

**CITY OF CLEARWATER, SEDGWICK COUNTY, KANSAS**

**CITY COUNCIL MEETING**

**MINUTES**

**September 11, 2007**

The regular meeting of the City of Clearwater, Sedgwick County, Kansas, City Council was held on Tuesday, September 11, 2007, at 6:30 p.m., in the Clearwater City Council Chamber, City Hall, 129 E. Ross Avenue, Clearwater, Kansas.

The following members were present: Mike Justice, Mayor, Mike York, Lyle Berntsen, David FitzGerald, Judy Armstrong, and Jim Whitney. The following staff members were present: Kent Brown, City Administrator; Cheryl Wright, City Clerk; Jo Johnson, Deputy City Clerk; and Janet Amerine, City Attorney. Others present at the meeting were Bruce Berntsen, Clearwater Fire Department; Mike Machart and Les Langston, Planning Commission; Paul Rhodes, Times Sentinel; Sara Lane, Luke Laha, James McMurphy, and Lindsey Johnson, Clearwater High School Government students.

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Mayor Justice called the meeting to order at 6:30 p.m. Justice gave the invocation, which was followed by the Pledge of Allegiance. The Clerk called the roll to confirm the presence of a quorum.

**1. Approval of the Minutes of the Regular Meeting of August 28, 2007**

**MOTION:** Council Member FitzGerald made a motion to approve the minutes of the meeting. The motion was seconded by Council Member Berntsen and passed unanimously.

**2. Mayor's Recommendations**

There were no appointments or resignations.

**3. Public Forum**

Bruce Berntsen addressed the Council with a complaint concerning the speed that a Sheriff's Officer was driving down Fourth Avenue on a call to an accident. Berntsen stated the time of day was also a factor in that school had just let out and further that this was the Friday of the Fall Festival City Wide Garage sale with many people going in and out of the

garage sale along Fourth. Berntsen estimated the speed of the officer at around 70mph in a 30 mph zone. Berntsen stated that he spoke with Police Chief Demars concerning this matter and that Demars indicated there were several other complaints received concerning this Officer's speed. Demars advised Berntsen that he has spoken to the Sheriff Office regarding their speed. Mayor Justice stated that if it continues that a letter should be addressed to Sheriff Steed concerning this action.

4. **State of Kansas Non-State Public Employees Renewal Contract for Employee Health Insurance**

City Administrator Brown stated that the State insurance plan was for a three-year contract plan. The City is at the end of 3 years and it is time to renew or find different employee insurance. Brown stated that City Clerk Cheryl Wright attended a conference in Emporia on Monday concerning the changes to the contract and that the State's plan will change slightly but is basically the same. Staff worked with Hardman Benefit Plans, Inc. reviewing other options. Hardman contacted various plans and the best plan would only save the City around twelve dollars per month. Staff is recommending to the Council that the City keep the employee insurance plan with the State of Kansas by renewing the contract for another three years.

**MOTION:** Council Member FitzGerald made a motion to renew the State of Kansas Non-State Public Employee Contract for Employee Health Insurance for the next three years. Council Member Berntsen seconded the motion and it passed unanimously.

5. **Designate Voting and Alternate Voting Delegates to the League of Kansas Municipalities Conference**

City Administrator Brown stated that every year the Council designates a delegate and an alternate delegate from the City for voting at the League. By consensus, the Council designated City Administrator Brown as the voting delegate and City Clerk Wright as alternate delegate to the League of Kansas Municipalities Convention in Overland Park in October.

6. **Review Planning Commission Recommendations for Establishing Exceptions to Yard Setbacks for Residential Zones**

City Administrator Brown stated that the Planning Commission had reviewed the regulations on exceptions to yard setbacks for residential zones. The Planning Commission requested John Staton of Sedgwick County Department of Code Enforcement to discuss with the Planning Commission the topic of certain items that Code Enforcement looks at when determining yard setbacks. Brown explained that in the Clearwater Zoning Code it states that

“the inspector will measure from the nearest architectural projection when determining yard setbacks.” Staton explained that all cities have exceptions to yard setbacks when he appeared before the Planning Commission. Brown stated that the Planning Commission reviewed a list of exceptions from Wichita/Sedgwick County, Valley Center, and Colwich, choosing the exceptions from Sedgwick County as a guide. The Planning Commission discussed each exception and made changes. The Planning Commission narrowed the list of exceptions and shortened the number of feet allowed from the Sedgwick County/Wichita Unified Zoning Code model. Brown then reviewed the following list as the suggested exceptions per the Clearwater Planning Commission.

### **CLEARWATER PLANNING COMMISSION**

**Features allowed within setbacks.** The following structures and features may be located within required setbacks:

- a) Trees, shrubbery or other features of natural growth;
- b) Fences or walls that do not exceed six feet in height as measured on the side of the fence with the least vertical exposure above finished grade;
- c) Driveways, patios and sidewalks;
- d) Bay windows, architectural design embellishments, and cantilevered floor areas of dwellings that do not project more than two feet into the required setback and extend no more than 6 feet in width;
- e) Open outside stairways, decks, entrance hoods, terraces, canopies and balconies that do not project more than five feet into the rear setback nor more than two feet in a required side setback;
- f) Chimneys, flues and ventilating ducts that do not project more than two feet into a required setback and when placed so as not to obstruct light and ventilation;
- g) Open, unenclosed porches and carports that do not project more than five feet into a required rear setback;
- h) Utility lines, wires and associated structures, such as power poles;
- i) Window wells not over 8” above grade may project a maximum of 44” including all structural elements;

Brown stated that the Planning Commission is going to hold a public hearing on the suggested changes to the Zoning Code and Brown wanted the Council to review the

exceptions before the hearing. After the public hearing the Planning Commission will recommend any changes to the Council in ordinance form.

Council Member FitzGerald stated that he did not really have a problem with a, b, c, or h, but has a real problem with d,e,f,g, and i. Council Member Whitney stated that it seems that recently there have been brought to the Council every meeting a request for variance on the setback requirements. Whitney questioned why have setback requirements if every home being built it being granted a variance to those setbacks. He further stated that he is not in favor of any exception and that setbacks were put in place so that citizens would have 25 feet between the houses. Whitney stated that we are getting all these cobbled up little developments. FitzGerald stated that 90 percent of the people in Clearwater like the large setbacks.

Council Member Armstrong stated that she does not see how a 4-foot window well in the setback on both houses is a problem. This still leaves 17 feet between the window wells and 25 feet between the houses. Council Member Whitney stated that too many items in the setback and it causes hazards between houses whether for fire or for maintenance. Council Member Berntsen stated that he did not agree with several of the exceptions and that Clearwater is heading in the wrong direction. Council Member Whitney stated he agreed with Berntsen.

Armstrong stated that too many restrictions create too large lots. Armstrong stated that certain houses in Clearwater already have among the highest specials in Sedgwick County. If there are too many restrictions, it is anti-growth. Mayor Justice stated the exceptions are items that still don't affect how close the houses are to each other. A person driving down the street still views the wall of the house as the start of the house, not the exceptions listed. Council Member Armstrong stated that when she and her husband were building their house, that because of a wing wall which is just concrete, they had to reposition their house on the lot in order to meet the setback requirements.

Mayor Justice and the Council reviewed each item on the list. Justice stated there was general agreement regarding items a, b, c, and h. Whitney stated that window wells are too much of an intrusion on the setback. Armstrong stated that if you can't include a window well, the house will have to be set back at least 15 feet from the property line in order to include the window well and not violate the setback. FitzGerald stated that John Riggs had advised the planning commission to not let developers tell you how to build your city. Justice stated that he does not see any difference between a driveway, patio, sidewalk or window well. FitzGerald stated that he could go along on the window wells, but wasn't ready to agree to anything else.

As the Mayor and Council reviewed items d, e, f, g, and i on the list, Brown gave examples from the discussion at the Planning Commission of current properties in Clearwater that have these items already in place. Brown also stated that a couple

individuals came to the Planning Commission to explain their house plans and how a cantilevered floor plan as in item d was in their building plan. After considerable discussion, Mayor Justice advised staff to communicate the Council's discussion and statements regarding each of the items for the public hearing. City Attorney Amerine stated that the Planning Commission would hold the hearing and then send an ordinance to the Council. The Council would have another chance to review and approve any changes to the zoning ordinance.

**7. Release to Vacate Easement in Park Glen**

City Administrator Brown stated that the Council, at a previous meeting, discussed the lot in Park Glen where the builder is requesting that the City vacate a portion of the easement. The survey has been completed and City Attorney Amerine received the legal description and has prepared the release for 3-foot on the east side of the lot. Brown continued to state that during the survey the sewer line was located and has been marked.

**MOTION:** Council Member Berntsen made a motion to authorize Mayor Justice to sign the release to vacate 3-foot of the easement. Council Member Armstrong seconded the motion and it passed unanimously.

**8. Review Estimates for Repair of Brick on Front of City Hall**

City Administrator Brown reported that it is time to make repairs to the brick on the front of City Hall. Brown stated that 2 proposals, one from Gary Smarsh and one from Steve Herrman, were requested and received for the repair or replacement of the brick and they are very far apart. Brown continued to state that he thinks that the scope of work might be different. The proposal from Gary Smarsh detailed his scope of work and proposed a cost of \$7,720.00. The estimate from H & H Masonry, Inc., Steve Herrman, gave the estimated hours to do the job with the corresponding amount per hour with an estimate of \$1,965.00. Brown explained his perception of the required repairs for the brick on the front of City Hall. Council Member FitzGerald questioned if there was a bid received for fixing the brick and replacing the windows in City Hall? City Clerk Wright stated that the first proposal she received from Gary Smarsh was for the entire job, but after reviewing the proposal, Wright stated that she went back to Smarsh and requested a proposal for only the brick portion. The brickwork really should be completed before winter. The Council briefly discussed the two proposals and requested staff to get more detailed information on the estimate from Steve Herrman.

**9. Consent Agenda**

City Clerk Wright stated that last year the City increased their Clearwater Area Chamber of Commerce membership from silver to a gold sponsorship. Council Member

FitzGerald stated he would like for the City to continue at the gold sponsorship showing support of the Chamber of Commerce. By consensus, the Council approved a gold sponsorship to the Chamber of Commerce in the amount of \$600.00.

## 10. Reports

City Clerk Wright stated that she has put the ad for a Deputy City Clerk on Channel 2, posted it at the library and it would also be in the Times Sentinel.

City Clerk Wright reported that the City received an invitation from Riggs Associates to attend the client dinner on October 8<sup>th</sup> during the Kansas League of Municipalities Conference in Overland Park.

City Administrator Brown stated that Police Chief Demars would be conducting interviews this week and next week for candidates for police officer. Council Member FitzGerald questioned if it is necessary to replace both officers? Brown stated two officers resigned and it is up to the Council if they do not want to replace both officers. Mayor Justice stated in order to have 24 –7 police coverage and to cover for vacations, sick days, and DARE it would be a problem with less than 5 officers.

The Council requested that Brown to relay to the police department that they did a good job during Fall Festival. Mayor Justice requested that Brown draft a letter to Brenda Hastings and the Fall Festival committee and commend them for a job well done.

City Administrator Brown reported that he had a pre-construction conference on the parking lot in City Park. The plan is to begin work on September 17<sup>th</sup> and Brown stated that he is working with Westar to get the power poles removed.

City Administrator Brown stated that he has been contacted several times concerning the height of trees overhanging the street. Brown read from the City Code 2.64.074 "Public tree care With notice to adjoining land owner, the city shall have the right to plant, prune, maintain and remove trees, plants, shrubs and tree trunks, within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds." Brown stated that the second part of the code is 2.64.078 "Pruning, corner clearance Every owner of any tree overhanging any street or right-of-way within the city should prune the branches so that such branches do not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk." Brown stated that eight feet is not high enough to clear many of the fifth wheels, motor homes, trailers, and some vans. Brown asked the Council if eight foot is the standard that they want and if they want it higher? City Attorney Amerine stated that a sample ordinance on the League of Kansas Municipalities website has either ten or twelve

feet. After a brief discussion, the Council requested Amerine to prepare an ordinance changing the standard for trees at 12 feet.

Council Member York reported that he contacted the homeowner on N. Lee concerning a nuisance in his yard and he is working to clean up the area.

Council Member FitzGerald stated that the original windmill from old Clearwater was on a semi during the Fall Festival parade. The Mason's have it mostly restored and have it stored inside a locked area. The Mason's are requesting that they have input on the final location of the windmill. Mayor Justice stated that the location of the windmill would begin with recommendations from the Park Advisory Board to the Council.

Council Member Whitney reported that the northwest corner of the concrete culvert that goes under the street at First and Kansas is broke.

Council Member Whitney reported that the sod is being installed at the Community and Senior Center. Whitney advised the Council that the sod would die in the center next summer due to the very short inadequate coverage of the sprinkler system. Whitney continued to state that there was not a row of sprinklers put down the center. Whitney stated that the fescue sod should be fertilized at the end of October.

Council Member Whitney questioned if there is anything further on the generator? City Administrator Brown stated that he is waiting to get the elevation of the generator. The electrician has taken care of the permit with Sedgwick County.

Mayor Justice questioned if anything is being done to get the old dump truck with the windows broken removed from the property in the 400 block of west Ross? Justice stated that the Police should contact the property owner.

Mayor Justice suggested that Public Works use a power washer on the playground equipment in City Park.

Mayor Justice stated that he noticed that the sprinklers are still being used at the ball fields. There is a lot of grass growing on the warning track and in the fence and wondered if it could be sprayed. Justice continued to state that it seems to him that some maintenance at this time of the year could save a lot of time in the spring.

City Administrator Brown stated that on Sunday September 16 at the EVS building there would be a dedication and a naming of the building to the Wes Tackett Building. The open house would be from 1:30 p.m. to 4:00 p.m.

City Administrator Brown stated that there was a letter sent out from EVS Director,

Wayland Whitlow and Police Chief Kim Demars to all EMS personnel. The letter reminds EMS personnel “when we are called to respond to a Domestic Violence call, any form of Suicide call, a Code Orange call, or a call related to a shooting, stabbing, or any other kind of assault, the ambulance is not to go to the scene until cleared by the Clearwater Police Department or the Sedgwick County Sheriffs Department.

**11. Adjournment**

**MOTION:** Being no further discussion to come before the Council, Council Member FitzGerald moved for adjournment. The motion was seconded by Council Member Berntsen and passed unanimously.

**CERTIFICATE**

State of Kansas        }  
County of Sedgwick   }  
City of Clearwater    }

I, Cheryl S. Wright, City Clerk of the City of Clearwater, Sedgwick County, Kansas, hereby certify that the foregoing is a true and correct copy of the approved minutes of the September 11, City Council meeting.

Given under my hand and official seal of the City of Clearwater, this 25th day of September 2007.

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Cheryl S. Wright, City Clerk