

*Kearney, Nebraska
June 23, 2009
7:00 p.m.*

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 7:00 p.m. on June 23, 2009, in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Don Kearney, Bruce Lear, and Bob Lammers. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Kirk Stocker, Director of Utilities; Dan Lynch, Chief of Police; Bruce Grupe, City Engineer; and Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: Kent Cordes, Candy Kuntz, Dave Sims, Virginia Sims, Jeff Wirth, Al ZumBrunnen, Candace ZumBrunnen, Julie Brooker, Jerry Thompson, Tamdan Ngo, Lisa Ngo, Terry Eirich, Lacrica Olson, Cornell Hinkey, Mike Adelman, Sara Giboney from Kearney Hub, Steve Altmaier from KGFW Radio, NTV and KHAS TV.

Notice of the meeting was given in advance thereof by publication in the Kearney Hub, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the City Council and a copy of their acknowledgment or receipt of such notice is attached to these minutes. Availability of the Agenda was communicated in the advance notice and in the notice to the Mayor and City Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

I. ROUTINE BUSINESS

INVOCATION

There was no representative from the Kearney Ministerial Association to give the Invocation; therefore, the Council held a moment of silent prayer.

PLEDGE OF ALLEGIANCE

The Council members led the audience in the Pledge of Allegiance.

ANNOUNCEMENT

Mayor Clouse announced that in accordance with Section 84-1412 of the Nebraska Revised Statutes, a current copy of the Open Meetings Act is available for review and is posted towards the back of the Council Chambers.

PRESENTATION OF FIRE SERVICE AWARDS

Mayor Clouse and Council Members recognized the volunteer firefighters who have given many hours of their time in responding to fire/rescue emergencies, firefighter training, assisting with public fire prevention and safety education programs, serving as fire department officers, and serving on various types of committees. Each of the following volunteers is being recognized: Kelly Hardin 25 years, Jim Brooker 20 years,

Mike Guenther 10 years, Bob Scarborough 10 years, and Matt Ullman 5 years. Fire Chief Jerry Thompson presented the firefighters with the awards.

II. UNFINISHED BUSINESS

1. Moved by Kearney seconded by Lammers to approve the annual manufactured home court license for L&M Mobile Home Park, 1122 Central Avenue. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.
2. Postponed until August 25, 2009 any action on the annual manufactured home court license for Wood River Trailer Court, 865 West 78th Street.

III. PUBLIC HEARINGS

ANNEXATION OF EAST HIGHWAY 30 FROM ANTELOPE AVENUE TO CHERRY AVENUE

Public Hearings 1 and 2 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the annexation of a tract of land being U.S. Highway 30 from the intersection of Antelope Avenue located on the west line of Government Lot 1, Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, thence east to the intersection of Cherry Avenue and U.S. Highway 30 located on the east line of said Section 32, as the same is located within part of Government Lots 1 and 5; and part of the Northeast Quarter of the Southwest Quarter of said Section 32 and lying north of the north right-of-way line of the Union Pacific Railroad and south of Lots 1 and 2 of Vantage Industrial Park, Buffalo County Nebraska; and part of the Northwest Quarter of the Southeast Quarter of said Section 32 lying north of the north right-of-way line of the Union Pacific Railroad; and part of the South Half of the Northeast Quarter of said Section 32, lying north of the north right-of-way line of the Union Pacific Railroad and abutting the east line of said Section 32 at Cherry Avenue, all in Buffalo County, Nebraska.

City Manager Michael Morgan presented this matter to the Council. The first public hearing is the annexation of East Highway 30 from Antelope Avenue east to Cherry Avenue. As you may remember, the Council annexed Kearney Crete and Block, Morris Press and Cabelas. To clarify the ownership and maintenance of East Highway 30, the City is proceeding to annex it to make it part of the City limits. Annexation of these properties will not affect the Two-Mile Extra Territorial Jurisdiction line. The Planning Commission considered the proposed annexations at a public hearing held on May 15, 2009 and was unanimously approved. There were no members of the public that testified at said hearing. In accordance with Section 16-117 of the Nebraska Revised Statutes, the City Council, on June 9, 2009, passed a resolution stating its intent to annex, approved the annexation plans, and set the public hearing for comment on the proposed annexations before the City Council for tonight.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the annexation of a tract of land being U.S. Highway 30 from the intersection of Antelope Avenue located on the west line of Government Lot 1, Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, thence east to the intersection of Cherry Avenue and U.S. Highway 30 located on the east line of said Section 32, as the same is located within part of Government Lots 1 and 5; and part of the Northeast Quarter of the Southwest Quarter of said Section 32 and lying north of the north right-of-way line of the Union Pacific Railroad and south of Lots 1 and 2 of Vantage Industrial Park, Buffalo County Nebraska; and part of the Northwest Quarter of the Southeast Quarter of said Section 32 lying north of the north right-of-way line of the Union Pacific Railroad; and part of the South Half of the Northeast Quarter of said Section 32, lying north of the north right-of-way line of the Union Pacific Railroad and abutting the east line of said Section 32 at Cherry Avenue, all in Buffalo County, Nebraska. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

ANNEXATIONS OF PLATTE RIVER COMMERCIAL PARK, PLATTE RIVER COMMERCIAL PARK SECOND ADDITION, NORTH ACRE THIRD, BUFFALO COMMONS RETIREMENT VILLAGE

Mayor Clouse opened the public hearing on the annexation of the following tracts of land: Lot 1 of Block 1, Platte River Commercial Park, a subdivision being part of Government Lot 1, part of Government Lot 2, part of Government Lot 4 and part of Government Lot 5 located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; Lots 1 and 2 of Block 1, Platte River Commercial Park Second Addition, a subdivision being part of Government Lot 2 and part of Government Lot 4 located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; Lot 1 of Block 2 and Lot 1 of Block 3, North Acre Third, an addition being part of the Southeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; Lots 1 and 2, together with all of 56th Street abutting said Lot 2, Buffalo Commons Retirement Village, a subdivision being part of the South Half of the Southeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska.

City Manager Michael Morgan presented this matter to the Council. There are five tracts of land located in Platte River Commercial Park, Platte River Commercial Park Second, North Acre Third and Buffalo Commons Retirement Village that were platted and developed in the past, but were not annexed at that time for various reasons. These properties are now annexable and the City proposes to annex them into the corporate limits. Some of these properties were obligated to future annexation without protest by subdivision agreement when the property was platted. Annexation of these properties will not affect the Two-Mile Extra Territorial Jurisdiction line. The Planning Commission considered the proposed annexations at a public hearing held on May 15, 2009 and was unanimously approved. There were no members of the public that testified at said hearing. In accordance with Section 16-117 of the Nebraska Revised Statutes, the City Council, on June 9, 2009, passed a resolution stating its intent to annex, approved the annexation plans, and set the public hearing for comment on the proposed annexations before the City Council for tonight.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and approve the annexation of the following tracts of land: Lot 1 of Block 1, Platte River Commercial Park, a subdivision being part of Government Lot 1, part of Government Lot 2, part of Government Lot 4 and part of Government Lot 5 located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; Lots 1 and 2 of Block 1, Platte River Commercial Park Second Addition, a subdivision being part of Government Lot 2 and part of Government Lot 4 located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; Lot 1 of Block 2 and Lot 1 of Block 3, North Acre Third, an addition being part of the Southeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; Lots 1 and 2, together with all of 56th Street abutting said Lot 2, Buffalo Commons Retirement Village, a subdivision being part of the South Half of the Southeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

LIQUOR LICENSE FOR MONGOLIAN GRILL

Mayor Clouse opened the public hearing on the application for a Class C-85854 liquor license submitted by MONGOLIAN GRILL OF OMAHA LLC, dba Mongolian Grill located at 5012 3rd Avenue, 178, to consider the Manager Application for Tamdan Ngo, and to consider approval of Resolution No. 2009-80. The City received a letter from Lacrica Olson, Coalition Coordinator from Buffalo County Community Partners verifying that Tamdan received responsible beverage training on June 18, 2009.

Tamdan Ngo, co-owner and manager of Mongolian Grill, presented this matter to the Council. They are requesting a liquor license because many of their customers have requested alcoholic beverages.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and approve or recommend approval of the application for a Class C-85854 liquor license submitted by MONGOLIAN GRILL OF OMAHA LLC, dba Mongolian Grill located at 5012 3rd Avenue, Suite 178, approve the Manager Application for Tamdan Ngo, and approve **Resolution No. 2009-80**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

RESOLUTION NO. 2009-80

WHEREAS, Mongolian Grill of Omaha LLC, dba Mongolian Grill has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class C-85854 (Beer, Wine and Distilled Spirits – On and Off Sale) Liquor License to do business at 5012 3rd Avenue, Suite 178, Kearney, Nebraska, and has paid all fees and done all things required by law as provided in the Nebraska Liquor Control Act; and

WHEREAS, Mongolian Grill of Omaha LLC, dba Mongolian Grill also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Corporate Manager of Tamdan Ngo; and

WHEREAS, a hearing was held relating to said application on June 23, 2009.

NOW, THEREFORE, BE IT RESOLVED that the President and City Council of the City of Kearney, Nebraska approve or recommend approval to the Nebraska Liquor Control Commission of the issuance of a Class C-85854 (Beer, Wine and Distilled Spirits – On and Off Sale) Liquor License to Mongolian Grill of Omaha LLC, dba Mongolian Grill located at 5012 3rd Avenue, Suite 178, Kearney, Nebraska, and to approve the application for Corporate Manager of Tamdan Ngo.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to record the Council action favoring the issuance of said license in the Minute Record of the proceedings of the Council.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

IV. CONSENT AGENDA

Moved by Clouse seconded by Kearney that Subsection 1 through 18 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held June 9, 2009.

2. Approve the following Claims:

PS	Personnel Services
SMCS	Supplies, Materials & Contractual Services
ER	Equipment Rental
CO	Capital Outlay
DS	Debt Service

AT&T \$144.27 smcs; Agri Coop \$1,367.53 smcs; Alamar Uniforms \$48.74 ps; Alltel \$61.19 smcs; Almquist,R \$140.00 smcs; Amer First Aid \$26.30 smcs; Anderson Brothers \$142.26 smcs; Ardent Lighting Group \$38,929.50 co; Ask Supply \$263.95 smcs; Aurora Coop \$36.40 smcs; Baker & Taylor Books \$4,664.25 smcs; Bamford \$200.00 smcs; BBC Audiobooks \$112.26 smcs; Berens-Tates Consulting \$5,000.00 smcs; Blevins,D \$211.20 smcs; Bluecross Blueshield \$105,154.31 smcs; Bosselman \$907.50 smcs; Broadfoot's \$2,005.00 smcs; Brummer,M \$25.00 smcs; Buffalo Co Dist Court \$228.48 ps; Buffalo Co Economic \$28.14 smcs; Buffalo Co Highway Dept \$43.47 smcs; Buffalo Outdoor Power \$36.97 smcs; Builders \$172.40 smcs,co; Carey,K \$31.72 smcs; Carnes,H \$743.75 smcs; Carr,E \$19.23 smcs; Cash-Wa \$4,627.14 smcs; Central Fire & Safety \$100.00 smcs; Century Laundry Distributing \$8,710.00 co; CH Diagnostic & Consulting \$1,300.00 smcs; Charter \$179.97 smcs; Charter Media \$1,583.50 smcs; Chesterman \$5,333.00 smcs; City Glass \$646.75 smcs; City of Ky \$19,403.34 smcs,ps; College Savings Plan of NE \$100.00 ps; Creative Product Sourcing \$2,342.77 smcs; Credit Management Services \$242.39 ps; Crossroads Welding \$29,922.00 co;

Cummins \$248.87 smcs; Dawson Co PPD \$19,963.11 smcs; Day,D \$1,759.50 smcs; Dell \$4,021.34 co; Depository Trust \$66,145.00 ds; Dept of the Treasury \$559.97 ps; Development Council \$2,254.67 smcs; Don Quinn Plumbing \$135.76 smcs; Dutton-Lainson \$82.56 smcs; Eakes \$37.55 smcs; Eickhoff,B \$8.00 ps; EMC Ins \$2,576.88 smcs; Enterprise \$39.03 smcs; Eustis Body Shop \$210.00 smcs; Fedex \$81.48 smcs; Fiddelke \$892.24 smcs; Fireguard \$275.11 smcs; Footjoy \$59.33 smcs; Foremost Promotions \$184.02 smcs; Fujinawa,K \$40.44 smcs; Gale \$1,618.61 smcs; Galls \$28.39 smcs; GE Money Bank \$1,753.22 smcs; Gibreal,B \$27.66 smcs; Golden Rule Creations \$407.00 smcs; Graham, Candace \$15.02 smcs; Great Plains One Call \$460.71 smcs; Great Plains Safety \$250.00 smcs; H&H Distributing \$2,585.40 smcs; Hall,B \$1,744.00 co; Hausmann Construction \$258,705.00 co; HD Supply \$4,248.98 smcs; Highsmith \$244.80 smcs; Hitech \$483.00 smcs; Hollman Media \$300.00 smcs; Hydrite Chemical \$14,383.09 smcs; ICMA RC \$4,815.97 ps; IRS \$109,445.25 ps; Int'l Code Council \$60.00 smcs; Jack Lederman \$1,559.80 smcs; Johnson Service \$975.00 smcs; Johnson,A \$55.00 smcs; Jump A Roo \$200.00 smcs; Ky Clinic \$35.00 smcs; Ky Concrete \$28,392.97 smcs,co; Ky Crete & Block \$5,629.11 smcs,co; Ky Hub \$2,968.08 smcs; Kelly Electric \$1,371.97 smcs; KGFW/KQKY/KRNY \$693.92 smcs; Konica Minolta \$157.10 smcs; Lancope \$4,638.84 smcs; Landstrom,A \$43.04 smcs; Lawson Aquatics \$1,414.00 co; Lesco \$4,615.19 smcs; Linweld \$84.92 smcs; Loper Football \$2,188.00 smcs; Magic Cleaning \$4,160.00 smcs; Mail Express \$163.20 smcs; McLaughlin,P \$58.50 smcs; Menards \$41.62 smcs; Mennard Solutions \$350.00 smcs; Metlife \$16.20 ps; Midwest Striping \$12,990.00 smcs; Miller & Associates \$546.52 co; Municipal Supply \$907.11 smcs; NCS Equipment \$195.60 smcs; NE Child Support \$2,681.51 ps; NE Dept of Aeronautics \$995.00 ds; NE Press Advertising \$590.00 smcs; NE Regional Library \$200.00 smcs; NEland Distributors \$2,196.00 smcs; NMC \$67,887.12 co; Northwestern Energy \$3,618.91 smcs; NWEA \$290.00 smcs; O'Meara,B \$14.49 smcs; Optimist Club \$129.94 smcs; Overhead Door \$65.00 smcs; Paramount Linen \$301.42 smcs; Pep \$51.10 smcs; Pepsi-Cola \$525.77 smcs; Physio-Control \$185.87 smcs; Ping \$79.47 smcs; Platte River Radio \$150.00 smcs; Postmaster \$220.00 smcs; Presto-X \$96.00 smcs; Pro-Quest \$3,040.00 smcs; PW/Rentals \$345.00 smcs; Rand Materials \$256.22 smcs; Random House \$304.00 smcs; Ready Mixed Concrete \$3,467.26 smcs,co; Recorded Books \$568.01 smcs; Resource Management \$699.00 smcs; Reynolds,A \$20.00 smcs; Rheome Tree \$40.00 smcs; Riverside Mfg \$1,489.90 ps; RNDC-Eagle Division \$238.68 smcs; RNDC-Falcon Division \$83.22 smcs; Roberts,K \$10.49 smcs; Sage,P \$15.61 smcs; Sapp Brothers \$20,227.23 smcs; Schwartz,A \$18.56 smcs; Seymour,J \$16.95 smcs; S-F Analytical Lab \$218.00 smcs; Sherman,B \$175.00 smcs; Sherwin Industries \$348.00 smcs; Shopping Tripps \$20.00 smcs; Smith Signs \$234.00 smcs; Snap-On Tools \$73.48 smcs; Solid Rock \$130.00 smcs; SOS Portable Toilets \$170.00 smcs; Spaghetti Shop \$400.00 smcs; Springer Roofing \$356.28 smcs; St Fire Marshal Training \$250.00 smcs; Sterling Distributing \$269.80 smcs; Sungard Public Sector \$2,800.00 co; Taillon,R \$97.20 smcs; Taylor Made \$1,193.17 smcs; Tee's Plus \$1,393.88 smcs; Theis,J \$60.00 smcs; Thompson,K \$58.50 smcs; Tielke Enterprise \$209.75 smcs; Titleist \$1,071.69 smcs; Turner Body Shop \$556.00 smcs; Underground Construction \$550.00 smcs; Union Pacific Railroad \$100.00 er; Unique Management \$179.00 smcs; West Payment Center \$1,342.44 smcs; Wiegand Security Service \$75.00 smcs; Wilkins Hinrichs Stober \$25,136.59 co; Williams,M \$31.90 smcs; WPCI \$107.00 ps; Payroll Ending 6-6-2009 -- \$354,483.37. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$_____ to the

City of Kearney.

3. Receive recommendations of Planning Commission and set July 14, 2009 at 7:00 p.m. as date and time for hearing on those applications where applicable.

4. Approve the renewal of Non-Owned Corporate Hangar Lease (T-922A) between the City of Kearney and The Buckle for the storage of aircraft or aircraft parts, repair, maintenance and service of aircraft belonging to, leased to or under the control of The Buckle at the Kearney Regional Airport and approve **Resolution No. 2009-81.**

RESOLUTION NO. 2009-81

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the Non-Owned Corporate Hangar Lease for T-922A on behalf of the City of Kearney, Nebraska, with The Buckle, a copy of the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

5. Approve T-Hangar A-7 Lease Agreement between the City of Kearney and Randal Klinginsmith for storage at the Kearney Regional Airport and approve **Resolution No. 2009-82.**

RESOLUTION NO. 2009-82

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the T-Hangar A-7 Lease Agreement, on behalf of the City of Kearney, Nebraska, with Randal Klinginsmith, a copy of the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

6. Approve the Permit between the City of Kearney and Larry Eggert on behalf of H&E Air Service to occupy the public right-of-way and approve **Resolution No. 2009-83.**

RESOLUTION NO. 2009-83

WHEREAS, Larry Eggert on behalf of H&E Air Service requested permission to enclose the stairway with a roof, frame around the opening and a door on the Wort Building located at the southeast corner of 24th Street and Central Avenue.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the request submitted by Larry Eggert on behalf of H&E Air Service to enclose the stairway with a roof, frame around the opening and a door on the Wort Building located at the southeast corner of 24th Street and Central Avenue be approved subject to the conditions set forth in the Permit, marked as Exhibit "A", attached hereto and made a part hereof.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

7. Approve the Technical and Professional Services Contract between the City of Kearney and Miller & Associates to perform technical and professional services for the administration of a federal Economic Development Assistance Program Grant for area economic development public works infrastructure for 2009-2010 and approve **Resolution No. 2009-84.**

RESOLUTION NO. 2009-84

WHEREAS, the City of Kearney was awarded federal Economic Development Assistance Grant Funds from the U.S. Department of Commerce, Economic Development Administration for area economic development public works infrastructure improvements for 2009-2010; and

WHEREAS, the City of Kearney requested proposals from firms in Central Nebraska for project administration services relating to this project; and

WHEREAS, City staff reviewed the proposals and recommends pursuing a contract with Miller & Associates to provide project administration services.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute, on behalf of the City of Kearney, the Technical and Professional Services Contract between the City of Kearney and Miller & Associates for project administration services as set forth in the Contract. A copy of the said Contract, marked Exhibit "A", is attached hereto and made a part hereof by reference

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

8. Approve the Technical and Professional Services Contract between the City of Kearney and Miller & Associates to perform technical and professional services for the administration of a Community Development Block Grant for 2009-2010 and approve **Resolution No. 2009-85.**

RESOLUTION NO. 2009-85

WHEREAS, the City of Kearney was awarded Community Development Block Grant Funds from the Nebraska Department of Economic Development which will provide public works infrastructure improvements for 2009-2010; and

WHEREAS, the City of Kearney requested proposals from firms in Central Nebraska for project administration services relating to this project; and

WHEREAS, City staff reviewed the proposals and recommends pursuing a contract with Miller & Associates of Kearney to provide project administration services.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute, on behalf of the City of Kearney, the Technical and Professional Services Contract between the City of Kearney and Miller & Associates for project administration services as set forth in the Contract. A copy of the said Contract, marked Exhibit "A", is attached hereto and made a part hereof by reference

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

9. Approve the selection of Miller & Associates for engineering design services, preliminary and final design for paving, storm sewer, water and sanitary sewer improvements for an area in southwest Kearney and approve **Resolution No. 2009-86**.

RESOLUTION NO. 2009-86

WHEREAS, the City of Kearney advertised for Request for Proposals for engineering/design services, preliminary design and final design for paving, storm sewer, water, and sanitary sewer improvements for an area in southwest Kearney, Nebraska; and

WHEREAS, City staff reviewed the proposals and interviewed the three firms and has recommended the selection of Miller & Associates.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that Miller & Associates be selected for engineering/design services, preliminary design and final design for paving, storm sewer, water, and sanitary sewer improvements for an area in southwest Kearney.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

10. Approve the request submitted by the University of Nebraska at Kearney to conduct a Homecoming Parade on October 17, 2009 beginning at 10:00 a.m. The route will commence on North Railroad Street and Central Avenue, north on Central Avenue to 27th Street, west on 27th Street to 9th Avenue and ending at the Nebraskan Student Union. The staging area to be blocked off beginning at 7:00 a.m. is Railroad Street from Avenue E to 5th Avenue, 4th Avenue from Railroad Street to 22nd Street, 3rd Avenue from Railroad Street to 22nd Street, 21st Street from 3rd Avenue to 5th Avenue, 20th

Street from 3rd Avenue to 5th Avenue, Avenue B from Railroad Street to 22nd Street, Avenue C from Railroad Street to 22nd Street, Avenue D from Railroad Street to 22nd Street, and Avenue E from Railroad Street to 22nd Street. Parking will be prohibited on Central Avenue between Railroad Street and 25th Street from 2:00 a.m. until conclusion of the parade. This request will also allow for the selling of refreshments during the parade.

11. Approve submitting the Energy Efficiency and Conservation Block Grant to the Department of Energy for projects that implement energy efficiency and conservation strategies and approve **Resolution No. 2009-87.**

RESOLUTION NO. 2009-87

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the Energy Efficiency and Conversation Block Grant, on behalf of the City of Kearney, Nebraska, with the American Recovery and Reinvestment Act, the Department of Energy, a copy of the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

STANLEY A. CLOUSE
 PRESIDENT OF THE COUNCIL
 AND EX-OFFICIO MAYOR

12. Approve the Agreement between the City of Kearney and WindStar Events & Marketing to temporarily close the parking lot located north of the Museum of Nebraska Art, 2401 Central Avenue, from 7:00 a.m. on October 2, 2009 until 2:00 p.m. on October 4, 2009 to conduct a downtown festival.

13. Approve Application and Certificate for Payment No. 1-Final in the amount of \$31,972.00 and the Certificate of Substantial Completion submitted by Wilke Contracting Corp. and approved by Miller & Associates for the 2009 Part 7 – Cherry Avenue Bridge Repair and approve **Resolution No. 2009-88.**

RESOLUTION NO. 2009-88

WHEREAS, Wilke Contracting Corp. of Kearney, Nebraska has performed services in connection with the 2009 Part 7 – Cherry Avenue Bridge Repair, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 1-Final in the amount of \$31,972.00 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$31,972.00</u>
Contract Sum to Date	31,972.00
Total Completed and Stored to Date	31,972.00
Retainage	.00
Amount Due to Date	31,972.00
Less Previous Certificates for Payment	<u>.00</u>

Current Payment Due

\$31,972.00

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of May 28, 2009, as shown by Exhibit "B" attached hereto and made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 1-Final, as shown on Exhibit "A", and the Certificate of Substantial Completion as shown on Exhibit "B" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

14. Approve Change Order No. 1 showing an increase in the amount of \$2,015.50, Application and Certificate for Payment No. 1 in the amount of \$50,702.60 submitted by Concrete Workers, Inc. and approved by Miller & Associates for the 2009 Part 3 Improvements for the construction of sidewalks in southeast Kearney and approve **Resolution No. 2009-89.**

RESOLUTION NO. 2009-89

WHEREAS, Concrete Workers, Inc. of Kearney, Nebraska has performed services in connection with the 2009 Part 3 Improvements for the construction of sidewalks in southeast Kearney, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing an increase in the amount of \$2,015.50 as shown on Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, Concrete Workers, Inc. and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 1 in the amount of \$50,702.60 as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$140,907.00
Change Order No. 1 (6-23-2009)	+ <u>2,015.50</u>
Contract Sum to Date	142,922.50
Total Completed and Stored to Date	56,336.22
Retainage	5,633.62
Amount Due to Date	50,702.60
Less Previous Certificates for Payment	<u>.00</u>
Current Payment Due	\$ 50,702.60

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 1, as shown on Exhibit "A" and Application and Certificate for Payment No. 1, as shown on Exhibit "B", be and are hereby accepted and approved.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

15. Approve the Plans and Specifications for the Airport Signage Project and set the bid opening date for July 21, 2009 at 2:00 p.m.

16. Approve submitting the Justice Assistance Grant for the Kearney Police Department to go towards the purchase of a Direct-Link LifeLine crisis communications system as well as a Salient Stills digital recording system and approve **Resolution No. 2009-90.**

RESOLUTION NO. 2009-90

WHEREAS, the Kearney Police Department, in conjunction with the Buffalo County Sheriff's Department, is making application for the 2009 Byrne Justice Assistance Grant with funds going toward the purchase of the purchase of a Direct-Link LifeLine crisis communications system as well as a Salient Stills digital recording system.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor be and is hereby authorized and directed to execute the Grant Application and other related documents on behalf of the City of Kearney.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

17. Approve the Joint City of Kearney-Buffalo County 2009 Byrne Justice Assistance Grant Program Award Interlocal Agreement for the purchase of a Direct-Link LifeLine crisis communications system as well as a Salient Stills digital recording system and approve **Resolution No. 2009-91.**

RESOLUTION NO. 2009-91

WHEREAS, the Kearney Police Department, in conjunction with a grant awarded to the Buffalo County Sheriff's Office, will apply awarded funds towards the purchase of a Direct-Link LifeLine crisis communications system as well as a Salient Stills digital recording system; and

WHEREAS, the grant program identifies the City of Kearney and Buffalo County as disparate jurisdictions and requires a joint application; and

WHEREAS, the City and County believe it to be in their best interests to enter into an Interlocal Agreement with regard to the JAG funds.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Joint City of Kearney-Buffalo County 2009 Byrne Justice Assistance Grant Program Award Interlocal Agreement the purchase of a Direct-Link LifeLine crisis communications system as well as a Salient Stills digital recording

system, attached as Exhibit A and made a part hereof by reference, be and is hereby approved.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute the Interlocal Agreement on behalf of the City of Kearney.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

18. Approve the recommendation submitted by the Fire Chief to include the following as members of the Kearney Volunteer Fire Department: John Keeney, Brandon Koopman, Mark Panowicz and David Copp and approve **Resolution No. 2009-92.**

RESOLUTION NO. 2009-92

WHEREAS, Jerry Thompson, Chief of the Kearney Volunteer Fire Department, has forwarded several names of individuals desiring to serve as volunteers in the Kearney Volunteer Fire Department; and

WHEREAS, based on the recommendation of Chief Thompson, the City Council of the City of Kearney, Nebraska hereby finds and determines that said persons listed are fully capable and qualified to serve a membership in the Kearney Volunteer Fire Department; and

WHEREAS, in order to be qualified for benefits in accordance with Sections 48-115, et seq. of the Nebraska Revised Statutes, said volunteer firefighters acting outside the corporate limits of the City must be officially directed to do so in order to be eligible.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kearney, Nebraska, that those persons recommended by the Chief of the Kearney Volunteer Fire Department for membership in the Kearney Volunteer Fire Department as set forth on the attached letter of recommendation, marked Exhibit "A," attached hereto and made a part hereof by reference, are hereby confirmed as members of the Kearney Volunteer Fire Department for the purposes of and in accordance with Section 48-115 of the Nebraska Revised Statutes, and that said members are fully entitled to benefits under the Workers' Compensation Act.

BE IT FURTHER RESOLVED that all of said volunteer firefighters named on Exhibit "A" are hereby specifically authorized and directed to serve outside the corporate limits of the municipality under the direction, orders and authority of the Chief of the Kearney Volunteer Fire Department in accordance with Section 4-204 of the Kearney City Code.

PASSED AND APPROVED THIS 23RD DAY OF JUNE, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

ORDINANCE NO. 7528 – ANNEXATION OF EAST HIGHWAY 30 FROM ANTELOPE AVENUE TO CHERRY AVENUE (PERTAINS TO PUBLIC HEARING 1)

Ordinance No. 7528 annexing East Highway 30 from Antelope Avenue to Cherry Avenue. Most generally, the City Council always suspends the rules requiring the reading on three different days and moves for final passage. However, in accordance with Section 16-404 of the Nebraska Revised Statutes, "...such requirement shall not be suspended for any ordinance for the annexation of territory." Therefore, the Council will have the first reading of the ordinance by title on June 23, the second reading on July 14 and the final reading on July 28.

Council Member Kearney introduced Ordinance No. 7528, being Subsection 1 of Agenda Item VI to annex a tract of land being U.S. Highway 30 from the intersection of Antelope Avenue located on the west line of Government Lot 1, Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, thence east to the intersection of Cherry Avenue and U.S. Highway 30 located on the east line of said Section 32, as the same is located within part of Government Lots 1 and 5; and part of the Northeast Quarter of the Southwest Quarter of said Section 32 and lying north of the north right-of-way line of the Union Pacific Railroad and south of Lots 1 and 2 of Vantage Industrial Park, Buffalo County Nebraska; and part of the Northwest Quarter of the Southeast Quarter of said Section 32 lying north of the north right-of-way line of the Union Pacific Railroad; and part of the South Half of the Northeast Quarter of said Section 32, lying north of the north right-of-way line of the Union Pacific Railroad and abutting the east line of said Section 32 at Cherry Avenue, all in Buffalo County, Nebraska, and moved that Ordinance No. 7528 be placed on first reading by title only. Council Member Lammers seconded the motion to place on first reading. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried. City Clerk read Ordinance No. 7528 on first reading by title only.

ORDINANCE NO. 7528

An Ordinance of the City of Kearney, Nebraska, to extend the boundaries and include within the corporate limits of, and to annex to the City of Kearney, Nebraska a tract of land being U.S. Highway 30 from the intersection of Antelope Avenue located on the west line of Government Lot 1, Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, thence east to the intersection of Cherry Avenue and U.S. Highway 30 located on the east line of said Section 32, as the same is located within part of Government Lots 1 and 5; and part of the Northeast Quarter of the Southwest Quarter of said Section 32 and lying north of the north right-of-way line of the Union Pacific Railroad and south of Lots 1 and 2 of Vantage Industrial Park, Buffalo County, Nebraska; and part of the Northwest Quarter of the Southeast Quarter of said Section 32 lying north of the north right-of-way line of the Union Pacific Railroad; and part of the South Half of the Northeast Quarter of said Section 32, lying north of the north right-of-way line of the Union Pacific Railroad and abutting the east line of said Section 32 at Cherry Avenue, all in

Buffalo County, Nebraska; to provide service benefits thereto; to confirm zoning classifications; to repeal all ordinances and resolutions or parts thereof in conflict herewith; and to provide for publication in pamphlet form by authority of the City Council and effective date of this ordinance.

ORDINANCE NO. 7529 – ANNEXATION OF PLATTE RIVER COMMERCIAL PARK, PLATTE RIVER COMMERCIAL PARK SECOND ADDITION, NORTH ACRE THIRD, BUFFALO COMMONS RETIREMENT VILLAGE (PERTAINS TO PUBLIC HEARING 2)

Ordinance No. 7529 annexing Platte River Commercial Park, Platte River Commercial Park Second Addition, North Acre Third, and Buffalo Commons Retirement Village. Most generally, the City Council always suspends the rules requiring the reading on three different days and moves for final passage. However, in accordance with Section 16-404 of the Nebraska Revised Statutes, "...such requirement shall not be suspended for any ordinance for the annexation of territory." Therefore, the Council will have the first reading of the ordinance by title on June 23, the second reading on July 14 and the final reading on July 28.

Council Member Lammers introduced Ordinance No. 7529, being Subsection 2 of Agenda Item VI to annex the following tracts of land: Lot 1 of Block 1, Platte River Commercial Park, a subdivision being part of Government Lot 1, part of Government Lot 2, part of Government Lot 4 and part of Government Lot 5 located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; Lots 1 and 2 of Block 1, Platte River Commercial Park Second Addition, a subdivision being part of Government Lot 2 and part of Government Lot 4 located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; Lot 1 of Block 2 and Lot 1 of Block 3, North Acre Third, an addition being part of the Southeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; Lots 1 and 2, together with all of 56th Street abutting said Lot 2, Buffalo Commons Retirement Village, a subdivision being part of the South Half of the Southeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, and moved that Ordinance No. 7529 be placed on first reading by title only. Council Member Lear seconded the motion to place on first reading. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. City Clerk read Ordinance No. 7529 on first reading by title only.

ORDINANCE NO. 7529

An Ordinance of the City of Kearney, Nebraska, to extend the boundaries and include within the corporate limits of, and to annex to the City of Kearney, Nebraska the following tracts of land: Lot 1 of Block 1, Platte River Commercial Park, a subdivision being part of Government Lot 1, part of Government Lot 2, part of Government Lot 4 and part of Government Lot 5 located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; Lots 1 and 2 of Block 1, Platte River Commercial Park Second Addition, a subdivision being part of Government Lot 2 and part of Government Lot 4 located in Section 32, Township 9

North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; Lot 1 of Block 2 and Lot 1 of Block 3, North Acre Third, an addition being part of the Southeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; Lots 1 and 2, together with all of 56th Street abutting said Lot 2, Buffalo Commons Retirement Village, a subdivision being part of the South Half of the Southeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; to provide service benefits thereto; to confirm zoning classifications; to repeal all ordinances and resolutions or parts thereof in conflict herewith; and to provide for publication in pamphlet form by authority of the City Council and effective date of this ordinance.

ORDINANCE NO. 7530 – AMEND CITY CODE TO ALLOW FOR SELLING ALCOHOL OFF PREMISE ON SUNDAY

Mayor Clouse opened for discussion Ordinance No. 7530 to amend the City Code to allow beer, wine and distilled spirits to be sold off the premise on Sunday between 12:00 p.m. until 12:00 a.m. At the last Council meeting, Attorney Jeff Wirth representing a group of convenience store owners requested the Council to consider amending the City Code. The Council did not take any action because they wanted to allow for public input. The City did receive two letters of opposition and he received very few comments.

Council member Buschkoetter stated he requested that this issue be put on the Agenda because he saw this law as somewhat outdated. Especially when two miles outside of Kearney's northern and western boundaries, business is booming. If there is a goal of trying to make it so there is not alcohol in Kearney, that goal is not being met. It is just moving that money spent on alcohol outside of our community. He did not believe that all liquor stores will stay open on Sundays if this new law is put into effect. The convenience stores that are open anyway, now can sell this profitable product. The County allows package liquor sales on Sunday just outside our City limits. The input he has heard from most people is that it is about time that it is allowed in Kearney.

Council member Kearney stated that most people he has heard from regarding this issue are opposed to it. He thought it could possibly be due to the age difference. He believed that the "blue laws" should be reviewed, but suggested doing it in a comprehensive way instead of step by step. The Council has made changes to these laws several times over the past years. There are people who might want to have a Champaign brunch on a Sunday morning before noon who might request to have the law changed in the future.

City Attorney Mike Tye stated the State Statute sets the general parameters of noon on Sunday until midnight and sales cannot be allowed from 1:00 a.m. to 6:00 a.m. That is why several of the surrounding communities that are listed in the memo have simply complied with what the State Statute has set as the parameters. A city can choose to be more restrictive by City ordinance than what that State Statute allows, but it cannot expand to more hours. Currently, Kearney is more restrictive than the State Statute allows.

Council member Lammers stated he had done some research on this issue. His opinion on selling alcohol on Sunday does not improve the quality of life in Kearney.

Selling alcohol on Sunday will increase the number of cases of domestic violence, car crashes, car fatalities and the increase of alcohol to minors. A study of Sunday alcohol sales in New Mexico from 1990-2000, the five years before Sunday alcohol sales and the five years after indicated a 29 percent increase in alcohol related crashes, 42 percent in alcohol related fatalities as published in the American Journal of Public Health. No other day of the week saw a significant change in the percentage of related crashes and fatalities after the legislation was enacted. Counties that chose not to participate in Sunday alcohol sales saw their related statistics remain similar to what they were before. The New Mexico's study found that the Sunday ban saved lives and prevented hundreds of fatalities and injuries from alcohol related crashes.

On March 27, 2008, the Governor of Georgia wrote an article entitled "The Tragic Cost of Sunday Alcohol Sales" sighting the same study in New Mexico funded by the Robert Wood Johnson Foundation to uncover the legislations long term affects. The sponsors of the New Mexico legislation hoped that the following sales of off premise consumption might encourage more people to buy alcohol and drink at home, thus reducing accidents and deaths. This obviously was not the case. This argument was a tempting trap for the state's legislators and many of New Mexico's elected officials who were chasing the same carrot without seeing the stick.

In Indiana where Sunday liquor sales are banned, they rank 4th in the lowest alcohol related fatalities in the nation. In New Mexico they have the 8th highest alcohol related fatalities. A recent study in Minnesota showed the economic cost associated with alcohol use in 2001 accounted for \$4.5 billion more than \$900 for every man, woman and child in Minnesota. The cost was 19 times greater than the \$234 million in tax revenues collected by the state of Minnesota from alcohol sales. From the production of Sunday alcohol sales in Brisbane, Australia there were significant increases in the number of Sunday casualties and reported property damage accidents. The increase is still applicable after a second 3-year study. The introduction or marked increase in Sunday alcohol sales in Michigan, Australia, New South Wales, Victoria, Finland, Norway and Sweden resulted in increases in road deaths, road injuries and/or violence.

In Norway, the state monopoly liquor stores close from 1:00 p.m. on Saturday, as well as Sunday after trial disclosure period in 1991 showed a decrease in assault rates, drunkenness, and domestic disturbances and without diminishing total liquor sales for the week. The sale of package liquor on Sundays increases the chances of underage children having access to alcohol. Approximately 1/5 of the alcohol consumed in the United States is done by people under the legal age. His concern was that in a restaurant or bar IDs is being checked; however, purchasing package liquor and taking it home, it can be consumed by minors as well as adults. We should make it easier for them to access.

Council member Buschkoetter stated that he had viewed the same website. He noted that New Mexico went from no alcohol sales to both on/off sale at the same time which means that there was no access to any alcohol prior to that. In Kearney, you can go to the bar and drink and then drive home or to the liquor store and buy beer and go home and drink it there. Not that everyone is going to do that, but some will. He believed that they were comparing apples and oranges. Extending package liquor sales on Sunday is not any different than purchasing any other day of the week. He discusses "blue

laws” with his students in class when they study the First Amendment. He stated that the students often say those laws do not make sense. Young people today know how to procure alcohol. If people are worried they can find someone to buy at a local liquor store for them, you can bet they already know where Glenwood Corners is. Alcohol does not go away, just because it is not available at Wal-Mart on Sunday. It is the duty of their parents to teach their children responsible behaviors at home. Alcohol is already available all seven days of the week; it is just whether or not you have to drive another two miles to get it or not.

Mayor Clouse stated this is a sensitive issue and one that they should give some serious consideration. Although this was not a public hearing, the Mayor opened the floor for comments.

Jeff Wirth, Attorney in Kearney, stated two weeks ago he appeared before the Council on behalf of his clients, a group of convenience store owners who were requesting that the City ordinance be amended to allow for off sale on Sunday. They want to bring the off sale into compliance with on sale. They are not looking to expand hours of the sales, but only within the allowable time on Sunday according to the State Statute. This is going to be a matter of choice. If the Council passes the ordinance, it does not mean that Wal-Mart has to sell beer on Sunday or that Bill’s Liquor has to open to sell beer on Sunday. He anticipated that many of those places that are otherwise closed on Sundays might elect to stay closed. The issue is that the convenience stores that are open seven days a week anyway would like to have the opportunity to expand their sales and make a little money. This becomes a matter of economics where we are experiencing tough times and employers are looking for ways to not lay off workers or cut hours. They are asking to allow some of our community business leaders to expand their profit making ability to sell what they are otherwise legally entitled to sell. They are asking to basically make this ordinance the same as on sale which is noon to midnight and to expand the hours to 1:00 a.m. on New Year’s Eve if it falls on a Sunday.

Mike Adelman, 1417 Avenue F, stated that he had a couple of things he disagreed with that Mr. Wirth had said regarding this issue. He stated that despite the comments about the economic downturn and its supposedly negative impact on off premise alcohol sales, off premise players that do not grow during economic recessions are the exception rather than the rule. He quoted Mr. Wirth from the Kearney Hub article, “The main motivation, quite honestly, is one of economics and given the economic times that everybody is feeling, political subdivisions, counties, retailers, big retailers, and huge corporations everybody is feeling the crunch of the economic times that we are in.” Mr. Adelman disagreed with that statement. According to the Richard Brandis, Editor and Chief of Beverage Dynamics magazine a regular publication that comments on the health and economics of the alcohol industry, retail sales of beverage alcohol in bars and restaurants have significantly decreased in the past six months. Sales volumes at the off premise operations has increased and those gains are primarily comprised of value priced products. In essence, liquor store sales are up or should be and the gains come from the increase consumption of lower tier brands. This is not necessarily a good thing, but growth is growth. To argue that everybody on the off premise is feeling the crunch of the economic times that we are in, he believes is a false statement.

Mr. Adelman did not believe the Council should pass this ordinance for that reason. If a

liquor store is not growing during tough economic times, given the economy is not devastatingly bad, then the store should review its policies and promotions instead of blaming the economy. Mr. Brandis (Beverage magazine) further stated that if the on premise is not suffering in bars and restaurants, it is entirely possible the lack of Sunday package stores sales in Kearney is protecting the business of bars and restaurants to gain from Sunday sales. By allowing off sale, it will remove their exclusive right to sell liquor by the drink on Sunday and will cause more harm to the on premise than good to the off premise. A short term gain now of the off premise could be detrimental to the health of the on premise and may cause irreparable harm to the current crop of bars and restaurants who serve alcohol in town. In fact, some of them may no longer exist when times are good again which in turn will harm the off premise. There is no proof that allowing for Sunday sales in the off premise will increase business at all, rather than just redistributing it.

The residents of Kearney will not immediately become accustomed to the modified ordinance. The effects of sales of alcohol on Sundays may not become widely known until the tough economic times, which they set out to avert, have long since come to an end. These arguments demonstrate the high possibility of long term costs and short term gains. It would be wiser to weather this economic storm the old fashioned way without creating broad base rules that may cause a great deal of harm to the beverage and alcohol industry in this region and the hundreds of job it provides in this community.

Mayor Clouse stated that he personally would not change this ordinance for economic reasons. The reason he would consider doing this is to level the playing field because he believes that the convenience store owners are at a competitive disadvantage. He also does not believe that the City of Kearney is going to have a windfall from sales tax increases from these alcohol sales. Time will tell how this plays out and the strong will survive. If an establishment is providing good service, they will survive regardless of the circumstances.

Cornell Hinkey, 4210 Bel Air Drive, owner of Little USA located west of Kearney on Highway 30, stated that although it has been said this is not an economic issue, for his business it is. A big part of his survival is the Sunday beer sales which he believed was true also for Glenwood Corners. Their businesses rely on that traffic on Sundays because they do not get near as much traffic because they have to bring them that far out there during the week. If Sunday off sale opens up in town, he believed it would allow more minors access to alcohol on Sundays. Right now there are only two places around Kearney that can give them the opportunity to purchase. He believed that they are doing a good job of keeping it away from minors.

Council member Lammers stated he values the quality of life that we have here in Kearney. If the Council is thinking about making a decision on this tonight, he suggested that it go out to the community to decide what their quality of life issues should be.

Council member Buschkoetter stated they had a very similar discussion 8-10 years ago about kids having more access to alcohol when the proposal of having a brew pub in Kearney was presented. They have two in town that are very good at carding minors and he did not believe that either have had any liquor license violations. One has expanded to producing their beer in cans and selling it to liquor stores across the state.

He stated that it really affects those who have a business interest in it and the convenience of our citizens. It is up to the individual to decide what they want to buy and where they want to spend their money.

Council member Lear stated the larger issue has been well illustrated by Council members Lammers and Buschkoetter. He had great respect for many of the points brought up by Council member Lammers because he believes they are true. His personal feelings do not include the vote for economics because if they start voting based on economics, they will end up selling a lot of things that perhaps they should not be selling. His issue result from the arbitrary line has somehow been drawn, on one side of the line you can sell beer on Sunday and on the other side you cannot. He does not think that is fair, it should be the same for all. He agrees that like any product when you make it more available, more of it is consumed. There is a lot of competition because we have so many convenience stores in this area. He thinks that most of them will opt for the sale on Sunday. He did not think it will help underage drinking to allow this, but will not have a major negative impact on it either. He would question why do we have this arbitrary line and does it really provide a significant benefit. He would be in favor of allowing Sunday sales.

Council Member Lear introduced Ordinance No. 7530, being Subsection 3 of Agenda Item VI to amend Section 3-1304 "Alcoholic Beverages; Hours of Sale; Generally" of Article 13 "Alcoholic Beverages" of Chapter 3 "Business Regulations" of the Kearney City Code to allow beer, wine and distilled spirits to be sold off the premise on Sunday between 12:00 p.m. until 12:00 a.m.; to delete in its entirety Section 3-1305 "Alcoholic Beverages; Hours of Sale; Sundays" of Article 13 "Alcoholic Beverages" of Chapter 3 "Business Regulations of the Kearney City Code, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: Lammers. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7530 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: Lammers. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7530 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: Lammers. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7530 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

OPEN ACCOUNT CLAIMS: NPPD - \$58,242.08, PLATTE VALLEY STATE BANK - \$47,600.92

Moved by Kearney seconded by Lammers that Open Account Claims in the amount of \$47,600.92 payable to Platte Valley State Bank, and in the amount of \$58,242.08 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney. Nay: None. Clouse and Lear abstained. Motion carried.

VII. REPORTS

UPDATE ON 5TH AVENUE ASPHALT OVERLAY PROJECT

City Engineer Bruce Grupe stated the project includes the milling and overlay of 5th Avenue from approximately 13th Street to 25th Street. They have run into some problems with this project. They milled three blocks of surfacing from 16th Street to 19th Street. The south block being from 16th Street to 17th Street, they found some really severe base problems. There is existing concrete under this asphalt and a lot of their equipment fell through. The last time this concrete was overlaid was 15 years ago. The City needs to re-evaluate this project, particularly that block of pavement. They have taken a look at some cost options and believe that we can get a 40-50 year fix on that block (only) by repaving it for a minimal amount of an additional \$10,000. The other two blocks that were milled are not as severe as that one, but recognize that the base is in poor condition. They want to make sure they are spending citizens' money equitably and so will further re-evaluate this project. Last fall the City did a lot of patching in that area with its own forces and thought it had a pretty good indicator of what was going on. They were surprised to find the one they patched the least was the one that they found the most problems with.

City Manager Michael Morgan stated they are concerned about the value of the project going forward in this particular way. He has essentially authorized them to proceed with concrete on that first block to move this along. That is a very busy street in that neighborhood and has to be done. The City has additional funds in the budget to do that. They do not quite know what to do with the additional two blocks that have been milled. If they go in and overlay it with asphalt, they may only get 5-7 years life. That would not be very cost effective. They will most likely come back to the Council and request to finish those two blocks and create curb and gutter the way it should be. The problem with the curb and gutter is the way they are designed and the water that it collects. They will not go any further with the rest of that project this year and will have to negotiate with the contractor. They will hear from the contractors about the costs of the work they will be completed.

CLOSED SESSION

Moved by Clouse seconded by Kearney that Council adjourn into closed session at 8:05 p.m. for the protection of the public interest to conduct the City Manager's annual performance evaluation. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

Mayor Clouse restated the purpose for the closed session is for the protection of the public interest to discuss the City Manager's annual performance evaluation. According to law, the Council has the option to reconvene back into open session and may take any formal action it deems appropriate.

Council member Kearney left the meeting at 8:41 p.m.

Moved by Clouse seconded by Lammers that Council reconvene in regular session at 8:56 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter. Nay: None. Kearney and Lear absent. Motion carried.

VIII. ADJOURN

Moved by Buschkoetter seconded by Lammers that Council adjourn at 8:56 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers. Nay: None. Kearney and Lear absent. Motion carried.

ATTEST:

**STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR**

**MICHAELLE E. TREMBLY
CITY CLERK**