

City of Fremont Nebraska
Board of Public Works
Department of Utilities

Board Hearing May 25, 2016

FORMAL OBJECTION TO AGENDA ITEMS 5 and 6

Objection:

This formal objection is being made for the record of this hearing pursuant to the Nebraska Open Meetings Act, §84-1411 (1). This Section of the Act states that “[a]genda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.”

Agenda items 5 and 6 below do not meet the requirements of the Act. No average person can reasonably ascertain from the one sentence below, in each item, what the action item will do.

5. Consider affirmation of an emergency declaration to waive requirements per City Ordinance §3-325
6. * Consider reimbursement and indemnification agreement for engineering and design services
*items referred to City Council (if any)

According to case law in Nebraska, in *Hansmeyer v. Nebraska Public Power District 6*, the court found that, “[a] member of the public should not be required to hunt up and read the documents underlying an agenda of a public body to determine what is actually on that agenda.” In the *Hansmeyer* case the court found that referring only to a work order number was an unreasonable burden on the public to have to dig up to determine what that item may be, or the impact the action item on the agenda may have. *Hansmeyer v. Nebraska Public Power District*, 6 Neb. App. 889, 578 N.W.2d 476 (1998), *aff’d*, 256 Neb. 1, 588 N.W.2d 589 (1999).

The *Hansmeyer* case is quite similar to the circumstances here with the language for Agenda item 5.

Agenda item 6 is even more cryptic. There is an even greater barrier for the public to decipher this item, as there is not citation to a city code or rule. Also, the item has an asterisk to a possible referral to the City Council, the meaning of which is unascertainable. What are the engineering and design services for? Reimbursement to whom? What is the amount? What does “referred to City Council” mean and what are the criteria for an item to be on noted as referred to the City Council? These are basic informational items that need to be expanded upon and spelled out for the public to ascertain what each action item on the agenda actually is.

Again, according to the Open Meetings Act § 84-1411 (1),

Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. *Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting* [emphasis added].

Remedy Sought:

This board must not take any action on these agenda items. These action items must be properly re-noticed and brought back at a future hearing after giving a sufficiently descriptive explanation of the issue to be considered and acted upon.

Thank you for your consideration:

/S/ *L. Kuelshack*

/S/ _____

/S/ _____