

**CITY COUNCIL  
CITY OF LEXINGTON  
LEXINGTON, NEBRASKA**

A Regular Meeting of the Lexington City Council was held Tuesday, December 22, 2015, at the Lexington City Hall, 406 E. 7<sup>th</sup> Street, Lexington, Nebraska at 5:30 p.m. Members of the Council present were John Fagot, John Salem, Linda Miller, Dora Vivas and Jeremy Roberts. City Officials present were City Manager Joe Peplitsch, Assistant City Manager Dennis Burnside, City Attorney Brian Copley, Finance Director Barb Hodges, Development Services Director Bill Brecks, Police Chief Tracy Wolf and City Clerk Pamela Baruth. The press was represented by KRVN, Clipper-Herald and NTV.

**NOTICE:** Notice of the meeting was given in advance, thereof by publication in the Lexington Clipper-Herald, the designated method for giving notice, as shown by the Affidavit of Publication attached to these Minutes. Notice of this meeting was simultaneously given to the Mayor and all members of the Council, and a copy of their Acknowledgment of Receipt of Notice and the Agenda is attached to these Minutes. Availability of the Agenda was communicated in advance notice and in the notice to the Mayor and Council of this Meeting. The proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public. All items presented and discussed on the Agenda were available for public inspection.

**CALL TO ORDER:** The meeting was called to order by Mayor Fagot. Fagot informed the public that the Open Meetings Act is posted in the Meeting Room at the Lexington City Hall, 406 E. 7<sup>th</sup> Street, Lexington, Nebraska.

**MINUTES – REGULAR MEETING 12-8-2015:** Minutes of the Regular meeting held Tuesday, December 8, 2015, were presented. Moved by Salem, seconded by Vivas, to approve the minutes as presented. Roll call. Voting “aye” were Miller, Roberts, Vivas, Salem, Fagot. Motion carried.

**MINUTES – WORK SESSION 12-12-2015:** Minutes of the Work Session held Saturday, December 12, 2015 were presented. Moved by Miller, seconded by Roberts, to approve the minutes as presented. Roll call. Voting “aye” were Vivas, Salem, Roberts, Miller, Fagot. Motion carried.

**CLAIMS & BILLS:** Claims and Bills in the amount of \$1,832,950.32 were presented for Council’s consideration and approval. Upon review of the Claims and Bills as listed, moved by Roberts, seconded by Salem, to approve the Claims and Bills as listed, and authorize the City Treasurer to transfer \$221,323.28 from the General Fund, \$29,016.24 from Street Fund, \$319,102.83 from TIF, \$1,208,097.26 from LEXUS, \$30,323.13 from Sanitation, \$1,448.04 from Ambulance, \$18,183.50 from Health Fund, and \$5,456.04 from Meals on Wheels to the City of Lexington’s Operating Account. Roll call. Voting “aye” were Miller, Vivas, Salem, Roberts, Fagot. Motion carried.

CITY OF LEXINGTON  
ACCOUNTS PAYABLE  
December 22, 2015

Abdo-Spotlight Magic Wagon	Library Books	2,343.28
Amazon	Library Books	177.32
Anderson Graphics	Monthly Hosting Charge	181.85
Baker & Taylor	Library Books	21.03
Barco Municipal Products, Inc.	ST Signs	71.08
Barmore Drug Store, Inc.	Ambulance Medical Supplies	91.48
Bauer Built Tire	New Tires	1,622.16
Bennett, Susan	WCNAA Directors Meeting Mileage	73.60
Business Card		
Amazon	Face Cap Assembly & Batteries	93.56
Plum Creek Laser Wash	Police Vehicle Washes	18.00
1000Bulbs.com	GGC LED lights	4,864.18
Gourock	Fieldhouse Netting & Accessories	1,465.08
Northface.com	Employee Jackets	850.00

Zappos	Employee Boots	125.00
JT&A, Inc.	Stormwater EnviroScape WR Shed Model	830.00
Computer Warehouse	Fieldhouse Cables	38.34
National Rec & Park Association	Membership Dues	165.00
Sears Home Services	GGC Washer & Dryer Repair	326.87
Nebraska Rec & Park Association	Membership Dues	60.00
Streamlight.com	Tablet Car Mounts	33.92
PoliceStore.com	Tactical Gear	281.51
Post Office	Postage	106.40
SRECO-Flexible, Inc.	WWTP Throttle Control Cable	148.00
DHHS	WR Operator License Renewal	575.00
Cash-Wa Distributing	Food & Kitchen Supplies	2,321.17
Chapters Book & Gifts	Library Books	134.58
CocaCola/Dr.Pepper Bottling of Kearney	GGC Beverages	60.00
Community Development Agency	Kirkpatrick Land Pymt/Property Taxes	110,659.11
Consumer Reports	Library Subscription	24.00
Davis Energy, Inc.	Fuel Purchase	47.99
Dawson County Ag Society, Inc.	EL Rebate	900.00
Dawson County Treasurer	Drainage Tax	77.52
Dawson Public Power District	Power Purchase	8,473.19
Eakes Office Solutions	Police / Business Office Supplies	440.17
Electrical Engineering & Equipment, Co.	EL / Dev Svc Conduit Materials	23.60
Electronic Systems, Inc.	Library Fire Alarm Inspection	70.00
Environmental Systems Research Institute, Inc.	GIS Server / Maintenance Fees	1,000.00
Energy Pioneer Solutions	Monthly Payments	2,610.22
Fagot Refrigeration & Electric, Inc.	WWTP Reznor Service	335.79
Fastenal Company	PK / ST / WR / Dev Svc Supplies	207.50
Gale/Cengage Learning	Library Books	124.10
Gnirk Lawn Care, Inc.	Ground Sterilant	3,124.40
Grainger	WWTP Seal Bearing Assembly	490.25
Great Western Bank-Lib. Petty Cash	Postage / Stamps / Supplies / Food	155.13
Health Claims Fund	Claims	18,183.50
Hiland Dairy Foods Company LLC	Food & Beverages	476.01
Holbein, Dahlas	Fire Equipment Maintenance	1,000.00
Hunt Cleaners, Inc.	PK / CEM / ST / WR Gloves	266.54
Ingram Library Services	Library Books	57.80
Intellicom Computer Consulting, Inc.	Mo Billing/Maintenance Agmt/Email Filtering	3,560.07
John Deere Financial	ST Parts	141.88
Jones Plumbing & Heating, Inc.	Library Repair / WR PVC Materials	139.49
Kirk's Nebraskaland Restaurant	Boards & Commission Svc Recognition	275.00
Lexington Newspapers, Inc.	Publications	311.72
Lynn Peavey Company	Police Testing Kits	35.75
Lexus	Utilities	36,177.48
Madeline's Café & Bakery	Boards & Commission Svc Recognition	50.00
McCandless Backhoe, Inc	Snow Removal	600.00
Mead Lumber & Rental - Lexington	PK / Dev Svc / ST Supplies	644.66
Meridian Rentals	Snow Blower	1,149.00
MicroMarketing, LLC	Library Books	14.98
Miller & Associates , Inc.	Fieldhouse Professional Services	5,159.60
Mr. Automotive	ST Parts	209.71
Municipal Supply	Water Main Sampling Station	1,846.39
NE Dept of Health & Human Services	Utilities Refund	2,125.50
Nebraska Machinery, Co	ST Vehicle Repair	603.55
Nebraska Tech & Telecomm. Inc.	Telephone Expense	1,271.19
Nebraska Public Power District	O & M / Power Purchase	1,047,935.12
Nebraskalink	Library Internet Service	30.00

North Platte Bulletin	Library Subscription	40.00
OCLC, Inc.	Library Subscription	108.31
Oliver Consulting Services, Inc.	Library System Service	100.00
Orthman Community YMCA	Memberships	974.60
Paulsen, Inc.	Concrete	1,201.67
Platte Valley Auto Mart	WR Vehicle Parts	23.29
Platte Valley Communications	Monthly Maintenance	90.00
Plum Creek Market Place	Food	18.69
Plum Creek Promotions	PK Uniforms	365.77
Presto-X	Fire Dept Pest Service	89.77
Primary Electric, Inc.	WWTP Exhaust Motor Repair	935.00
Razo, Manuel	EL Rebate	1,200.00
S & W Auto Parts, Inc.	Fire Dept / WR / ST Parts	90.08
Service Master Mid Nebraska	City Hall / GGC / Library Cleaning	5,136.96
Sirchie Fingerprint Laboratories	Police Testing Kits	230.82
Subway @ Walmart	Food	53.70
Tep's Bar & Grill	Boards & Commission Svc Recognition	525.00
Thompson Co, The	Food & Kitchen Supplies	1,278.16
Titan Access / Productivity Plus	WR/Fire Dept/WWTP/Amb Vehicle Svc	10,186.62
Unisan Nebraska LLC	Library Cleaning Supplies	93.47
U-Save Business Equipment	EL/PK/GGC/ST/Admin Office Supplies	1,185.21
Village Uniform	GGC Cleaning Supplies	81.14
Wal-Mart	Supplies	516.60
Zoll	Ambulance Computer Maint Renewal	105.00
Baker & Taylor	Library Books	79.90
Bamford, Inc.	Fieldhouse Fire Sprinklers	1,053.00
Business Cards		
Stripe.Com	Taxicab / Nat. Leag of Cities Conference	33.00
Community Development Agency	Holiday Plaza Bond	208,443.72
Dan's Sanitation	Sanitation Fees	30,323.13
Davis Energy, Inc.	Fuel Hose	75.00
Demco, Inc.	Library Book Covering Materials	633.00
Eakes Office Solutions	Library Office Supplies	77.95
Eustis Body Shop, Inc.	Towing Expense	220.00
Fagot Refrigeration & Electric, Inc.	GGC Dishwasher Repair	80.95
Fastenal Company	ST Equipment Parts	211.79
Gnirk Lawn Care, Inc.	Ball Fields Spray Service	812.97
Great Western Bank-Lib. Petty Cash	Postage / Craft Materials	26.97
Great Western Bank-City Petty Cash	Meals / EL Rebates	161.71
Intellicom Computer Consulting, Inc.	Monthly Billing	1,150.00
Lexington City Payroll Account		
Payroll	Wages	128,178.83
Social Security	Employer Portion / FICA Med	9,189.39
Union Bank & Trust	Employer Portion / Pension	4,416.02
Union Bank & Trust	Police Pension	2,395.53
ICMA	City Manager Pension	865.63
Lexington, City of	Franchise Fees	77,718.26
Lexington Feeders Service	WR Uniform	117.15
Lexington Newspapers	Publications	20.03
Lexington Volunteer Fire Department	EMS Training	22.00
Lien, Inc.	Winterize Sprinklers/Landscape Maint	2,274.65
Mead Lumber & Rental - Lexington	Fieldhouse Painting Materials	410.01
NADA Used Car Guide	Library Subscription	105.00
NE Public Health Environmental Lab	WR Testing	402.90
Paulsen, Inc.	Manhole Repair	357.64
Platte Valley Communications	Pager Repair	140.00
Steve's Lock & Key	Library Door Repair	274.00

T L Sund Constructors, Inc.	Fieldhouse Additional Paving	69,580.00
Tri-City Tribune	City Subscription	31.50
Wal-Mart	Supplies	332.51
	<b>TOTAL CLAIMS:</b>	<b>1,832,950.32</b>

**FINANCIAL REPORT:** Moved by Vivas, seconded by Roberts, to accept the financial report for November 2015 as presented. Roll call. Voting “aye” were Miller, Salem, Roberts, Vivas, Fagot. Motion carried.

**PUBLIC HEARING:** Mayor Fagot opened a public hearing to consider a conditional use permit for property located at 401 N Grant Street.

Bill Brecks presented the application submitted by the Islamic Center of Lexington, who occupies an abutting building to the west of the subject property, owned by Mr. Quintero. The applicant desires to expand its operations into the subject property and use the building as a mosque. The building use is currently a laundromat, a permitted use in the C-2 Core Commercial. He noted, according to Section 4.05 of the zoning ordinance, any change in use of a building must comply with current zoning codes. Per zoning requirements, places of worship require a conditional use permit. Upon staff’s initial review of the application related to code requirements and future land use plans, the proposed use appears to deviate from standards under Section 6.08 of the zoning code. He noted that off-street parking requirements, based upon occupancy numbers on the proposed building plans submitted, were difficult for the area. Efforts were made to work with the applicant to identify other facilities within the C-2 and other zones that would fit the desires of the applicant and meet zoning requirements. He reported the applicants chose to move forward with the subject location. He noted issues related to incompatibility with surrounding commercial uses, off-street parking requirements, and limiting future development potential for the area were cited by the Planning Commission in their recommendation for denial of the application at their meeting in November.

Claude Berreckman, Jr, council for Islamic Center of Lexington, noted he has advised the Islamic Center that he does not believe the center needs a conditional use permit; that is a decision of the administration of the city of Lexington. However, he feels the amended zoning ordinance approved in February 2014 was amended to keep churches out of the commercial area and subsequently has violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). He concluded the church should be a permitted use and has advised his client that they may make use of the area as a permitted use. He continued that if a conditional use permit is not granted, or is not considered as a permitted use, an investigation by the US Department of Justice, Special Counsel for Religious Discrimination will be triggered. He also referred to the recent changes to the zoning code and indicated to the Council that such revisions are not applicable to the Islamic Center’s application because the application was made prior to the most recent revisions. He also stated he feels the parking standard is a laughable excuse to deny the application.

Shuhkri Abdi, chairman of Somali Community Center, compared the theatre and the center parking issues. He stated the community is there for prayers at specific times and have never had any complaints about parking. He offered to pay for the city parking lot for use by their community. Shuhkri stated the center is convenient to their people as most walk to the center.

Kris Teply, owner of Tep’s Bar and Grill, indicated parking is a problem and if religious community continues to grow, parking will be more of a problem. She noted that another neighbor has issues with parking as he tries to conduct his business.

Faisa Hagi Mohamed explained prayer times and noted the religion encourages them to walk to their worship place. She feels very welcomed in Lexington and requested toleration of one another. She also stated their Muslim community continues to grow and there is a need for a mosque and worship center but parking should not be an issue in granting the permit.

Fagot stated that parking is only one issue. He reminded the audience the building is in a commercial area which is intended to support and grow commerce within the city. He thanked Faisa for her comments regarding being welcoming and working with staff on this issue. He stated staff has met with the applicant and identified alternatives that may facilitate the needs of the applicant.

Bonnie Albright was concerned about liquor license and tobacco sales due to proximity of a religious center, and wondered about tax dollars needed to maintain streets which won't come from empty businesses.

Naji Abdi agreed city leaders have been very welcoming, receptive and fair. However, they have been advised by legal counsel they have a legal right to stay in the current building and will pursue that right to the fullest extent of the law if denied. They are simply requesting approval to continue to integrate into the community and keep Lexington diverse.

Teply stated she is only concerned with expansion and wondered why there is such an affinity to this building when there may be other buildings in town better suited to their worship practices.

Javier Quintero, owner of the former Longhorn Laundromat, stated, in the 14 or 15 years he has been in that location, he has never had an issue with parking or any reports of misconduct with the current members. He wondered how the center not being on the tax rolls would be any different than the theater property not being on the tax rolls. He requested the decision on the application be fair and honest.

Sultan Sultan, member of the center, feels there are no problems with parking lots and wondered if other religious organizations or the theater have been asked to move out of their location. He also inquired about the use of the east city parking lot. He wondered about reducing the capacity of the building to 200 to 300 people, and about using part of the building as a parking lot.

Fagot reminded all that a change in use of this property is being considered, and that the theater did not expand or change their use. He reiterated that the Islamic Center may continue to operate in its current building; it is the expansion of such operations into the laundromat building that is being discussed.

Peplitsch answered the need is for private off street parking, not public parking, the occupancy load is indicated on the site plan submitted by the applicant, and any changes to the submitted plan would require a new application. He reminded all that the occupancy is based on capacity of building, not how many people may or may not be using the facility at any one time.

Brecks noted, as a reference, the three public parking lots near the center do not have the required number of parking spots based on the submitted plan. He requested this be looked at responsible planning; parking is not main issue but growth of downtown in the future is a key point. This issue is about the use of this property as a church, not only by this applicant but future owners or renters of the same use. We need to look years into the future, not six months.

Quintero wondered about having an agreement with Teply regarding her liquor license or selling her building to protect her as a business owner. Fagot stated that liquor license requirements are governed by state law.

Fagot requested all to keep in mind the future development of this area of the downtown as an important issue; any conditional use approved stays with a property as long as conditions are met.

JJ White wanted clarification as to the difference between Islamic Center and the Somali Community Center and who was making the application for the conditional use permit.

Allbright feels the building and the downtown area cannot handle the growth anticipated by the Islamic community and perhaps another facility would be better suited.

Rex Adams, pastor, stated he appreciated the city's zoning code and should be applied across the board. He stated his church is in a similar situation as it has no room for growth and has a parking issue too and would be required to follow these codes if his church wished to expand at their current location.

Naji Abdi asked again if they stay in their current area, would they be able to use the public parking. He also inquired about some changes to the zoning code that were approved within the last few weeks. He stated their community has been occupying the east side of building since March 2015. Peplitsch reiterated that the use of the Islamic Center in the building abutting the laundromat building may continue.

Copley stated the council approved the amendment to the zoning code as a result of the Islamic Center's allegations at the Planning Commission meeting that certain similar uses as the Center were being treated differently. He continued that based on those allegations, he reviewed the code and determined that other uses such as a theater, charitable organization, or social club could potentially present similar issues. Thus, the code was changed so those uses would be treated with the same level of scrutiny as places of worship going forward. No such similar uses have applied for conditional use under the zoning ordinance approved in early 2014.

Hagi Mohamed stated this worship center is bringing money into the Lexington community as more Somalis see the mosque is here and they contribute to the financial aspect of the community.

Rod Ziegler, citizen and member of Board of Adjustment, encouraged the council to make a decision for all citizens of Lexington and not to be bullied by the Islamic Center's counsel.

Being no further public comments, the public hearing was closed.

Miller appreciates all comments but feels it comes down to 2 things, zoning requirements and commercial development efforts. The conditional use permit would stay with the property if the owner or occupants comply with any conditions placed on the property. She wondered what happens to the building when the Islamic Center outgrows the space and moves on, it would also be available to other church activities without question, and commercial potential for the area may be hindered, which is contrary to downtown revitalization and comprehensive development planning efforts. She also questioned the applicant's ability to expand their operation into the future as has been indicated, the location and layout of this property would make that rather difficult.

Salem feels approval of this application would be a mistake based on long-term planning.

Roberts stated that he was impressed with the comments regarding growth of the Islamic community and the center brings others from other cities. As there is no room for growth in this location, there may be a better option in another area of town to grow and flourish.

Copley requested a review of the application based upon the list of standards set forth in Section 6.08 of the zoning ordinance. Following discussion, moved by Salem, seconded by Miller, to deny the application for a conditional use permit for property located at 401 North Grant Street, based upon the following subsections as follows: 6.08.02 the conditional use would be injurious to the use and enjoyment of other property in the immediate area; 6.08.03 the establishment of the conditional use would impede the normal and orderly development of the surrounding area for permitted uses within the district; and 6.08.011 the use would involve an activity substantially increasing the burden on public parking facilities.

Roll call. Voting "aye" were Vivas, Roberts, Miller, Salem, Fagot. Motion carried.

Fagot indicated that he believes the city wants to see the Islamic Center grow and be successful in the community and that city staff is available to work with the center to identify locations that will better suit the needs of the center and the community as a whole.

**ORDINANCE:** Ordinance No. 2369 entitled "AN ORDINANCE APPOINTING CITY OFFICIALS; TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM" was presented. Following discussion, moved by Salem, seconded by Vivas, to suspend the rules regarding the reading of an ordinance on three different occasions. Roll call. Voting "aye" were Miller, Roberts, Vivas, Salem, Fagot. Motion carried.

Ordinance No. 2369 was presented on final reading. Moved by Miller, seconded by Roberts, to approve Ordinance No. 2369 on final reading. Roll call. Voting "aye" were Vivas, Salem, Roberts, Miller, Fagot. motion carried.

**APPOINTMENTS:** The following appointments to boards and commissions were proposed for Council approval:

Housing Authority – Julie Owens;  
Planning Commission – Curt Bennett, Seth McFarland, Derek Haines, open;  
Tree Board – Dave Stenberg, Gordon Sellin;  
Police Pension Committee – Dennis Burnside;  
Community Development Agency – Kory Cetak;  
Street Superintendent – Darold Tagge.

Following discussion, moved by Miller, seconded by Salem, to approve the appointments as presented. Roll call. Voting “aye” were Vivas, Roberts, Salem, Miller, Fagot. Motion carried.

**ORDINANCE:** Ordinance No. 2370 entitled “AN ORDINANCE TO AMEND AND REPLACE ORDINANCE NO. 2366; TO REPEAL ORIGINAL SECTION ORDINANCE NO. 2366, AND ALL OTHER ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HERewith; AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM” was presented. Peplitsch explained this is to correct an error in the legal description in a prior ordinance. Following discussion, moved by Vivas, seconded by Salem, to suspend the rules regarding the reading of an ordinance on three separate occasions. Roll call. Voting “aye” were Miller, Roberts, Salem, Vivas, Fagot. Motion carried.

Ordinance No. 2370 was presented on final reading. Moved by Miller, seconded by Roberts, to approve Ordinance No. 2370 on final reading. Roll call. Voting “aye” were Miller, Vivas, Roberts, Salem, Fagot. Motion carried.

**PAY REQUEST:** Peplitsch reviewed Pay Request #6 from TL Sund Constructors for the Lexington Fieldhouse project in the amount of \$156,235.11. Moved by Roberts, seconded by Salem, to approve Pay Request as presented. Roll call. Voting “aye” were Miller, Vivas, Salem, Roberts, Fagot. Motion carried.

**PAY REQUEST:** Peplitsch reviewed Pay Request #7 from TL Sund Constructors for the WWTP Support Facility project in the amount of \$17,280.45. Moved by Miller, seconded by Vivas, to approve Pay Request as presented. Roll call. Voting “aye” were Salem, Roberts, Vivas, Miller, Fagot. Motion carried.

**ROUNDTABLE DISCUSSION:** Peplitsch gave an update on current projects. Wolf announced Officer Jordan Hawkins has completed his field training and is now a road officer.

**ADJOURNMENT:** There being no further business to come before the Council, Fagot declared the meeting adjourned.

John Fagot, Mayor

Pamela Baruth City Clerk

I, the undersigned City Clerk for the City of Lexington, Nebraska, hereby certify that all of the subjects included in the foregoing proceedings were contained in the Agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk during regular business hours prior to said meeting; that the Minutes of the Mayor and Council of the City of Lexington, Nebraska, from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meeting of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

/s/Pamela Baruth  
City Clerk