

# CITY OF OGDEN

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## Council Meeting

March 3, 2010

The Regular Meeting of the Governing Body for the City of Ogden was scheduled on Wednesday, March 3, 2010 at 7:00 p.m. in City Hall.

The meeting was called to order at 7:00 p.m.

The following members were present; Robert Pence, Kenneth Carroll, Rae Harris and Mayor Bond. Attorney Irvine was present.

Pence moved to approve the Agenda as amended to remove Jeff Meahl's request for an Occupational License and to hear a statement from Roger Harris, Jr. regarding a City Crew member. Seconded by Carroll. Motion carried.

Carroll moved to approve the minutes of the January 20, 2010 Council Meeting. Seconded by Pence. Motion carried.

Mayor Bond commented that the approved minutes can be found on the City's Website.

Mayor Bond stated that he had asked Deloris DelRosso to fill the vacancy of Councilmember as a result of the resignation of Sharon Conger and she has agreed, and he asked Kirk Crabtree to fill the vacancy of Councilmember as a result of the resignation of Kevin Valvo and he has agreed.

Pence stated that the vacated positions should be filled with candidates that the citizens have voted for at the last election. Pence inquired of Mayor Bond whether he had asked any of the candidates that received votes at the last election whether they would be willing to fill the vacancies as the Council had requested. Mayor Bond responded that he had asked DelRosso and Crabtree. Pence commented that Mayor Bond was supposed to follow the request of the Council and has elected on at least two occasions not to do so. Mayor Bond commented that his interpretation is that he is responsible for nominating candidates and presenting them for approval by the Council. Pence inquired of Attorney Irvine for an interpretation of Robert's Rules of Order as to whether the Mayor should follow the direction of the Council. Attorney Irvine responded that he was not familiar with Robert's Rules of Order to offer an opinion. Pence stated that his interpretation of the memo prepared by Attorney Irvine stated that the Mayor must listen to the requests of the Council. Attorney Irvine stated that the statutes say that the nominations are to be done with the advice and consent of the Council. Attorney Irvine commented that there is no clear interpretation that would say whether the advice and consent has to be done before or after a nomination. Mayor Bond stated that the appointment is with the advice and consent of the Council, not the nomination. Attorney Irvine agreed.

Pence stated that approval of appointments to the Council is not an Agenda item, rather only a discussion of appointments to fill vacancy of Councilmembers. Mayor Bond

March 3, 2010

inquired that in the discussion, it would be fair to assume that his nominations are unacceptable. Pence stated that as far as he was concerned those individuals that received votes in the last election should be asked whether they would be interested in filling the vacancy of Councilmember. Mayor Bond questioned whether it was reasonable to make the topic of nominating candidates for the position of Councilmember an agenda item. Carroll stated that if those two were the only submissions by the Mayor, then the topic should not be considered to be an agenda item.

Greg Langton-Langton Insurance, present, introduced Tom Adams, a Traveler's Insurance public sector-field territorial representative. Langton presented a Summary of Coverages for the Council to review. Adams commented that the valuation basis of the property insurance is Actual Cash Value (ACV) so depreciation is applicable in the event of a loss. Adams commented that Inland Marine property coverage is typically property that is portable to include contractor equipment, i.e. mowers, graders, etc. Adams commented that the General Liability Coverage is the Tort Liability Coverage for bodily injury and property damage for which the City may be deemed negligent. Adams commented that the Public Entity Management Liability coverage, also known as Public Officials Liability Insurance, serves as an Errors and Omissions Policy to insure against lawsuits concerning zoning issues, Council decisions, etc. Adams commented that the City is not insured against employee dishonesty under the Government Crime Protection Coverage.

Adams disseminated the Premium Loss History Report from 2000 to the present.

Mayor Bond inquired whether the City had insurance coverage that would presently protect the City should another instance occur such as the Eddie Lowery Lawsuit. Adams commented that Law Enforcement Liability Coverage would suffice, however the City does not have a police department because of the formation of the Riley County Police Department and Riley County Law Enforcement Agency, which provides police protection throughout the county. Adams commented that the City does not have a direct liability exposure because the risk has been transferred to the RCPD who is providing the service. Adams stated that the \$500,000 limit Tort cap only applies to Tort Claims heard in State Court. Adams commented that claims heard in Federal Court do not have a limit. Attorney Irvine stated that at the time of the Eddie Lowery incident, the City did not have Law Enforcement Liability Coverage only Personal Injury Coverage. Adams suggested that the City investigate whether the City could be named on the RCPD insurance as an additional insured so that the City could be defended in the event the City is named in a lawsuit.

Adams commented that to provide the City with Law Enforcement Liability Coverage, the basis used to rate and determine the premium is the number of law enforcement personnel, of which the City has none and therefore a premium cannot be determined.

Ray Markings was not present.

Carroll moved to table review of the Community Center Computer Technical Service proposal. Seconded by Pence. Motion carried.

Gunaydin Basci, present, requested an Occupational License/Food Service Permit for Buhara Turkish Kebab House at 417 Riley Avenue.

Carroll moved to grant Gunaydin Basci an Occupational License/Food Service Permit for Buhara Turkish Kebab House at 417 Riley Avenue. Seconded by Harris. Motion carried.



March 3, 2010

Otto Kruger was not present.

Harris moved to table Otto Kruger's request for an Occupational License for Kruger Technologies, Inc. at 526 Riley Avenue. Seconded by Carroll. Motion carried.

Barry Arp was not present.

Carroll moved to table Barry Arp's request for an Occupational License for Hot Cuts at 106 Riley Avenue. Seconded by Pence. Motion carried.

Larry Prawl was not present.

Clerk explained that the methodology used to authorize adjustments to the water/sewer bill is to refund 50% of the water charge and for the sewer charge an eleven month average is calculated and the difference between the average and the sewer charge would be the amount refunded.

Carroll moved to table Larry Prawl's request for adjustment to a water/sewer bill due to a leak. Seconded by Pence. Motion carried.

Virginia Stilley-Ashwood Mobile Home Court, present, requested an adjustment to the water/sewer bill of 412 South Park Street due to a leak.

Harris moved to authorize an adjustment in the amount of \$612.15 to reduce the January 2010 consumption period water/sewer bill for 412 South Park Street. Seconded by Carroll. Motion carried.

Carl Bowen, present, requested an adjustment to the water/sewer bill of 221 10<sup>th</sup> Street due to a leak.

Harris moved to authorize an adjustment in the amount of \$833.91 to reduce the January 2010 consumption period water/sewer bill for 221 10<sup>th</sup> Street. Seconded by Pence. Motion carried.

Pence commented that the water was used in all the instances that the owners have requested an adjustment. Pence commented that in the above instances none of the water entered the sewer system and an adjustment to the sewer charge could be justified. Carroll commented that the water usage should be the responsibility of the property owner.

Attorney Irvine commented that he would prepare a draft resolution outlining the procedure for authorizing adjustments to the water/sewer bill due to leaks.

Mayor Bond stated that Eric Callahan-Callahan Construction submitted a bid in the amount of \$2,200 for shoring the first level floor at City Hall. The bid stated that the floor joists show evidence of decay at their bearing points on the perimeter foundation walls. To stabilize the floor would require installing 13 reinforced pad footings on which posts would be placed to support the installation of dimensional lumber beams that would support the floor in its present position.

Attorney Irvine commented that he thought that the procurement policy stated that a project costing more than \$10,000 would require the solicitation of bids.

Pence suggested that additional bids be solicited.

Terry Morrand, Jr.-Foreman, present, commented that the bid takes into consideration assistance from the City Crew.

Harris moved to accept the bid from Callahan Construction in the amount of \$2,200 to shore the first level floor at City Hall contingent that an Occupational License is obtained by Eric Callahan-Callahan Construction. Seconded by Pence. Motion carried.

March 3, 2010

Terry Morrand, Jr.-Foreman, present, informed the Council of a tree that is located in the right-of-way in front of 225 14<sup>th</sup> Street that is dying and requires removal. Morrand commented that the City Crew would be responsible for cleanup and hauling of the tree. Morrand submitted two bids for dropping the tree: Wildcat Tree Service - \$900.00 and Hosefelt Tree Service - \$600.00.

Harris moved to accept the bid for dropping a tree located in the right-of-way in front of 225 14<sup>th</sup> Street from Hosefelt Tree Service in the amount of \$600.00 provided proof of insurance is provided. Seconded by Carroll. Motion carried.

Carroll moved to recess the meeting until 8:38 p.m. Seconded by Harris. Motion carried.

Harris moved to return to the Regular Session. Seconded by Carroll. Motion carried.

Clerk submitted eight bids from four different contractors to install a new furnace at City Hall. The summary listed the contractor, manufacturer, warranty and price.

Pence commented that the best bid and warranty combination appears to be from Midstate Mechanical. Carroll inquired whether the warranty was for a commercial application because many manufacturers differentiate warranties between residential and commercial.

Clerk commented that Thermal Comfort Air discovered that the present Lenox Pulse21 furnace had two years remaining on the heat exchanger warranty. Lenox has offered to replace the furnace with the Lenox G51MP-60C-090 at a cost of \$500 and Thermal Comfort Air will install it for \$1,917.

Harris moved to table the issue of replacing the furnace until the March 17, 2010 Council Meeting so that warranty information and service contract information can be confirmed on four furnace models: Standard Plumbing - Goodman 6KS9115DX, Paul Werle Heating and Air Conditioning - Goodman GKS9 Series, Thermal Comfort Air - Lenox G51MP-60C-090, and Midstate Mechanical - American Standard AUC1C100A960. Seconded by Carroll. Motion carried.

Clerk presented a proposal from Brandon Kieffer to pay the City \$6,000 to harvest 39 walnut trees on City property which is located south of K-114.

Clerk commented that within certain right-of-way being obtained by KDOT for the construction of the K-18 Limited Access Highway and K-114 Highway, area landowners are having walnut trees harvested prior to turning over the property to KDOT. Clerk stated that 14 of the walnut trees are on property that will be taken by KDOT. Clerk stated that 25 walnut trees are located along the abandoned section of South 32<sup>nd</sup> Street (Golden Belt Road) which intersects 14<sup>th</sup> Street. That area will not be obtained by KDOT.

Pence inquired what would be done with the branches after harvesting, would they be just left or removed as part of a cleanup effort.

Carroll moved to table consideration of the proposal to harvest walnut trees on City property, until the March 17, 2010 Council Meeting, in order to obtain a bid from Kansas Hardwoods of Belvue, Kansas and inquire what will be done about the branches. Seconded by Pence. Motion carried.



March 3, 2010

Clerk commented that Randy Wood has inquired whether he could harvest the hedge trees from the abandoned section of South 32<sup>nd</sup> Street. Consensus of the Council was that Wood could harvest the hedge trees.

Attorney Irvine stated that he had renegotiated the Lease Agreement with Sprint/Nextel, formerly Southwest PCS, LP, for antennas on the water tower. Attorney Irvine stated that the annual lease payment increased from \$7,000.00 to \$10,000.00 and the annual escalator increased from 2.5% to 3%. Attorney Irvine presented a First Addendum to the Lease Agreement for approval by the Council.

Attorney Irvine commented that the lease is for five years with potential five-year extensions afterward the initial period.

Harris moved to approve the First Addendum to the Water Tower Lease Agreement with Sprint/Nextel, formerly Southwest PCS, LP, and authorize the execution of the agreement by the Mayor on behalf of the Council. Seconded by Pence. Motion carried.

Pence stated that the employee evaluations are required to be done annually and some of those evaluations are 16-18 months past due. Pence commented that he understood the need for job descriptions, which are presently being drafted. Pence stated that it would be improper to conduct an evaluation on an employee's past performance based on a job description that has just been written. Carroll commented that the employees need some kind of evaluation that could be fairly done based on what they have done in the past before the proposed job descriptions are completed.

Mayor Bond commented that he has not done a performance evaluation because he is not familiar with what the employee he is charged with evaluating does. Mayor Bond commented that the Council must be clear on what is expected from the employees because it is the basis for their merit increase. Mayor Bond commented that the public must have a clear understanding of what is expected from the employees in order to evaluate the service they receive. Mayor Bond stated that in the absence of a generally accepted system of measurement, everyone has their own interpretation of what an employee does. Mayor Bond commented that he has directed his efforts towards developing tools to provide a fair measurement of an employee's performance. Mayor Bond commented that the City Attorney will render a legal opinion of the draft job descriptions, but they will not have any force until they are ratified by the Council. Mayor Bond commented that after the job descriptions are finalized, the Council would meet with the employees to gain clarity on the expectation of their job, and for the next 3-6 months the employee would be expected to do their job based on the positions criteria. After a set time frame, an evaluation would then be conducted to measure their performance.

Pence inquired of Attorney Irvine whether the City was in compliance with the Personnel Rules and Regulations governing annual employee evaluations. Attorney Irvine stated that his opinion would be that the evaluations should be done forthwith. Mayor Bond inquired how would the City respond to an evaluation that an employee is dissatisfied with. Attorney Irvine reviewed the current performance evaluation form. Attorney Irvine commented that the evaluations must be a meaningful evaluation, but presently it has to be a meaningful evaluation based on the tools that are presently available. Mayor Bond stated that he did not want to be put into an impossible situation whereby if the employee is not satisfied with the outcome of the evaluation, then the expectation is that the employee may pursue any means to gain an outcome that they would be satisfied with.

March 3, 2010

Mayor Bond stated that he would not sign a performance evaluation not having any knowledge about what he was stating an opinion about.

Harris commented that she has reviewed the bills for January 2010 and February 2010 and found them acceptable.

Clerk informed the Council that Brian Still has requested permission to post "Leased Property – No Trespassing" signs along the north side of the road leading to the wastewater lagoons. Clerk explained that someone has cut the cable fence that Still installed to prevent access to the adjacent field he has leased from the City. Before the RCPD can arrest anyone the property must be posted. Council agreed.

Clerk informed the Council that Gene Meier-Meier's Ready Mix has said that he is in negotiation with Westar Energy to purchase property so that he can relocate his concrete batch plant. The property is located on a wooded tract located between the wastewater lagoons and K-18 Highway. Meier has indicated that he would be willing to petition the City for annexation should he purchase the property. Meier had inquired whether the City would be interested in allowing him to mine the sand from the City Pond. Meier requested permission to conduct up to five core drillings around the City Pond to determine whether there was enough sand to make the venture feasible. Clerk commented that Meier indicated that he would pay the City a royalty on the sand removed.

Mayor Bond commented that the City should consider how the area can be developed into a recreation area. Mayor Bond commented that to allow sand mining would forgo any reasonable opportunity to use the Pond for recreation purposes.

Council decided that they preferred that the City Pond remain a recreation area.

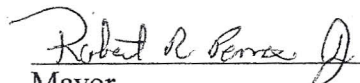
Pence inquired of Attorney Irvine of the legal ramifications of not conducting the annual evaluations of the employees. Attorney Irvine replied that he has not had the time to analyze the issue. Attorney Irvine commented that the job descriptions, to a large extent, are descriptions of what the employees are presently doing and therefore he doesn't foresee there being any radical difference based on the job description.

Harris commented that Roger Harris, Jr. has resolved his issue and has requested the item be removed from the Agenda.

Mayor Bond informed the Council that the Community Center operating hours are Monday-Friday, 9:00 a.m. – 8:00 p.m.

Carroll moved to adjourn the meeting. Seconded by Harris. Motion carried.  
Time: 10:01 p.m.

Vincent L. Kramer II  
City Clerk

  
Mayor