

CITY OF OGDEN

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Council Meeting

July 7, 2010

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

The meeting was called to order at 7:05 p.m.

The following members were present; David Ward, Ward Nations, Rae Harris, Brian Still and Mayor Pence. Attorney Irvine was present. Kenneth Carroll was not present.

Mayor Pence commented that the bills of the month were not available for approval.

Nations moved to approve the Agenda. Seconded by Still. Motion carried.

Nations moved to approve the minutes of the June 2, 2010 Council Meeting and the June 17, 2010 Special Council Meeting. Seconded by Ward. Motion carried.

Marvin Rodriguez-Zoning Administrator, present, submitted photos of nine signs/poles that have been abandoned or are in disrepair. Rodriguez commented that to remove the signs/posts has been estimated by a sign company to cost approximately \$150 each. Rodriguez commented that after notification by the City, the property owner has the option of removing the sign. Should the sign remain upon expiration of the time given for removal of the sign, the Governing Body would decide whether the sign should be removed. Cost of removal of the sign would be placed on the tax roles as a special assessment against the property.

Ward commented that he was not expecting the removal of the poles as a component of removal of abandoned signs or signs in disrepair. Ward stated that to install another pole in the future would be expensive for a new business. Ward commented that the existence of the pole on the commercial property has value to a prospective business.

Mayor Pence commented that he could accept leaving the poles for future use by a business.

Rodriguez commented that some poles would not allow the installation of a sign in compliance with the Zoning Regulations. Rodriguez stated that an advertising sign would not be allowed to be installed on the poles, only the name of the business can be depicted. Rodriguez commented that any sign currently being used to depict an existing business but not in conformance with the Zoning Regulations would be considered legal non-conforming. Rodriguez commented that if any nonconforming use is discontinued for a period of six consecutive months, any future use would be required to be in conformity with the Zoning Regulations.

Harris commented that the issue is a blight concern.

Rodriguez commented that Junction City requires that the sign and pole must be removed under similar circumstances. Rodriguez commented that in the case of a sign being located on a building where no business is in existence, a blank is required to be inserted in the frame.

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Nations commented that if the regulations prohibit the placement of a sign on an existing pole, then there is no reason to allow the property owner to keep the pole. However, if the pole could be used in conformity with the regulations then the property owner should be allowed to keep the pole for future installation of a sign.

Clerk suggested that a sign not presently in use would look better if a blank was inserted in the framework should the sign and pole be allowed to remain. Keeping the pole and frame painted would also improve its appearance.

Ward suggested notifying the property owners giving them 60 days to either maintain the sign or remove it.

Harris moved to, with regard to the list presented by the Zoning Administrator, notify the property owners stating that they are to remove the sign and pole in question within 60 days or the City shall remove the sign and pole and place the cost of removal on the tax roles as a special assessment against the property. Seconded by Nations. Motion carried.

Mariah Bracebridge-Community Center Coordinator, present, requested permission to purchase 4-5 chairs at approximately \$60 each to replace a couch located in the reception area.

Ward moved to authorize the purchase of 5 chairs at up to \$60 each. Seconded by Nations. Motion carried.

Mariah Bracebridge-Community Center Coordinator, present, informed the Council that Ray Makings is no longer available to fulfill the provisions of the Computer Technical Service Agreement because he no longer resides within the area.

Bracebridge requested permission to ask Ellis Harralson to service the computers. Council agreed.

Bracebridge commented that patrons must be 18 years or older to use the computers and there are no 'blocks' installed on the computers.

Attorney Irvine commented that he would prefer to review the Computer Technical Service Agreement to determine the appropriate notice for cancellation of the agreement.

Attorney Irvine commented that he has taken steps to collect from the Letters of Credit (LOC) for payment of the Special Assessments of the River Trail Development owned by RIM Development. Attorney Irvine stated that he contacted CoreFirst Bank Attorney Tom Lassiter and during their discussion made progress though not collecting on the Letters of Credit. Attorney Irvine stated that RIM Development has taken some different steps in their bankruptcy that caused him to pause his collection efforts on the LOC's. RIM Development has filed an amended reorganization plan that would change their earlier proposal to pay the special assessments. The previous proposal was to pay the 2009 special assessments over the course of four years and payments due in 2010 and subsequent years would be paid when due. Attorney Irvine stated that RIM Development's new plan is to pay the 2009 special assessments as soon as the Bankruptcy Court approves the reorganization plan and then pay future special assessments as they become due. Attorney Irvine commented that it would appear that the City would receive payment of the special assessments soon but not before the August 1, 2010 KDOT Revolving Loan payment is due. Attorney Irvine commented that RIM Development has settled the condemnation case with KDOT for purchase of right-of-way and the settlement proceeds would be used to pay the special assessments.

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Harris moved to authorize payment of \$101,302.30 from the General Fund to facilitate payment of the KDOT Revolving Loan 0053 & 0069 Principal and Interest due August 1, 2010. Seconded by Still. Motion carried.

John Haas-Ranson Financial Consultants, present, reported that Commerce Bank has agreed to purchase the General Obligation Bonds, Series 2010 (River Trail Unit 8/Cimarron Extension) for an interest rate of 5.0248% resulting in an average annual debt service of \$17,030.58.

Ward moved to adopt Ordinance #657 – Authorizing and Providing for the Issuance of General Obligation Bonds, Series 2010, of the City of Ogden, Kansas; Providing for the Levy and Collection of an Annual Tax for the Purpose of Paying the Principal of and Interest on Said Bonds as They Become Due; Authorizing Certain Other Documents and Actions in Connection Therewith; and Making Certain Covenants With Respect Thereto (River Trail Unit 8/Cimarron Extension). Seconded by Nations. Motion carried.

Ward moved to adopt Resolution 07-07-10-A – Prescribing the Form and Details of and Authorizing and Directing the Sale and Delivery of General Obligation Bonds, Series 2010, of the City of Ogden, Kansas, Previously Authorized by Ordinance No. 657 of the Issuer, Making Certain Covenants and Agreements to Provide for the Payment and Security Thereof; and Authorizing Certain Other Documents and Actions Connected Therewith (River Trail Unit 8/Cimarron Extension). Seconded by Nations. Motion carried.

Attorney Irvine commented that in order to finalize the adoption of the Comprehensive Plan, the Planning Commission must approve it by majority vote and refer it to the Governing Body. The Governing Body can approve the adoption of the Comprehensive Plan by majority vote or can be overridden by a super majority vote or sent back to the Planning Commission for further review and consideration by majority vote of the Council.

BRR Architecture has requested a Work Session and Special Council Meeting be scheduled on July 26, 2010 for a presentation and approval of the Land Use portion of the Comprehensive Plan and Future Land Use Map. Attorney Irvine commented that BRR Architecture's intention is that the Planning Commission would consider the Land Use portion and Future Land Use Map and approve it on that date and that the Governing Body would do likewise. Attorney Irvine commented that scenario is unrealistic.

The Council agreed to schedule a Work Session on July 26, 2010 at 7:00 p.m. at the Ogden Community Center for a presentation of the Land Use portion of the Comprehensive Plan and Future Land Use Map by BRR Architecture.

Attorney Irvine commented that once a draft copy is submitted, copies will be made available for the public. Harris commented that documentation regarding the Comprehensive Plan can be found on the Website http://www.wix.com/Ogden_KS/plan.

Marvin Rodriguez-Zoning Administrator, present, stated that BRR Architecture is using the results from the community survey to direct them in the preparation of the Comprehensive Plan.

Attorney Irvine commented that there were two sources for information regarding mayoral authority, Kansas Statutes with supplementation by the City Ordinance. The State Statutes provides that the Mayor has supervision over the affairs of the City. A similar provision in the City Ordinance provides that the Mayor has the superintending control of all offices and

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affairs of the City. Attorney Irvine commented that in addition to that general language the Mayor has specific authority such as enforcing the laws and signing orders, drafts, ordinances, resolutions, voting in case of a tie, etc.

Attorney Irvine commented that the question of the Council was what is the authority of the Mayor with regard to financial responsibilities and control of officers and employees.

Attorney Irvine stated that the State Statute states that appointment of officers are made by and with the consent of the Council where the Mayor makes a nomination and the Council approves. Officers may be removed by majority vote of the membership of the Council, not a majority of a quorum. Attorney Irvine noted that the City Ordinance states to remove an officer requires a majority vote of the Governing Body which includes the Council and Mayor. Attorney Irvine stated that the State Statute would trump the City Ordinance in that situation. Attorney Irvine stated that officers could be suspended by the Mayor pending further consideration by the Council.

Attorney Irvine stated that Kansas is an at-will employment state where the employees/officers serve at the will of the employer. The employer may terminate employment of an employee/officer for any reason or no reason as long as it is not discriminatory or there is some contractual relationship that alters the rules that were agreed to by the parties.

Attorney Irvine commented that the City Ordinance states that employees are hired by the Mayor with the consent of the Council. The Mayor may remove an employee upon recommendation by the Council. The State Statute states that the Mayor shall deal with employees promptly for neglect or violation of duty. Attorney Irvine stated that there is a provision that deals with notice and hearing for employees.

Attorney Irvine commented that financial authority resides with the Council. The Mayor is not given any explicit authority to expend funds in either the State Statutes or the City Ordinance. Attorney Irvine commented that the financial authority could be delegated.

Mayor Pence commented that consistency in the application of the laws is needed rather than every two years a different interpretation is used.

Ward commented that he would prefer that the Mayor suspend an employee/officer until the Council can address the issue. Attorney Irvine stated that according to State Statute and the City Ordinance, no employee or officer can be terminated without consideration by the Council. Ward commented that he did not want the Mayor to have the authority to immediately terminate an employee/officer without due process.

Ward inquired whether the Mayor had the authority to review the applications for filling an employment position, select a candidate, and present only that candidate for consideration by the Council. Attorney Irvine commented that discretion lies with the Council as to how much information they need and when they need it. Attorney Irvine commented that it would be up to the Council to decide how much control they would want to retain over the function of hiring employees

Mayor Pence stated that in the past the process of hiring employees depended upon what administration was present. Mayor Pence stated that two procedures have taken place; the Mayor has selected a candidate for consideration by the Council, and the Council as a whole has interviewed applicants before considering hiring a candidate. Mayor Pence commented that the Governing Body would prefer an application and interview process conducted by the Council when hiring for employment positions, rather than a process where the Mayor presented his selection to the Council for consideration. Attorney Irvine commented that there is a wide degree of latitude in which hiring procedure is used, which is going to be different with each Council and each Mayor.

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Attorney Irvine stated that the State Statute, for appointed positions, cite the Mayor's recommendation has to be acted upon by the Council within 30 days otherwise the appointment is deemed to be approved. If the recommendation is rejected by the Council, there must be a finding of unfitness for holding office by the Council. Ward stated that the requirement of finding an appointment unfit in order to reject the Mayor's recommendation is what he wants to avoid.

Ward inquired why officers have to be appointed and not hired through the application and interview process. Attorney Irvine replied because the State Statute requires officers to be appointed. Ward inquired whether the City could 'Charter out' from under the State Statute. Attorney Irvine commented that would be possible because that provision of the State Statute is contained within the statute that pertains to the Cities of the Third Class and not uniformly applicable to all cities. Ward commented that he did not want a situation to occur where the Mayor can appoint whomever he chooses and to reject that nomination would require the Council to find someone unfit. Ward commented that the Mayor could stalemate the appointment process. Attorney Irvine stated that he would do additional research on that topic.

Harris commented that with elected positions the process of appointment protects that election process. Ward commented that the present system lends itself to allow the Mayor to fill positions with buddies, as favors, leading to an undesirable situation.

Nathaniel Fox-Swimming Pool Manager, present, requested the Council consider providing swimsuits for the Lifeguards because they would look professional and would be distinguishable from the patrons at the Swimming Pool. Fox requested the Council consider extending the hours of operation from 1:00 p.m.-6:00 p.m. to 1:00 p.m.-8:00 p.m. Fox requested to purchase proper and adequate training equipment for the Lifeguards to maintain their training, which is conducted on Mondays from 10:00 a.m. to Noon. Fox requested the Council to consider the operation of a snack bar versus vending machines. Fox requested the Council to allow a Teen/Adult swim night to be held every other Saturday evening.

Fox commented that a purchase of a dive brick would cost \$28.75. Fox stated that all of the lifesaving/emergency equipment is available at the Pool. Fox stated that the Lifeguards are willing to pay half of the cost of the swimsuits. Fox stated that the cost of t-shirts with the lifeguard insignia are \$5.95 each.

Harris moved to authorize the purchase of swimsuits for the Swimming Pool staff not to exceed \$300, half of which will be paid by the Swimming Pool staff. Seconded by Nations. Motion carried. Ward voted against.

Nations moved to authorize the operating hours of the Swimming Pool to be 1:00 p.m. to 8:00 p.m. Seconded by Ward. Motion carried.

Nations moved to authorize the purchase of a dive brick at \$28.75. Seconded by Still. Motion carried.

Ward stated that the Lifeguards should focus on performing the duties of a lifeguard and overseeing the safety of the patrons at the Swimming Pool. Ward commented that the operation of a snack bar had been done in the past and the problems outweighed any benefit realized. Fox commented that the revenue generated from the concessions could be used for the purchase of items for the Swimming Pool. Ward commented that operating a concession is another business being conducted at the Swimming Pool when the focus of the employees should be the operation of the Swimming Pool.

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Harris commented that the Council would prefer Fox manage the Lifeguards and the patrons and devote their time making sure they are safe rather than having the additional responsibilities of overseeing a snack bar.

Ward moved to deny the request to operate a snack bar at the Swimming Pool. Seconded by Still. Motion carried. Nations voted against.

Ward moved to authorize a Teen/Adult swim night on every other Saturday from 6:00 p.m. to 8:00 p.m. Seconded by Nations. Motion carried.

Harris moved to recess the meeting until 9:09 p.m. Seconded by Nations. Motion carried.

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

Nations moved to recess into Executive Session, until 9:35 p.m. for nonelected personnel issues. Seconded by Still. Motion carried. Marvin Rodriguez-Building Inspector/Zoning Administrator was present.

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

Nations moved to direct the Building Inspector/Zoning Administrator to be available performing the duties of the position from 8:00 a.m. thru Noon, Monday-Friday. Seconded by Still. Motion carried.

Nations moved to recess into Executive Session, until 9:50 p.m., for nonelected personnel issues. Seconded by Ward. Motion carried.

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

Attorney Irvine informed the Council that steps have been taken to place the unpaid water/sewer charges of Maplewind Court on the tax roles as a special assessment against the property.

Clerk informed the Council that Community First National Bank will issue a debit card for the City to pay a few invoices that require payment by credit card only, but the card must be issued under an individual's name rather than a business name in order for the bank to conduct a credit check.

Harris suggested obtaining a pre-paid debit card for those few instances each year that require payment by credit card.

Ward commented that he would prefer the City have a credit card versus the ability to obtain cash from an ATM with a debit card.

Council requested the Clerk to investigate obtaining a credit card for the City.

Clerk informed the Council that when the City annexed property to the east, the K-18 Bypass right-of-way was not included in the annexations. Nor was the U.P.R.R. right-of-way annexed. Clerk commented that he has discussed with Attorney Peter Rombold, whether annexation of the right-of-ways would present any positive or negative consequences. Attorney Rombold mentioned that in the City/State Agreement, if the City should annex property surrounding the concrete box culvert located under K-114, the City would become responsible for its maintenance. Presently the City has annexed property south of the

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concrete box culvert, but not north of the concrete box culvert. The City should refrain from annexing property directly adjacent to the north end of the concrete box culvert to avoid being held responsible for maintenance of the concrete box culvert.

Clerk stated that portions of the re-aligned K-114 Highway, which will connect Riley Avenue with the new K-18 Interchange, will be located within the City Limits. In the past, KDOT has relinquished possession and responsibility for short segments of highway to cities where the highway lies within the boundaries of the city. Clerk commented that he has asked Attorney Rombold whether deannexation of the K-114 right-of-way would avert KDOT from relinquishing responsibility of maintenance to the City.

Clerk commented that the Council has moved forward with removing unsafe and dangerous structures. Clerk informed the Council that under the Community Facilities Category of the Community Development Block Grant Program, funds can be obtained for the demolition of structures. The structures have to be unsafe or in blight condition. The City would be required to provide a 25% match. The City could not make application for the CDBG Program until the present CDBG 08-PF-829 Program is finalized.

Clerk commented that KDOT has purchased Lots 6, 7 & 8 in Stills Ranch Addition Unit 10 for the construction of the diversion of overflow conditions of Dry Branch Creek. Those lots have outstanding Special Assessments in the amount of \$94,143.45.

Clerk presented an Escrow Agreement whereby KDOT will pay the City \$94,143.45 which is the remaining balance of Principal and Interest assessed against Lots 6, 7 & 8 in Stills Ranch Addition Unit 10. The City would deposit and segregate the payment into the Bond & Interest Fund and on an annual basis pay the special assessment due. The City could possibly convert the payment into a 1-year Certificate of Deposit from which the payments could be made, renewing the remaining balance on an annual basis, and deposit any interest earned on the CD into the General Fund.

Ward moved to authorize the Mayor to execute the Escrow Agreement with KDOT. Seconded by Nations. Motion carried.

Clerk informed the Council that the City of Manhattan and Riley County are having 2 foot contour Lidar Mapping done of various locations. The nearest location is the Manhattan Airport. Clerk commented that Patrick Collins-Riley County Emergency Management was trying to persuade the company to photograph the City of Ogden at no additional cost because of the close proximity to the airport.

Ward commented that two projects within the City have damaged the streets. Ward stated that the City is obtaining estimates to repair the 200 Block of 14th Street in order to share the cost of repairs with the USD #383 and Champion Contractors. Ward commented that the 100 Block of 10th Street has been damaged by the construction contractor installing gas piping for Kansas Gas Service. Ward commented that the City Attorney may have to get involved to hold the contractor responsible.

Nations inquired why is the City spraying weed control chemicals along Riley Avenue. Clerk commented the activity was started years ago in an effort to improve the appearance of Riley Avenue. The property owners were not controlling the weeds in the sidewalks. Nations stated that eliminating the spraying of weeds along Riley Avenue would be one measure to cut expenses.

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Nations inquired as to the amount received from the Riley County Park Board this year. The City was allotted \$2,500, which the Council needs to decide on how to spend it.

Still inquired whether J & K Contracting was done with the installation of the discharge piping for the wastewater lagoons. Still commented that he would like to reconnect the cable that borders the north side of the lagoon access road to deter access into the field that he is leasing.

Still stated that the contractor has left the lagoon gate open on several occasions.

Still commented that several people have inquired the reason for issuing Building Contractor Licenses, Electrical Contractor Licenses and Plumbing Contractor Licenses when the only criteria for obtaining one is simply asking the Council for the license. Still commented that the current practice of issuing those licenses is useless if anyone can be granted one. Attorney Irvine agreed that the current practice should be abolished or establish a process of qualification to obtain a license.

Still requested access to the low-water lagoon access road in order for him to move his farm equipment to the area he leases from the City that is adjacent to the wastewater lagoons. This would allow him a safer access to the site rather than driving the equipment on K-18.

Attorney Irvine commented that he would look at amending the lease agreement to include allowing access onto the low-water crossing by the lessee. Attorney Irvine requested that Attorney Peter Rombold be consulted on the issue.

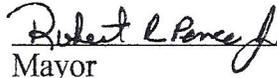
Mayor Pence inquired of when the water bill delinquency day would be, considering that July 10, 2010 is on a Saturday. Clerk stated that because the 10th fell on a weekend, the due date will be July 12, 2010.

Mayor Pence requested the Council consider dedicating the City Park Ballfield. Mayor Pence commented that Mardee Hutchinson would check with the Riley County Park Board regarding how much of the \$2,500 allotted to the City could be spent on a memorial plaque or monument. Council agreed with Mayor Pence's suggestion and agreed that a dedication could be held during the 2010 Ogden Fall Festival.

Nations moved to adjourn the meeting. Seconded by Still. Motion carried.

Time: 10:45 p.m.

Vincent L. Kramer II
City Clerk



Mayor