

CITY OF OGDEN

222 Riley Avenue, P.O. Box C
(785) 539-0311
Ogden, Kansas 66517-0843

Council Meeting

May 5, 2010

The Regular Meeting of the Governing Body for the City of Ogden was scheduled on Wednesday, May 5, 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.

Mayor Pence invited the public to present comments to the Governing Body.

Council agreed to remove the three following topics from the Agenda: Jerry Pultz-Code Enforcement Officer, Approval of Job Descriptions, and Bills of the month.

Harris moved to approve the Agenda as amended to remove Jerry Pultz-Code Enforcement Officer, Approval of Job Descriptions, and Bills of the month. Seconded by Nations. Motion carried.

Carroll moved to approve the minutes of the April 21, 2010 Council Meeting. Seconded by Nations. Motion carried.

Patrick Cox-BG Consultants, Inc., present, commented that the Kansas Department of Commerce has decided to implement a Bonus Round Application for Community Development Block Grant funding totaling \$7,000,000. Cox commented that it was his intent to present projects for application for Council consideration. Cox stated that when he initially heard of the proposal, he felt that it would be a great opportunity for the City to receive funding for water tower painting/maintenance, water system telemetry and radio-read water meters. Cox commented that to receive \$500,000-\$600,000 in CDBG funding would only require a 15% match from the City.

Cox stated that the guidelines for application have just been released and Donna Crawford-Governmental Assistance Services has opined that it would not be in the City's interest to submit an application. Cox commented that the application deadline is June 12, 2010 and that Crawford is unavailable to submit an application on behalf of the City. Cox commented that the City would have to close out CDBG 08-PF-829 Lift Station Project before applying for the Bonus Round Grant and that would not be possible. Cox stated that water projects are low priority on the list for consideration by KDOC because sewer projects and community facilities are ranked higher. Cox stated that for the City to expend funds to submit a grant application for a low probability of being selected would not be advisable. Cox commented that there are many applicants for the Bonus Round CDBG.

Ward commented that the City Shops are in need of repair and the Community Center is in need of expansion for storage of tables/chairs. Ward inquired whether the aforementioned projects would be eligible under the community facilities category. Cox

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commented that there is potential for both projects under the community facility category provided that they are community facilities as recognized by the KDOC. Ward commented that with the traffic volumes on South Walnut Street and its present condition, improvements would need to be considered. Cox commented that CDBG funding for street improvements are project specific. Ward commented that the lone sanitary sewer main crossing Riley Avenue would potentially be a concern with additional development to the north. Cox commented that there are additional issues related to the topic such as a sanitary sewer main located beneath structures and appropriate utility easements.

Cox informed the Council that the Kansas Department of Health & Environment Revolving Loan Program is undergoing a reorganization and restructuring phase. Cox commented that it is predicted that there would be approximately ¼ of the funds available in the future as compared to past funding.

Ward commented that with regard to the proposed ordinance regulating wireless transmission towers, he did not want the structures located within or near residential zoning districts.

Marvin Rodriguez-Zoning Administrator, present, explained that the proposed ordinance would allow monopole towers within the Mixed Use Zoning District but when applying the condition that the tower could not be located within 200 feet of a residential property line, the resulting effect is that no monopole tower proposed to be located within a Mixed Use Zoning District could comply. Ward stated that because of the 200-foot requirement, why not eliminate the Mixed Use Zoning District from the list of permitted locations.

Ward inquired why have wireless transmission towers the capability of being located within the City. Attorney Irvine responded that the situation is similar to sexually oriented businesses in that the Courts have ruled that cities have to provide the reasonable opportunity for the placement of towers, they cannot be completely prohibited. Rodriguez commented that without regulations, towers can be placed anywhere within the City. Carroll commented that regulations are needed to control the locations upon which a tower is placed.

Rodriguez stated that stealth towers are permitted to be placed within all Zoning Districts, including Residential Zoning Districts, and are subject to the height limitations for the particular Zoning District. Rodriguez commented that monopole towers are permitted within the Agricultural Zoning District and Public Use Zoning District. Monopole towers would be permitted in the area of the Wastewater Lagoons (Public Use Zoning District) and generally in Blocks 5, 46, 54, 55 and 57 which are presently designated as an Agricultural Zoning District.

Rodriguez commented that he has contacted Manhattan and Fort Riley regarding their input in relation to flight approaches/takeoffs and patterns, the Airport Overlay District and FAA restrictions.

Clerk inquired what would prevent someone complying with all regulations and constructing a tower and after some considerable elapsed time sell portions of the 200-foot radius property for residential development. If a new Planning Commission, Zoning Administrator or Building Inspector was not familiar with the location, it could be conceivable that the property could be mistakenly rezoned residential. Clerk inquired whether the City could require that property used for the placement of a tower have covenants placed on the property prohibiting the reselling of any portion of the 200-foot radius. Attorney Irvine stated that he would investigate the issue.

Ward suggested asking the Planning Commission to consider removing the C-1 - Central Business Zoning District, C-2 - General Commercial Zoning District, MU - Mixed

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Use Zoning District, I - Industrial Zoning District and LI - Light Industrial Zoning District as permitted Zoning Districts for the placement of monopole towers and only allowing monopole towers to be placed in Public Use Zoning Districts and Agricultural Zoning Districts. Stealth tower placement restrictions would remain unchanged.

Harris moved to request the Planning Commission to consider removing the C-1 - Central Business Zoning District, C-2 - General Commercial Zoning District, MU - Mixed Use Zoning District, I - Industrial Zoning District and LI - Light Industrial Zoning District as permitted Zoning Districts for the placement of monopole towers and only allowing monopole towers to be placed in Public Use Zoning Districts and Agricultural Zoning Districts. Seconded by Ward. Motion carried.

John Haas-Ranson Financial Consultants, present, commented that a Public Hearing to hear any and all written and oral objections to the Special Assessments for River Trail Unit 8/ Cimarron Extension is required.

Mayor Pence opened the Public Hearing for public comment.

Attorney Irvine commented that the process would levy the cost of improvements of the specific development against the property as special assessments. The property owners within the specific development would be responsible for payment of the special assessments. Haas commented should the property owners default on payment of the special assessments the City-at-large would be responsible for payment of the principal and interest on the General Obligation Bond through a general tax levy. Haas commented that the hope is that the special assessments would eventually be paid or the property be sold to someone else who would pay the assessments.

Attorney Irvine stated that a Petition for Foreclosure has been filed against RIM Development; the bank has not yet taken possession and RIM Development is presently in possession. Attorney Irvine stated that RIM Development has filed for Chapter 11 Bankruptcy, which is a reorganization whereby RIM Development is intending to maintain control and ownership of the property. RIM Development must formulate a plan that must be acceptable to the Bankruptcy Court and all creditors.

Haas commented that the assessments must be filed with the County Clerk by August 25, 2010 to be considered payable on December 2010. The Temporary Notes Issue Series 2008-C mature on August 1, 2010 and must be paid. Haas stated that there are four options: 1) Proceed with issuing General Obligation Bonds, have the process closed by August 1, 2010 to payoff the Temporary Notes and certify the assessments by August 25, 2010, 2) Proceed with issuing General Obligation Bonds, have the process closed by August 1, 2010 to payoff the Temporary Notes, but delay certifying the assessments until after September 1, 2010 resulting in the assessments being payable December 2011 and the first General Obligation Bond payment due in 2012, 3) Stop the General Obligation Bond process and rollover the Temporary Note for an additional two years, 4) Default on the payment of the Temporary Note and never obtain financing again.

Attorney Irvine commented that he had a conversation with the attorney representing RIM Development in the bankruptcy proceedings where she suggested that the action of the City to spread the special assessments would be a violation of the bankruptcy automatic stay. Attorney Irvine commented that when somebody files for bankruptcy, creditors are precluded from taking action to enforce a judgment or collect a debt without the Bankruptcy Court's permission. The attorney claimed that the City does not have the permission of the Bankruptcy Court to collect the special assessments. Attorney Irvine stated that through his research he was convinced that the RIM Development's Attorney was wrong. Attorney

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Irvine stated that there is a specific provision within the bankruptcy code that the City is entitled to place a special assessment on the property if the assessment becomes due after the filing of the bankruptcy petition.

Attorney Irvine recommended the Council postpone adoption of the proposed Ordinance levying special assessments until the May 19, 2010 Council Meeting. Attorney Irvine commented that the only change in the process would be that the period in which the property owner could prepay the assessments would be shortened from six weeks to four weeks. Haas commented that he would need direction from the Council by the May 19, 2010 Council Meeting as to when the principal and interest payments would begin, 2011 or 2012, in order for him to structure the General Obligation Bond issue to reflect the decision. Ward commented that undeveloped land could be placed on a tax sale after two years of delinquent taxes. Ward commented that the sooner the process unfolds the sooner the possibility of a tax sale. Haas stated that the disadvantage would be the sooner the City-at-large may have to pay the principal and interest on the General Obligation Bond.

Attorney Irvine commented that RIM Development will be receiving payment from KDOT for the proposed K-18 Corridor right-of-way in the amount of \$1,400,000. Attorney Irvine commented that ideally, through the bankruptcy proceedings, those funds would be applied towards taxes and special assessments. Attorney Irvine stated that the City would prefer that the outstanding special assessments be paid from the \$1,400,000 and therefore the City could hold in reserve the Letters of Credit to be drawn upon in the future.

Attorney Irvine stated that RIM Development has filed a plan which suggests that they want to take the unpaid special assessments and pay them over the next 5 years.

Haas stated that he would prepare the cash flow impacts of the four options presented to the Council.

Ward commented that a 30% Letter of Credit against the River Trail Unit 8/Cimarron Extension cost of construction of \$981,000 would be \$294,300. The actual Letters of Credit total \$350,000. Ward inquired how much of the Letter of Credit can be exercised towards payment of the General Obligation Bond of \$210,000. Attorney Irvine stated that the City can draw upon the Letter of Credit to the extent of the unpaid special assessments. Attorney Irvine stated that the City could not use the Letter of Credit to prepay the special assessments prior to Bonding.

Attorney Irvine commented that the Letters of Credit are from Core First Bank and they have filed contingent claims in the Bankruptcy Court for the amounts of the Letters of Credit. Attorney Irvine commented that it is conceivable that the Bankruptcy Judge could say that there is a plan on file and not let the City draw on the Letters of Credit because the plan addresses payment of the unpaid special assessments over the next five years. Attorney Irvine commented that future special assessments would be expected to be paid when due because those assessments would not be part of the plan.

Carroll moved to close the Public Hearing. Seconded by Still. Motion carried.

Attorney Irvine commented that it could be possible that at some later date RIM Development could file for Chapter 7 Bankruptcy which liquidates all assets.

Council decided that consideration of an Ordinance 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 be tabled until the May 19, 2010 Council Meeting.

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John Haas-Ranson Financial Consultants, present, commented that he would prepare the analysis of the City's Debt Capacity and cashflow scenerios to be presented at the May 19, 2010 Council Meeting.

Carroll moved to table the presentation of the City's Debt Capacity by John Haas until the May 19, 2010 Council Meeting. Seconded by Still. Motion carried.

Ward commented that traditionally the Councilmember that received the greatest number of votes in the election was nominated as President of the Council.

Ward nominated Kenneth Carroll as President of the Council. Seconded by Still. Motion carried.

Carroll moved to recess the meeting until 9:06 p.m. Seconded by Harris. Motion carried.

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

Mayor Pence nominated Bernard Irvine as City Attorney, Stephen Freed as Municipal Judge, Sharon Pence as Court Clerk, Vincent Kramer as City Clerk, Mariah Bracebridge as City Treasurer, Marvin Rodriguez as Building Inspector, Patricia Boetticher for 3-year term on the Planning Commission, Mona Bass for 3-year term on the Planning Commission, Sharon Rohlman for 2-year unexpired term on the Planning Commission and Ed Burch for a 1-year unexpired term on the Planning Commission.

Attorney Irvine commented that the Mayor nominates individuals for appointment with the advise and consent of the Council as stated in Chapter 1, Article 301. Ward stated that certain appointed positions should be filled by soliciting applications that would be reviewed by the Council, rather than thru arbitrary nominations by the Mayor. Attorney Irvine commented that if the Council believes that the process has been deficient then the Council can decline the nomination subject to the suggestion that the Mayor proceed with a formal application and interview process. Ward stated that the process of nomination does not assure that a qualified candidate is nominated or selected. Ward commented that only through the process of application and interview can the best available candidate be selected. Ward inquired whether the City could adopt a Charter Ordinance that would change the process.

Mayor Pence commented that a supervisor or Mayor should not have the authority to terminate an employee, rather the employee should be suspended until the matter can be addressed by the Council. Ward stated that Chapter 1, Article 207 states that 'The Governing Body may designate whether the administration of a policy or the carrying out of any order shall be performed by a committee, an appointive officer, or the mayor. If no administrative authority is designated it shall be vested in the mayor.'

Attorney Irvine commented that the idea behind the May appointments is to provide continuity in the position; the appointment is made with consent and go on. Attorney Irvine commented that if at any time during the term a vacancy arises, the Council would fill the vacancy through an application process. Ward requested Attorney Irvine to investigate the issues related the hiring and firing authority of the Mayor. Mayor Pence stated that he had a conversation with Attorney Irvine regarding limiting the authority of the Mayor. Attorney Irvine commented that from a practical standpoint that advise and consent of the Council precedes a nomination from the Mayor. Mayor Pence stated that the whole Governing Body should have an opportunity to review all the applications and not just the hand-picked applicant of the Mayor.

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Ward inquired whether the Mayor can hire and fire non-appointed employees. Attorney Irvine stated that the Mayor can hire employees with the consent of the Council. Ward commented that Chapter 1, Article 303(c) states "Employees, other than appointed officers, may be removed by the mayor upon recommendation of the City Council." Carroll commented that the appropriate method would be for the Mayor to suspend the employee until the Council could address the incident. Mayor Pence commented that he would prefer that nobody could be fired until the Council is in agreement with that action.

Nations moved to approve the appointments of Bernard Irvine as City Attorney, Stephen Freed as Municipal Judge, Sharon Pence as Court Clerk, Vincent Kramer as City Clerk, Mariah Bracebridge as City Treasurer, Marvin Rodriguez as Building Inspector, Patricia Boetticher for 3-year term on the Planning Commission, Mona Bass for 3-year term on the Planning Commission, Sharon Rohlman for 2-year unexpired term on the Planning Commission and Ed Burch for a 1-year unexpired term on the Planning Commission. Seconded by Carroll. Motion carried.

Carroll commented that within the position description of the Community Center Coordinator the physical demands cite that the employee must occasionally lift and/or move up to or over 50 pounds. Carroll suggested that it should state 'up to or over 50 pounds with assistance.' Mayor Pence suggested removing the words 'or over'.

Mayor Pence suggested that the Council may wish to consider expanding the responsibilities of the position to include a park and recreation role.

Nations commented that under desired minimum qualifications that two years of experience including pool management was cited and inquired whether overseeing the operations of the swimming pool was to be an additional responsibility. Council agreed to remove 'including pool management'.

Still inquired what is involved regarding the day-to-day operation of the Community Center as it is presently operated.

Ward commented that there is an element to the community that consists of the youth which should have a greater role at the Community Center. Ward commented that the computers are only available during the hours the Library is open. Ward suggested that the computers be available to the youth after school and an effort should be taken to try to provide use of the computers at other times. Council discussed changing the hours of operation at the Library. Still commented that segments of the population are being excluded from using the Library because of the current hours of operation.

Mayor Pence commented that he would like the Council to consider encompassing more responsibilities onto the Community Center Coordinator position than what is presently being done.

Nations commented that individuals have approached him suggesting that the Community Center be closed one day during the weekdays in order for the Community Center to be open on the weekends.

Harris moved to approve the job description of the Community Center Coordinator as amended by changing the ability to lift up to 50 pounds and removing 'including pool management' and changing the title to Community Center/Recreation Coordinator. Seconded by Carroll. Motion carried.

Harris moved to recess into Executive Session, for nonelected personnel issues, until 10:30 p.m. Seconded by Still. Motion carried.

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Attorney Irvine excused himself at 10:10 p.m.

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

Ward moved to recess into Executive Session, for nonelected personnel issues, until 10:45 p.m. Seconded by Nations. Motion carried.

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

Nations moved to recess into Executive Session, for nonelected personnel issues, until 10:57 p.m. Seconded by Still. Motion carried.

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

Harris requested that the topic of city personnel to determine the need to remove unused or derelict signage from commercial property be added to the May 19, 2010 Agenda.

Nations excused himself from the meeting at 11:00 p.m.

Still moved to recess into Executive Session, for nonelected personnel issues, until 11:10 p.m. Seconded by Carroll. Motion carried.

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

Still moved to recess into Executive Session, for nonelected personnel issues, until 11:30 p.m. Seconded by Ward. Motion carried.

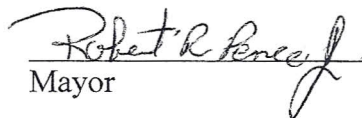
Carroll moved to return to the Regular Session. Seconded by Still. Motion carried.

Harris moved to schedule a Special Meeting on Thursday, May 13, 2010 for the purpose of an Executive Session to conduct interviews for the Community Center/Recreation Coordinator position. Seconded by Carroll. Motion carried.

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

Time: 11:40 p.m.

Vincent L. Kramer II
City Clerk



Mayor

CITY OF OGDEN

222 Riley Avenue, P.O. Box C
(785) 539-0311
Ogden, Kansas 66517-0843

Special Council Meeting

May 13, 2010

A Special Council Meeting of the Governing Body for the City of Ogden was scheduled for Thursday, May 13, 2010 at 7:00 p.m. in City Hall for the Object and Purpose Of:

1. Executive Session to conduct interviews for Community Center/Recreation Coordinator position.
2. Select Community Center/Recreation Coordinator.
3. Executive Session for Nonelected Personnel Issues.

The meeting was called by the following members: Kenneth Carroll, David Ward, Ward Nations, Rae Harris. Brian Still was not present. Attorney Irvine was not present. Mayor Pence was present.

The meeting was called to order at 7:08 p.m.

Nations moved to recess into Executive Session, until 10:00 p.m., for nonelected personnel issues to conduct interviews for the Community Center/Recreation Coordinator position. Seconded by Harris. Motion carried.

Carroll arrived at 8:19 p.m.

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

Ward moved to recess into Executive Session, until 10:30 p.m., for nonelected personnel issues. Seconded by Nations. Motion carried.

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

Carroll moved to adjourn the meeting. Motion failed for the lack of a second.

Harris moved to offer Mariah Bracebridge the position of Community Center/Recreation Coordinator and City Treasurer positions for a combined annual salary of \$32,200 where \$26,000 would be the annual compensation for the Community Center/Recreation Coordinator position and \$6,200 would be the annual compensation for the City Treasurer position. Seconded by Nations. Motion carried. Ward abstained.

Ward commented that by combining the positions of Community Center/Recreation Coordinator and City Treasurer would save the City approximately \$19,000 annually in compensation alone.

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

Time: 10:40 p.m.

Vincent L. Kramer II
City Clerk



Mayor