

# CITY OF OGDEN

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Ogden, Kansas 66517-0843

## Council Meeting

May 19, 2010

The Regular Meeting of the Governing Body for the City of Ogden was scheduled on Wednesday, May 19, 2010 at 7:00 p.m. in City Hall.

The meeting was called to order at 7:01 p.m.

The following members were present; Kenneth Carroll, David Ward, Ward Nations, Rae Harris, Brian Still and Mayor Pence. Attorney Irvine was present.

Carroll moved to recess the meeting until 7:15 p.m. in order for the meeting to be moved to the Ogden Community Center to allow all present the opportunity to participate in the proceedings. Seconded by Still. Motion carried.

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

Mayor Pence requested the Agenda be amended to remove the report on research of mayoral authority and add a discussion regarding the termination of water service to Maplewind Mobile Home Court.

Harris moved to approve the Agenda as amended to remove the report on research of mayoral authority and add a discussion regarding the termination of water service to Maplewind Mobile Home Court. Seconded by Carroll. Motion carried.

Carroll moved to approve the minutes of the May 5, 2010 Council Meeting and May 13, 2010 Special Council Meeting. Seconded by Nations. Motion carried.

Ed Munoz-Ed's Doghouse, present, requested a Cereal Malt Beverage License to retail CMB for consumption on the premises at 523 Riley Avenue.

Ward moved to grant Ed Munoz a Cereal Malt Beverage License to retail CMB for consumption on the premises at 523 Riley Avenue. Seconded by Still. Motion carried.

Governor Mays-Pastor, Ogden Friendship House, present, commented that the disturbances emanating from the Ogden's Best Range at 215 Riley Avenue is disrupting the worship services held on Sundays 10:00 a.m. – Noon. Mays stated that he met with Barry Arp, owner of Ogden's Best Range, and Arp offered to open his business at Noon on Sundays. Mays commented that noise from the business begins at 11:30 a.m. on Sundays which disturbs the worship services. Mays requested the Council consider restricting the hours of such businesses in the same manner as businesses selling alcoholic beverages.

Mayor Pence stated that Arp's application for an Occupational License for Ogden's Best Range cites the operating hours as from 9:00 a.m. – 7:00 p.m. and his business cards state that the business opens on Sundays at Noon. Mayor Pence commented that Arp said the noise is a result of cleaning the steel backstops that require beating them with hammers,

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which he does prior to opening on Sundays. Mayor Pence commented that the ordinance does not give the Council the authority to dictate the hours of a business.

Mays inquired whether there was a restriction of the type or caliber of weapons that can be discharged in the business. Attorney Irvine commented that he was not aware of any restrictions.

Harris commented that Attorney Richard Seaton, Arp's attorney, stated that the business would limit the caliber of weapon being discharged to .45. Mays commented that automatic weapons were being fired within the building. Ward commented that Mays is mistaking the type versus the caliber of the weapon being discharged. Ward stated that there are automatic weapons that a smaller than .45 caliber.

Mays commented that any activity that is not contributing to a positive outlook on a community should be restricted and requested the Council to consider restricting the operating hours of gun ranges.

Harris commented that through her research the State of Kansas does not regulate gun ranges with respect to location and operation. Harris stated that the only regulation that can be put into effect would be an OSHA law that governs lead particulate exiting his building. Harris stated that the equipment that Arp purchased was used equipment and she did not believe that 15 years ago it met the OSHA requirement and did not believe the equipment meets the OSHA requirements today. Harris stated that would be the only issue that could be used to have the business removed from the location. Mays stated that he is not requesting that the business be removed rather that the noise not interfere with the worship services. Harris suggested that Mays could use the OSHA requirements as leverage because it is expensive to comply with the OSHA requirements.

Mayor Pence suggested directing Attorney Irvine to investigate whether the City has any legal grounds to regulate Ogden's Best Range operating hours.

Larry Prawl-Maplewind Mobile Home Court, present, stated that he is requesting a resolution to the situation of water service being terminated in order for the tenants to have water. Prawl offered his apology to the tenants. Prawl stated that he has attempted on three occasions to sell the Mobile Home Court but financing did not materialize. Prawl stated that he has taken the steps to initiate a quick auction sale to occur within the next 45-60 days and requested that water service be restored until the sale is completed. Prawl inquired whether a promissory note could be arranged whereby the terms of the contract sale require that upon purchase of the Mobile Home Court all arrearages plus current charges would be paid from the sale proceeds. Prawl stated that the Mobile Home Court and mobile homes would be auctioned.

Ward commented that part of the lot rent paid by the tenants includes a charge of \$40 for water that has been imposed and collected by the court owner. Ward inquired what happened to the \$40 per month that has been paid by the tenants. Prawl commented that the tenants that paid the \$40 are few and far between. Nations inquired whether Prawl was going to continue the \$40 charge for water during the 45-60 day period. Prawl commented that he would discontinue the charge if the Council desired. Ward stated that the \$40 charge collected by Prawl from the tenants should be paid to the City towards the Mobile Home Court's water bill.

Mayor Pence commented to install individual water meters within the Court would require payment of \$450 for each service connection, but in addition to the meter installation the cost of installing new 6" water mains throughout the Court would have to be considered also. Both are at considerable cost.

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Ward moved to direct the City Foreman to immediately restore water service to Maplewind Mobile Home Court. Seconded by Still. Motion carried.

Carroll moved that Larry Prawl will enter into a repayment agreement with the City for the water bills in arrears, and Prawl will be required to take the amount in arrears from the proceeds of the sale of Mobile Home Court and mobile homes with the understanding that if it is not paid within the 45-60 day period in which the sale is to be conducted the City reserves the right to terminate water service to Maplewind Mobile Home Court; and Prawl has a continuing obligation to pay the water bills when due as they incur during the 45-60 period and the City reserves the right to terminate water service if not paid when due. Seconded by Harris. Motion carried.

Carroll moved to recess the meeting until 8:05 p.m. Seconded by Still. Motion carried.

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

John Haas-Ranson Financial Consultants, present, commented that the Council has two choices with regard to the River Trail Unit 8/Cimaron Extension: A) levy the assessments and the property owners have until June 14, 2010 to pay the assessments and those that are not paid will be rolled into a bond issue to be paid for over a 20 year period, B) do not pass the ordinance levying the assessments and roll over the \$981,000 Temporary Note (due August 1, 2010) and reissue a Temporary Note in the amount of \$210,000 for another two years (the difference being the unspent Temporary Note proceeds).

Haas stated that should the Council decide to levy the assessments (Option A) there are two options available: 1) certify the assessments before August 25, 2010, the assessments will appear on the tax notices due December 2010 and May 2011 and bond principal/interest will be paid starting in 2011 (total estimated debt service cost is \$333,316.39), 2) delay certifying the assessments until after August 25, 2010, the assessments will appear on the tax notices due December 2011 and May 2012 and bond principal/interest will be paid starting in 2012 (total estimated debt service cost is \$339,646.39). Haas commented that if the existing Temporary Note is rolled over and a Temporary Note is reissued for another two years (Option B) the total estimated debt service cost related to that decision is \$352,713.89.

Haas commented that if the annual special assessments are not paid by the property owner, there is a Letter of Credit (LOC) securing the debt. Haas stated that if the City would not receive any proceeds from the LOC, the City would have to expend its own funds to make payments of principal and interest on the General Obligation Bond. The LOC is equal to 30% of the \$981,000 estimated cost of improvements. Haas commented that the City's interpretation is that there is approximately a LOC in the amount of \$270,000 available in the bank for payment of special assessments. Haas commented that the bank's interpretation is that their obligation is 30% of what is particularly owed in each year. Attorney Irvine commented that there is some potential that the LOC's may not be there for the City to draw upon. Attorney Irvine stated that the City can only draw upon the LOC if the special assessment that is certified as owed has not been paid. Attorney Irvine stated that the LOC is held either until it's drawn upon in full or until it's released by the terms of the LOC.

Ward stated that the property is vacant and therefore could go to a tax sale after two years of unpaid taxes. Attorney Irvine commented that a modification to that scenario would be whether the tax foreclosure sale would bar the City's claim for special assessments in arrears. Attorney Irvine stated that the proceeds from the tax sale would be proportionately allocated to the taxing entities (state, county, city). Haas commented that if the property is

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sold at a tax sale, the LOC goes away because the LOC is connected only to the present owners. The new owners would be responsible for any future taxes that accrue. Attorney Irvine stated that there are laws prohibiting 'related but nonrelated' buyers of the owner from obtaining property at a tax sale. Attorney Irvine stated that there are provisions outlined in the resolution requiring a LOC that cites that a LOC goes away if a resale goes to an unrelated subsequent buyer.

Ward moved to adopt Ordinance #655 – Levying Special Assessments on Certain Property to Pay the Costs of Internal Improvements in the City of Ogden, Kansas, as Heretofore Authorized by Resolutions Nos. 07-02-08-A, 07-02-08-B, 07-02-08-C, 07-02-08-D, of the City; and Providing for the Collection of Such Assessments. Seconded by Still. By a role call vote Carroll, Ward, Nations, Harris and Still voted in favor, none voted against. Motion carried.

John Haas-Ranson Financial Consultants, present, commented that almost always the bonds are sold at competitive sale. With the small monetary issue for the General Obligation Bond, \$210,000, there may be no bids. Haas requested the permission of the Council to contact Commerce Bank and negotiate a purchase price for the bonds.

The consensus of the Council was to allow John Haas to negotiate a selling price from Commerce Bank or others if necessary.

John Haas-Ranson Financial Consultants, present, stated that Statutory Debt does not include utility debt financing water and sewer projects. Utility debt is not subject to the City's statutory debt limit. Haas commented that the difference between the Cumulative GO Debt of \$3,900,000 and the Cumulative Transportation Loans plus GO Debt of \$5,600,000 is the \$1,300,000 Cumulative GO Debt subject to the Debt Limit which consists primarily of street improvements.

Haas commented that the GO Debt to Equalized Assessed Valuation (EAV) ratio is 37%. Haas stated that there has been a lot of growth within the City over the past several years; which is reflected in the increased assessed valuation. The increased assessed valuation has increased the City's Debt Capacity on a statutory basis. Haas commented that the City is only at 13% of the statutory debt subject to the EAV. The maximum statutory limit is 30%. Haas stated that the remaining GO Debt Capacity is \$1,900,000 and at one point in time it was less than \$1,000,000. Assuming no additional growth, the statutory debt capacity of the City would increase as debt is retired.

Haas commented that if the City would issue GO Debt to finance street improvements it would count against the City's debt limit but if the City uses the KDOT Revolving Loan program to finance street improvements it does not count against the City's debt limit. Haas stated that GO Debt and Transportation Loans total approximately \$5,600,000. The total debt, GO Bonds plus Transportation Loans and KDHE Revolving Loans, is approximately \$8,000,000.

Haas commented that not including the KDHE Loans, the City has 53% debt to EAV which is a high ratio. Haas stated that if the KDHE Loans were included the ratio would be approximately 65%. Haas stated that the City has the authority to borrow more on a statutory basis. Haas recommended that the City not borrow any more until the existing debt is paid down.

Ward commented that special assessments are not being paid and the City has an obligation to pay the principal and interest on the GO Bonds. Ward stated that the City

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cannot afford to pay those obligations for very long without depleting its funds. Ward commented that if special assessments are not paid by the property owners and payment from the Letters of Credit are not received, in about two years the City will not be able to make the payments on the debt.

Haas commented that normally a mill levy impact of the debt is done in this situation but there are so many issues regarding the outstanding special assessments he thought it would be confusing to determine the mill levy exposure. Attorney Irvine commented that within the next two months, more information will be available regarding the bankruptcy of RIM Development which should make an analysis of the mill levy impact more definitive and provide realistic probabilities.

Haas stated that he is concerned with communities with Total Debt to EAV ratios greater than 30%-35%. Haas commented that he is more concerned, on a credit basis, with utility systems being able to pay their utility bonds than the city having to levy taxes to pay those bonds. The City is presently at 53% and he would prefer that the ratio be 30%-35%. Haas reminded the Council that the City's debt is not the only debt the citizens are paying for; there is school district debt, county debt, etc. The direct and overlapping debt could be close to 100% of the assessed valuation; which is not a good position. Creditors not only look at the debt the City owes but the debt that other governmental entities have levied on the community.

Ward stated that if the River Trail Additions and Springer Addition do not pay their special assessments, and there is no assistance from the Letters of Credit and/or KDOT right-of-way proceeds, the City will be approximately \$300,000 short of making the principal and interest payments every year for the foreseeable future.

Haas commented that from a total debt credit standpoint, it would not be advisable to issue additional debt just because the City has \$1,900,000 in remaining GO Debt Capacity. Haas stated that once the City reaches the Statutory Debt Limit, the City cannot issue any more debt. Haas commented that if the assessed valuation would remain stagnant, then it would be some time before he would recommend issuing debt. Haas commented that should the assessed valuation increase, that time frame would be shortened.

Carroll moved to recess the meeting until 9:32 p.m. Seconded by Ward. Motion carried.

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

Marvin Rodriguez-Zoning Administrator, present, commented that the proposed amending ordinance corrects inconsistencies between Chapter 13, Article 5 of the Code and Chapter 15 of the Zoning Regulations. The amending ordinance changes the height of a sign above the sidewalk to 7½ feet to be consistent with Chapter 13, Article 501.

Rodriguez commented that the Zoning Regulations reference 'business signs' but there is not a definition for 'business sign'. The amending ordinance includes a definition for 'business sign'.

Rodriguez commented that the Zoning Regulations prohibited business signs from extending into or over the right-of-way which would be applicable to signage along Riley Avenue. The amending ordinance allows business signs to extend into the right-of-way or over the sidewalk in the Mixed Use Zoning District. This provision would be consistent with Chapter 13, Article 501.

Attorney Irvine stated that there is a provision within the Zoning Regulations that stated that any prior ordinance of the City in conflict herewith is hereby repealed. The

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provisions allowing signage over the sidewalks and requiring a height of 7½ feet have been repealed by the adoption of the Zoning Regulations. The Planning Commission desired for the two above provisions to be permitted in the Zoning Regulations. Otherwise, the existing signs that met the requirements of Chapter 13, Article 501 at sometime in the past are now considered a legal nonconforming use within the Zoning Regulations. Rodriguez stated that currently, any alteration to an existing sign would not be allowed and would require that the sign be removed because it would not comply with the Zoning Regulations. Council questioned the interpretation of what constituted 'altering a sign' meant.

Attorney Irvine stated that the Planning Commission, through the proposed amending ordinance, wanted to preserve the right of businesses to have signs over the sidewalks. Attorney Irvine commented that currently, should a sign be substantially damaged by more than 50% the sign could not be replaced because you cannot restore a nonconforming use. The proposed amending ordinance would allow the sign to be restored because it would no longer be considered a nonconforming use.

Attorney Irvine explained that there is a State Statute requiring that the entire section of an ordinance must be published when amending that portion of an ordinance that was previously adopted by reference, as was done with the Zoning Regulations.

Carroll moved to adopt Ordinance #656 – Amending the Zoning Regulations of the City of Ogden, Kansas, By Amending the Definition Section of Article 15, By Adding a Definition of Business Sign, and By Amending Section 15-401 Which Relates to Sign Standards. Seconded by Nations. Motion carried. Ward voted against.

Terry Morrard, Jr.-Foreman, present, commented that Monty Neidenthal has inquired whether the City would provide gravel on a section of unimproved South Oak Street. Morrard stated that the section of South Oak Street between Spruce Alley and 8<sup>th</sup> Street has been gated and therefore he considers the access to be a private drive. Neidenthal will use the road as a way to access his recently purchased property located at Block 54, Lots 19-36. (As a correction to the information presented it was later discovered that Neidenthal actually purchased Block 57, Lots 1-18). Attorney Irvine agreed that if the right-of-way was gated it would be considered a private drive.

Morrard informed the Council, for future reference, that Neidenthal has indicated that his intent is to construct a single-family residence on the property. Access to the house will be from South Park Street. South Park Street from 8<sup>th</sup> Street to 6<sup>th</sup> Street is unimproved and is also gated. If Neidenthal is considering leaving the gate, the access would be considered a private drive. Morrard commented that providing water service would not be difficult because of a water main located in the 8<sup>th</sup> Street right-of-way. Morrard commented that providing sanitary sewer service would be challenging and expensive because the nearest sanitary sewer main is located at the intersection of 9<sup>th</sup> Street and South Park Street. The sanitary sewer main would have to be installed from 9<sup>th</sup> Street to the alley in Block 54 (correct location is Block 57) within the South Park Street right-of-way. Issues of zoning would also have to be reconciled.

Morrard requested that, when Neidenthal requests a building permit, he has the permission of the Council to engage BG Consultants to analyze the feasibility of providing sanitary sewer service to the property. Morrard commented that the property may meet the criteria that allows a septic system within the City Limits. Attorney Irvine commented that the Council could consider creating a benefit district for the sanitary sewer improvements.

Consensus of the Council was that the City would not provide the gravel as Monty Neidenthal has requested.

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Harris commented that there are signs within the City that have not been maintained and have become a blight within the community. Harris requested that the Council consider the issue of requiring maintenance or removing the signs. Harris stated that an inventory and assessment should be performed in order to determine the extent of the problem. Harris suggested that the first step could be to contact the owners and request that the sign faces be removed if the business advertised is no longer operating.

Ward stated that if there are regulations governing signage then the regulations could be enforced to obtain compliance.

Harris moved to direct the Zoning Administrator to prepare a list of signs in noncompliance to be presented to the Council prior to enforcement of Chapter 15 - Sign Regulations of the Zoning Regulations. Seconded by Ward. Motion carried.

Carroll moved to recess into Executive Session, until 10:32 p.m., for nonelected personnel issues. Seconded by Still. Motion carried.

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

Attorney Irvine reported to the Council of the proceedings of the Bankruptcy Court Hearing regarding RIM Development.

Attorney Irvine commented that he made certain that the Bankruptcy Judge was aware that the City may draw upon the Letters of Credit (LOC) and that the Bankruptcy Judge did not object; which he did not. Attorney Irvine stated that he was satisfied that the City is not precluded by the bankruptcy from making claims on the LOC.

Attorney Irvine stated that RIM Development filed for Chapter 11 Bankruptcy – Reorganization and have filed a plan with the Bankruptcy Court as part of the process which sets forth their plan for satisfying creditors. Attorney Irvine commented that RIM Development is delinquent on their first payment of special assessments due in December 2009 in the approximate amount of \$127,000. Attorney Irvine commented that RIM Development is delinquent on their second payment of special assessments due on May 10, 2010 in the approximate amount of \$127,000. The bankruptcy petition only applies to that debt that had accrued prior to the filing of the petition; which occurred in January 2010. Attorney Irvine stated that technically RIM Development only has protection from the delinquent payment of December 2009. Attorney Irvine commented that RIM Development has amended their plan to change repayment to be over the next four years. Every subsequent special assessment payment will be paid as they come due. The exception would be the May 2010 special assessment, and it would be paid at the time the Chapter 11 plan was approved by the Bankruptcy Court; which could potentially occur within the next 60-90 days.

Attorney Irvine stated that in the bankruptcy plan they are proposing that the 72 units that are developed be turned over to Textron in lieu of being foreclosed upon. To the extent that the 72 units belongs to Textron, at that time the City would be made whole on any arrearages and the City would not have to wait the four years for payment on the December 2009 special assessments. The remaining undeveloped lots would fall under the four-year payment plan. The above is assuming that the City receives nothing from the LOC.

Attorney Irvine recommended pursuing collection of the LOC for the unpaid December 2009 special assessments at this point in time.

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Attorney Irvine commented that it is uncertain whether the City would received any of the KDOT right-of-way proceeds that would be paid out over four years. Attorney Irvine commented that he was cautiously optimistic that the City would receive some payment on the special assessments.

Attorney Irvine commented that the annual payments made by RIM Development over the next four years would be made on the anniversary date of the approval of the Chapter 11 bankruptcy plan.

Ward commented that he would like Sink, Gillmore & Gordon to continue to prepare the monthly financial statements. Ward stated that with the limited internal control measures available, another review by the City's accountants provides additional assurances and safeguards of the City's finances. Ward inquired of the Clerk regarding the present status of the monthly financial statement preparation. Clerk commented that Quickbooks 2009 is being used to enter the financial transactions of the City and prepare financial statements. Mayor Bond wanted the monthly financial statements prepared by Quickbooks 2009 and not by Sink, Gillmore & Gordon. Sink, Gillmore & Gordon would only review financial data when they conducted the annual Audit and prepared the Budget. Clerk stated that Quickbooks 2009 was modified by Sink, Gillmore & Gordon in order to be used for governmental accounting. Clerk commented that the monthly statements produced by Quickbooks 2009 are difficult to read and that the Council would be disappointed in the results. The monthly balance sheet must be prepared manually and separately from Quickbooks 2009. Sink, Gillmore & Gordon has stated that they would be able to prepare the monthly financial statements using data from Quickbooks 2009 resulting in statements identical to ones presently produced.

Consensus of the Council was for Sink, Gillmore & Gordon will review the monthly financial transactions and prepare the monthly financial statements.

Carroll commented that when water service is terminated for nonpayment, the notice is given to the customer (mobile home court owner). Carroll inquired whether it was possible to inform the tenants that the water service is being terminated.

Clerk stated that he was prevented from divulging customer information to the general public, i.e. termination due to nonpayment. Because of customer privacy issues the notice would only state that water service was being terminated. Maplewind Mobile Home Court would require 140 notices to be printed and posted which would require some time to accomplish. The customer has up until the physical termination of service to make payment, therefore it is not known for certain whether termination will occur until just before the service is actually terminated. At that point in time termination would not happen until posting of the notice was completed.

Ward stated that the mobile home court owner is the customer, not the tenants. Ward stated that the mobile home court owner has a responsibility and if he doesn't pay the water bill the tenants will surely hold him accountable until the water bill is paid.

Harris commented that the City cannot control the mobile home court owner's shoddy business practices.

Nations excused himself from the meeting at 11:03 p.m.

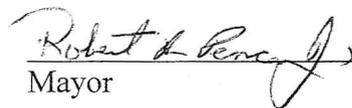
Mayor Pence commented that he has noticed during the Council Meetings a lack of courtesy when a Councilmember is speaking another Councilmember interrupts. Mayor Pence

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reminded the Councilmembers that Robert's Rule of Order applies to the conduct of the meeting.

Ward moved to adjourn the meeting. Seconded by Carroll. Motion carried.  
Time: 11:07 p.m.

Vincent L. Kramer II  
City Clerk

  
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Mayor