Attorney Ellison replied yes.

Councilmember Backus asked: procedurally, voting on removing something off of table shouldn't be affected by a conflict of interest though should it? We are not voting on the rezoning we are voting on the procedural item to remove from the table. City Attorney Ellison replied that first of all, the Council needs to understand that not only does the Council sit as a legislative body but they sit as judicial body. In this particular instance, Council is not sitting as a legislative body because the laws that you are interpreting are already on the books. In other words you have land use issues that are part of the zoning that are already passed and Council is interpreting that legislation already. Therefore it is his opinion, subject to whatever Council wants to do, but it is his opinion that sitting as a quasi-judicial body then Council is not allowed necessarily to have ex parte contacts with the public even if it was not intentional and when that takes place then you are not appearing with everybody in the full hearing and that taints the process potentially and affects the appearance of the process. Just like a judge, the judge never announces the decision the judge is going to make before he hears all the evidence at one hearing. That is the same thing we're talking about here; you've got to draw that distinction. As far as tonight is concerned, you have already notified the public that this is going to continue until the 22<sup>nd</sup> so he doesn't think it is appropriate for Council to take a position on this issue tonight in light of what has gone on. It may require an agenda item at the next meeting where this can be taken up if Council so desires; that is the motion that you may be talking about as to whether or not to allow, or get an opinion from the Council, on the ability of Councilmembers Holliday and Cowan to participate.

Councilmember Backus said so procedurally wise, it is still a conflict, back a tabled item, the conflict wouldn't affect the action to remove the item from table would it? City Attorney Ellison stated there is technically no conflict of interest, it is simply a matter of whether sitting as a judge on this particular issue you shouldn't recuse yourself. Councilmember Backus replied that they are not judging the issue; they are judging the procedure of the item on the table being removed or not. City Attorney Ellison replied yes. Councilmember Backus stated that if you have a conflict of interest you could vote to remove the item from the table as long as you are not voting on the actual item; you are voting on parliamentary procedure. City Attorney Ellison replied "right". Mayor Kaufman stated what is on the table tonight is just the continuation for which we do not have a motion or second.

Councilmember Smith asked City Attorney Ellison to clarify something on this conversation they had. Is what they did wrong just to discuss it or just the fact that they let their vote be known? Should we be doing the Community Conversations if they are going to put issues at risk like this? City Attorney Ellison stated the short answer is you can have a community discussion about various things. It is his understanding that that wasn't supposed to be the topic for discussion that night but it did come up. If the issue comes up the public certainly is entitled to talk about it and what they want. It is just that when you are sitting as a judge or quasi-judicial body you should not express your opinion about it either way. You say: "It is nice to hear from you, we will see you at the next public hearing when we can all be present and we can hear all sides and that is when I will make my decision and let you know how I feel".

Councilmember Gillen said having participated in one of these sessions you do get caught off-guard sometimes with some curve ball questions. Some helpful advice that I have received is "We will take that down, we will have the appropriate individual within the City contact you in regards to this matter" because we are an arm for our constituents to connect with the City. We have to vote on these matters as they come up. It is a very hard position to be in sometimes when you have someone wanting a direct answer from you and unfortunately sometimes you can't provide that. I felt like it was worthwhile when we were there, it allowed constituents to talk to us. It is not necessarily a bad thing. As a Councilmember it would be nice to have those conversations on what is on and off the table for discussions ahead of time going into these.

Councilmember Morrison said that makes it tough for our constituents because they come to those things looking for answers. You can get caught up in that role when you are not supposed to say these things and that is when they take the time out to come and see if they can get a heads up on what is really going on. You would have to be on your guard at all times so you wouldn't be in a situation like this because that is the hot topic. Councilmember Wiedeman said it is unusual because this has been continued several times and probably when it was originally scheduled it didn't even come into play. It was an unusual circumstance. Councilmember Holliday stated that he thinks Council understands that is the reason for him wanting the entire Council's opinion.

Councilmember Smith asked City Attorney Ellison: Even when we are talking individually with constituents we shouldn't let our opinion be known as to which way we will vote? City Attorney Ellison replied that is a hard question because it depends on whether you are sitting in a quasi-judicial capacity or legislative capacity and sometimes it is hard to tell which is which. This particular topic, in his opinion, is clearly quasi-judicial but on other topics it depends. For the most part if you are not interpreting land usage like you would be in this particular situation when you have residents on one side and property owners on the other side and there is potential for conflict. There is going to potentially be a winner or loser in that process; that is where you would have to be particularly careful. If you are talking about some ordinance, like for instance fireworks (on the agenda tonight), there isn't a particular problem with you talking with the general public about what they think the hours should be and things of that nature. You could express your opinion on that; that is a little easier one. He said he thinks it really does depend on the topic. In general you may be better off, because you don't always know if it is going to be a legislative side or quasi-judicial side, you may be better off saying "I would rather wait and hear from the public and listen to all sides before I express my opinion on the final vote". Mr. Ellison said that is the way it is supposed to work but he understands it doesn't always work that way. He doesn't think that there is a problem with people making contacts in certain circumstances. In the situation that we have before us, this issue is probably not appropriate.

Mayor Kaufman stated that what we have before us is the motion to continue the hearing to May 22, 2017 at 6pm.

**Motion by Councilmember Morrison to continue this public hearing to a date and time certain, approximately May 22, 2017 at 6:00 p.m. noting that Councilmember Gillen declared a conflict of interest on this matter at the March 27, 2017 City Council meeting which still stands. Second by Councilmember O'Neal. There was no discussion. The Mayor called the vote. "AYES": Smith, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: Gillen. Absent: None. Motion Carried.**

**CLOSED SESSION:** (Council reserves the right to enter into closed session if deemed necessary.)

**REPORTS:**



**OPEN COMMENT SECTION:** Discussion or action by Council regarding unscheduled business will not take place. This section is for citizen comment only.

Human Resources Director, Tammy Cooley, introduced Nathan Flowers as the new Fire Marshal/Fire Chief. He will start approximately May 24<sup>th</sup>. Mr. Flowers thanked everyone and stated that he is appreciative, humbled and excited to take on this role and continue what Chief Templar has done.

Mayor Kaufman said we kicked off National Tourism Week this week and tourism obviously is special in our community and our region. He encouraged the Council to attend several events throughout the week and to please make some time if they can to attend those. It is good visibility for our community and regional venues that do a lot of hard work in prepping for the season and shows support for them.

**ADJOURN:**

**Motion by Councilmember O'Neal to adjourn. Second by Councilmember Gillen. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Holliday, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: None. Motion Carried.**

Meeting adjourned at 6:52 p.m.

ATTEST:

  
Kathleen J. Welfl, City Clerk

  
Mark A. Kaufman, Mayor