

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

**CITY COUNCIL MEETING**

**MINUTES**

**APRIL 24, 2012**  
**(Approved 5-08-12)**

The regular meeting of the City of Clearwater, Sedgwick County, Kansas, City Council was held on Tuesday, April 24, 2012, 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 York, Mayor; Jim Whitney, David FitzGerald, Lyle Berntsen, and Sandi Keeler, Laura Papish, Council Members. The following staff members were present: Kent Brown, City Administrator; Liza Donabauer, City Clerk; Janet Amerine, City Attorney. Others present at the meeting were: Mary Schauf, Clearwater Fire Department; Ernie Misak, Public Works Director; Gene Garcia, Police Chief; Lonnie Stieben, SKT; Mike Gannaway, Jordan Freed, Gary Freed, Rachelle Moore, Sherry Williams and Bill Kenney; citizens; Xiomara Shrewsbury, Daniel Layton, Mariah Petersen, Braedan Bates, Kane Howell, Bryce Petersen, Nathan Brown, Caitlin Bergmann, Allie Palmer, Toni Ray, Chris Mulero, Zach Rhodes and Miranda Flores, High School Government Students.

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Mayor York called the meeting to order at 6:30 p.m. York 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 April 10, 2012**

**MOTION:** Council Member David FitzGerald made a motion to approve the minutes of the 4-10-12 City Council Meeting. The motion was seconded by Council Member Sandi Keeler and passed unanimously.

**2. Consent Agenda**

No items were on the Consent Agenda.

City Administrator Kent Brown made a request to add two agenda items: A draft resolution for 118 S. Byers, and an executive session regarding a personnel issue of a non-elected employee.

**3. Mayor's Recommendations**

Mayor Mike York made the following recommendations:

Accept Shane Baker's resignation as a Clearwater Public Works Maintenance Worker.

The above resignation of Shane Baker was accepted with Council consensus.

**4. Public Forum**

Lonnie Stieben announced that the next Town Hall Meeting is at 7:00 p.m. on Monday, April 30<sup>th</sup> at the South Central Education Service Center (SCESC). He stated that David Bosenmeyer from the Greater Wichita City Economic Development Committee and Daniel McCoy from the Wichita Business Journal, have agreed to help facilitate the Meeting. McCoy will discuss what the Business Journal is and what it can do for the Clearwater community. Stieben is trying to get a Wichita developer to also speak at the Town Hall Meeting.

**5. Park Commission's Recommendation of a Tree House Memorial at the Clearwater City Park**

City Administrator Brown stated that the Park Commission heard a request from Jordan Freed on 4-16-12. Jordan Freed introduced himself to the City Council. He stated that his friend Chris Mikesell passed away in 2007. Freed's tenth class reunion was this past summer. The class was trying to determine what they could do to build a memorial for their former classmate. Ideas such as a rock, bench, and tree planting did not quite capture the spirit of Chris Mikesell. The Class of 2001 decided on a tree house as a proper memorial to honor Chris. The classmates would like to purchase a tree house from Daniel's Wood Land from California. The company assembles the tree house and delivers it with a large tree stump. An email from the company states that since this is a commercial tree house there will be a few modifications. The group would have to put down a concrete pad that would be privately funded. The cost would be approximately \$18,000 for the tree house. The group is planning to raise \$25,000 for the concrete pad and other incidentals for the project. The group has already raised \$3,000. They did not want to make efforts to collect more funding until the City Council approved the project. At the Park Advisory meeting on 4-16-12, the group took a tour of the park and found a space close enough to the street so that the tree house is visible from the street. If there is any money left from the project the group would like to donate it to the City Park to be used for sidewalks or whatever is needed.

Council Member David FitzGerald explained that there will need to be a buffer zone around the equipment. Freed clarified that there would be a 6' buffer zone around the perimeter of the structure and a 7' buffer around the slide. Freed stated that they will comply with all city and state statutes and ordinances.

Council Member Laura Papish asked where donations can be made. Freed replied that donations would be accepted through the Community Foundation.

Mayor Mike York stated that he has concerns regarding vandalism. City Administrator Kent Brown stated it would be beneficial to add a camera to that side of the park.

**MOTION:** Council Member David FitzGerald made a motion to authorize them to proceed with their project providing that there would be no tax money put forth from the City for the building of the tree house. Council Member Laura Papish seconded the motion. The motion carried unanimously.

**6. Appoint Aquatic Center Staff for 2012 Season**

City Administrator Kent Brown stated that the pool manager submitted a list of employees he would like to hire.

**AQUATIC CENTER STAFF FOR 2012**

**MANAGER**

**CHUCK REITBERGER**

**LIFEGUARDS**

**ALLISON REITBERGER (WSI)  
KRISTEN BABB (WSI)  
HAYDEN BATES (WSI)  
JENNIFER CALDERON (WSI)  
JORDAN MILLS (WSI)  
KRISTA MELLE  
BROOKE WINTER  
COLIN FRICKEY  
MADISON PETERSEN  
KYLIE MOLISEE  
LAUREN AKIN  
KENZIE GANNAWAY  
DREW TERWORT  
KATELYN MORRIS  
SHYANNE PHILLIPS  
EMMA AST  
CODY HAMILTON**

**BASKET ROOM ATTENDANTS**

**BREANNA HAMILTON  
MATTHEW PURDOM  
DALTON CHAMBERS  
DAVID GERLACH**

Brown stated that this year has a couple of less lifeguards than in previous years. Council consensus was received.

**7. Budget Calendar and Planning Session for 2013 Budget**

City Administrator Kent Brown stated that the budget is due to the county clerk on August 24<sup>th</sup>. The City Council needs to approve the budget at the August 14<sup>th</sup> Meeting. The public hearing notice needs to be published on August 2<sup>nd</sup>. Most of the budget decisions for the 2013 budget will need to be made by the July 24<sup>th</sup> meeting where the notice of the public hearing on the proposed 2013 budget is approved.

The department head budget requests will be presented on May 8<sup>th</sup>. After the requests, the Council usually schedules a budget planning workshop either at the end of a meeting or at a special workshop on a separate date.

The Council decided to reschedule the 5-22-12 Council Meeting to 5-29-12 and stay late for the budget planning workshop.

**8. Alleyway Traffic**

City Administrator Kent Brown stated that the City has received complaints of commercial traffic in alleyways. Alleys are meant for utility access and access to residences. They are not maintained like a street. SKT is currently moving their offices to 112 S. Lee. There will be more business traffic on the north/south alley between the bank and SKT. The amount of traffic and the speed of traffic is a concern from local residential owners. Brown referred to a definition of an Alley or Alleyway from the Standard Traffic Ordinance Kansas Cities (Edition of 2011):

“Alley or Alleyway. A street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.”

The police have been notified about the speed of traffic. The police have used the radar on the alley traffic and did not find anything out of the ordinary. Council Member David FitzGerald asked why vehicles are heading south instead of north. Traveling south through the alley is a longer distance for traffic utilizing the bank and SKT areas. Council Member Laura Papish asked if this is a temporary situation during the construction period at SKT's new offices. City Administrator Kent Brown stated that there will be employee parking in that area. Mayor Mike York stated that it is his opinion that traffic is unable to exit the SKT property from the north because of a huge utility or telephone pole. The pole is located at the rear of the building. Council Member Jim Whitney stated that he felt this was an issue of people just needing to get along. The speed and level of traffic is part of living on an alley. City Administrator Kent Brown suggested that the employees can be educated on taking care when utilizing the alley. Council Member Keeler stated that she agrees with Council Member Laura Papish to revisit this discussion after the construction has ceased. Lonnie Stieben stated that he thinks the construction will end within two weeks. Stieben stated that memos have been sent to employees. Employees will be written up if they use the alley. SKT

has spoken with their subcontractors to inform them not to use the alley. Stieben stated that they get deliveries from companies all around the country. SKT cannot control the commercial delivery drivers.

Council consensus was to revisit this after the construction phase has ceased if complaints continue.

9. **Review Changes in Business Park Realtor Contract with Weigand Commercial Group**

City Administrator Kent Brown stated that the Council has considered a new realtor contract. Brown presented a proposed contract with Weigand Commercial. Council raised a few questions regarding a different compensation if the lead for the sale of a property came straight to the City. The realtor's response was that most people would contact the City first since it is public knowledge that the property belongs to the City. Brown stated that the City closed on the sale of the south 125' of lot 1, block 3; the sale is complete. That was the only lot in the process of negotiation. There are no concerns regarding pending sales.

City Attorney Janet Amerine stated that there should be two exclusions for the surface rights of the mineral rights and the sold lot located at south 125' of lot 1, block 3. This would be a term of 24 months. Council Member Laura Papish stated that she would be in favor of a one-year agreement for review at that time. City Attorney Janet Amerine stated that this is normal procedure. Mayor Mike York stated that he is also in favor of a one-year agreement. City Attorney Janet Amerine referred to the last sentence of the second paragraph. The paragraph discussed that if the City were to completely give away a lot, the commission would be \$1,000. She stated that it is her opinion that if a property is discounted to, for example, \$4,000, the commission would be 10% which would be \$400. This is not as severe as at first proposed.

Council Members Jim Whitney and Lyle Berntsen stated that they would agree with a one-year agreement.

**MOTION:** Council Member Lyle Berntsen made a motion to authorize entering into the contract with Weigand and authorize Mayor York to sign the agreement noting the change to exclude the mineral rights and south 125' of lot 1, block 3. Council Member Laura Papish seconded the motion. The motion carried unanimously.

10. **Agreement Renewal of Sno Zone to use City Park Concession Stand**

City Administrator Kent Brown stated that the Council had asked for a revised agreement. Kenney provided a proposal for rental of the city concession stand for operation of the Sno Zone. Kenney provided an amended agreement with an offer of \$250. In the meantime, a person within the Clearwater school district has put together a proposal to operate a concession stand from May through October, weather permitting. Their proposal is for \$325/month. City staff did not solicit this proposal. City Attorney Janet Amerine stated that it was her understanding that the rent would not be prorated. It would be from month to month whether they are open or not. So this is an issue

according to Kenney's emailed counteroffer. The building is not to be used as winter storage. Council Member David FitzGerald asked if the electricity could be turned off during winter months. City Attorney Janet Amerine stated that the electricity must be on to keep the pipes from freezing.

Council Member David FitzGerald stated that if Kenney would agree to the agreement this year, then the City should go with him. If Kenney does not agree with the counteroffer, then the offer should go out for open bids. City Attorney Janet Amerine stated that the contract is done. Kenney stated that he agrees with removing the equipment and having the building cleaned out by October 1<sup>st</sup>. Kenney thanked the Council for allowing him to use the building.

Kenney stated he has a problem with cleaning the restroom facility. Council Member Jim Whitney stated that these are City restrooms and City employees should clean the bathrooms.

Council Member Jim Whitney stated that this agreement has a starting and ending date that should be a non-negotiable. Mayor Mike York asked if Kenney would be agreeable to rent the building from May 1<sup>st</sup> to September 30<sup>th</sup>. Kenney stated yes.

City Attorney Janet Amerine stated that she will make changes to paragraphs 3 and 5. Amerine stated that Kenney needs to know that if his items are left in the concession stand past September 30<sup>th</sup> than he will be charged a complete months' rent.

Council Member Sandi Keeler asked if the City would open the concession stand for bid for the 2013 season. Council Member Jim Whitney asked that staff mail a copy of the agreement to Sherry Williams so she understands what she would need to do if she would like to bid on the contract for the 2013 year.

City Attorney Janet Amerine stated that she will get this agreement ready within two days and obtain Kenney's signature by May 1<sup>st</sup>.

**MOTION:** Council Member Lyle Berntsen made a motion to authorize the Mayor to sign the amended agreement for the City park concession stand with Bill Kenney with the changes that were discussed and authorize Kenney to start the operation of his business on May 1<sup>st</sup>. Council Member Jim Whitney seconded the motion. The motion carried unanimously.

## **11. Committee Reports**

The 4-17-12 Planning Commission meeting minutes were distributed in the Council Packets for Council review. The meeting was to discuss a zoning variance request to encroach on set back on Kansas Avenue at 151 S. Gorin. The following committees are scheduled to meet and are open to the public to attend:

Planning Commission: Meeting scheduled for 5-15-12

Park Commission: Meeting scheduled for 5-21-12

**12. Claims & Warrants**

City Clerk Liza Donabauer presented the claims and warrants as of 4-20-12 for \$33,862.67. There were some questions raised by Council Member Laura Papish regarding the claim from Decker Electric for the survey of the baseball scoreboard. Council Member Jim Whitney questioned why Decker was selected over a local contractor to look at the scoreboard. Whitney also asked if City staff could look at the scoreboard light bulbs earlier in the year.

**MOTION:** After discussion, Council Member Lyle Berntsen moved to authorize payment of the claims and warrants for \$33,862.67. The motion was seconded by Council Member Jim Whitney and passed unanimously.

**13. Old Business**

Mayor Mike York stated that he received a complaint about the west pond at Chisholm Ridge, which has moss growing along the edges. Council Member Jim Whitney stated that the moss has to be treated by a broadcast method by hand. The surface area can only be treated a third at a time. Copper sulfate is expensive. A 50-pound bag costs approximately \$350. This would be an annual, three times per year, summer maintenance program. Misak stated that he has ordered a spray on chemical to try to take care of the moss.

Council Member Jim Whitney asked if City Administrator Kent Brown has heard anything from Mills. Brown stated that he has talked with him several times over the last couple months. Mills had mentioned last week that he'd get his application in for the next Planning Commission Meeting. Since no application for a variance has been received, City Attorney Janet Amerine stated that the next step is to pass a resolution. Amerine further stated that perhaps Brown can prepare the resolution and let Mills know that it will be on the Council agenda.

Council Member Jim Whitney stated that Falke did mow his property but has a brush pile. DuraForm has not mowed behind the building. Police Chief Gene Garcia stated that he noticed someone out mowing DuraForm.

Council Member Laura Papish stated that if the ADA planning is to take place during the budget process, she asked if an inventory has taken place. City Attorney Janet Amerine stated that she has a checklist from another City that could be used as an example to follow.

City Administrator Kent Brown stated that Bob Vincent with Ground Water Associates had spoken with the person in charge of water rights and at the time Kansas Department of Agriculture had not made a ruling.

City Attorney Janet Amerine stated that she attended the appeal hearing on the Mertens case and can't tell what the ruling will be. It appeared the court was leaning the City's way. The district court judge had several reasons that he could have ruled in the City's favor. The Attorney had preserved all of the City's arguments. The City Attorney presented all of the arguments, and the court was particularly interested in the utility easement. Amerine thinks the court will decide on something other than what the trial

court decided. If they rule against the City, there will be a trial. If the court rules for the City, it is over. A ruling expected within 2-3 months.

#### **14. Department Head Reports**

Ernie Misak, Public Works Director, stated:

- Mayor Mike York asked about the dump truck. Misak stated that the person has started working on it.
- Council Member Jim Whitney asked about the Spring Cleanup. Public Works Director Ernie Misak stated that 11 high school kids came to help. Approximately seven containers were filled. The Cleanup closed at 4:00 p.m. on Saturday.
- Council Member Lyle Berntsen stated that he received a complaint about the walking paths at the Chisholm Ridge Ponds. Berntsen stated that they are approximately 12” wide. Berntsen suggested using Round Up to kill the weeds.
- Public Works Director Ernie Misak stated that the annual sewer cleaning took place last week. No resident complaints were heard. Stickers were placed on residential doors on the Friday before.
- Council Member Jim Whitney asked when the pool would be filled. Misak responded that the middle of May is the pool fill-date.
- Public Works Director Ernie Misak stated that a new pump was placed in the pool and inverts were placed in the bottom of the pool.
- Mayor Mike York asked Public Works Director Ernie Misak if the digging on N. Lee Avenue was the preliminary digging for the project. Misak stated yes. Council member Jim Whitney asked if the City could have the contractor look at the wall by Emprise Bank. The dirt is washing out behind it.
- Council Member Jim Whitney asked who called all of the locates on North 4<sup>th</sup>. Public Works Director Ernie Misak stated that Kansas Gas Service is going to replace the gas line along the east side of North 4<sup>th</sup>.

Gene Garcia, Police chief, reported:

- Prom is this Saturday, 4-28-12. Family Fun Night is on Friday, 4-27-12 at the high school track.
- Garcia invited the Council to the D.A.R.E. Program at 9:00 a.m. on 5-02-12 at the CIC.
- One of his goals was to have regular department meetings. The Police Department had their first meeting on Friday regarding care of equipment, accountability, office cleaning, state reporting requirements and training, and schedule issues. The Police Department is working on department rules and procedures.
- The Police Department received feedback from other cities of similar sizes regarding nuisances. The two residences on North 4<sup>th</sup> are slowly removing its vehicles.
- Council Member Jim Whitney asked on the status of the Hummer. Lee Harp, the current D.A.R.E. Officer is putting on a few programs. Harp continues to gain

donations for the painting of the vehicle.

- Council Member Laura Papish stated that she received a comment from a citizen that it appreciated how the Police made the rounds during the storms. Papish asked if the Police could use its lights and sirens to alert citizens about weather emergencies. Garcia stated that they will consider this. There are restrictions on using the sirens and lights.

## 15. Staff Reports

City Clerk Liza Donabauer reported:

- The copiers for the City building and for the Police Department will be delivered on Wednesday, April 25.
- Swimming lesson sign ups and pool membership sales will begin 5-01-12.
- Safety meeting and employee luncheon will be Wednesday, April 25 at noon.

City Attorney Janet Amerine stated that the Planning Commission Meetings are normally scheduled the first week of every month. The 5-01-12 Planning Commission Meeting was rescheduled for 5-15-12. Attorney Amerine has scheduled a trip out of town during the third week of May. Amerine will miss the Planning Commission Meeting but can be reached any time.

City Administrator Kent Brown turned the Council's attention to Tab G which includes pictures, a draft resolution, and a letter from the Sedgwick County Department of Code Enforcement regarding the accessory structure at 118 S. Byers Avenue. The resolution sets a time and place for a public hearing. The public hearing would be on 6-12-12.

City Attorney Janet Amerine suggested that City Administrator Kent Brown copy the recommendations from Willie's letter into the resolution. Amerine asked that the Council make a motion to approve the motion with the noted amendments.

**MOTION:** Lyle Berntsen moved to adopt Resolution 10-2012 with noted amendments. Council Member David FitzGerald seconded the motion. The motion carried unanimously.

City Administrator Kent Brown stated that he received some information regarding Mastic Surface Treatment to be used for topical asphalt treatment, which is similar to a slurry seal, but cheaper. Brown provided an example for Council to review and stated that there would be a proposal presented at the next meeting.

Metropolitan Planning Commission has a proposal to reduce the City of Clearwater's area of influence from three miles to one mile. Currently, if the local planning commission recommends denying a development request, then the Metropolitan Area Planning Commission has to approve it unanimously to overturn the City's decision. Sedgwick County has determined that the City has too much control. All that the local jurisdictions have the power to do is to make recommendations on zoning cases. This proposal would limit the City quite a bit. The basis for the Commission's decision is that development requests have diminished greatly. There is a

meeting on 4-26-12. They asked that City Council members and Planning Commission members attend the meeting. All of the members from the MAPC, except for two, are from Wichita. Stieben stated that he has concerns regarding the county trying to control the dumping area, and BFI trash trucks.

Council Member Laura Papish asked how far the school district goes. City Administrator Kent Brown stated that the school district goes seven miles north and south of Clearwater. Clearwater doesn't utilize any county fire or police services.

Council Member Jim Whitney stated that this should be something that should be brought forward to Commissioner Norton at the Town Hall Meeting on 4-30-12. Whitney asked if a letter could be drafted and sent to the Commissioner. The letter should be copied to everyone in this process. With council consensus, a letter will be drafted and signed by the Mayor.

City Administrator Kent Brown stated that 74 people utilized the storm shelter during the recent tornado warning. There were pets within the building. Complaints were received regarding the pets. Council Member Jim Whitney stated that it would be a liability to the City to have animals on City property. Whitney suggested a policy. Council Member Laura Papish asked what other cities have done. Public Works Director Ernie Misak suggested containing the animals in their animal containers. Mayor Mike York asked about the capacity of the storm shelter. Administrator Brown stated 100. Brown stated that the Senior Center has asked to put an emergency shelter in its building. Council Member Laura Papish suggested that the boy scouts go door to door to alert citizens about the storm shelter.

## **16. Council Reports**

Council Member David FitzGerald stated that the sidewalk at Ross and Tracy is bad. The dead trees in the City Park and a tree along the west side of the basketball court should be removed. Council Member Jim Whitney proposed contacting the contractors for Westar to see how much it would cost to remove the tree. FitzGerald stated that the citizens have been quite pleased with the tree trimmers. FitzGerald asked if Bill Kenney, The SnoZone, could rent the City Concession building out to someone else after he has signed the agreement. Amerine stated that she could alter the agreement to include that clause.

**MOTION:** Council Member David FitzGerald made a motion to amend the Agreement with Sno Zone to include a clause to prevent assignment or subleasing to any other party. Council Member Lyle Berntsen seconded the motion. Jim Whitney asked if the agreement can be changed after Bill Kenney has already left tonight's meeting. Papish and Berntsen stated that Bill Kenney has the right to hire whoever he wants to work for the Sno Zone. The motion carried 5-0.

Council Member Lyle Berntsen stated that he has nothing to report.

Council Member Laura Papish stated that someone discussed with her about whether there could be a sidewalk to get to the grocery store from the Senior Center and

Senior housing and whether there could be a crosswalk at 4<sup>th</sup>/Janet. City Administrator Kent Brown stated that he has spoken with Sedgwick County about a crosswalk at that location. The County's position is that there is not enough of a traffic justification to place a crosswalk there. If the City wanted to do it, they could. However, it would have to be on the City's initiative.

Council Member Sandi Keeler asked Public Works Ernie Misak if the flow ditch north of the railroad belongs to the City. Misak and Administrator Brown stated it did not. They believed that this is likely an easement of the railroad. Keeler stated that it was noted that the City has taken care of it in the past. Misak stated that the City, as a project, cleaned it out for a while.

Council Member Jim Whitney stated that he received the backflow device test report. He stated that 1137 Red River in Chisholm Ridge is overgrown. He asked if the Beck residence is within city limits.

Clearwater citizen Mike Gannaway stated that he has heard many comments regarding the City's website. Expectations have changed over the last few years. The younger generation wants current information now. He would like to see ordinances and resolutions published on the City website and ready for use. Gannaway stated that an attorney that he works with stated that Clearwater is one of the few cities that does not have their traffic ordinances and other items on the City website.

**17. Executive Session – Personnel Matters of Non-Elected Personnel**

**MOTION:** At 9:33 p.m., Council Member Sandi Keeler made a motion to enter into executive session to discuss personnel matters of non-elected personnel for 10 minutes and invited Public Works Director Ernie Misak. The motion was seconded by Council Member Lyle Berntsen and passed unanimously.

At 9:43 p.m., the Council returned to regular session with no action taken.

York stated that he would like to direct staff to make an offer to Chadd Posch.

**18. Adjournment**

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

The Meeting adjourned at 9:45 p.m.

**CERTIFICATE**

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

I, Liza Donabauer, 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 April 24, 2012 City Council meeting.

Given under my hand and official seal of the City of Clearwater, this 8th day of May, 2012.

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Liza Donabauer, City Clerk