

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

**CITY COUNCIL MEETING**

**MINUTES**

**JANUARY 8, 2013**

**(Approved 1-22-13)**

The regular meeting of the City of Clearwater, Sedgwick County, Kansas, City Council was held on Tuesday, January 8, 2013, 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, and Sandi Keeler, Laura Papish, Council Members. Council Member Lyle Berntsen was absent. The following staff members were present: Kent Brown, City Administrator; Liza Donabauer, City Clerk; Janet Amerine, City Attorney. Others present at the meeting were: Donald Schauf, EMS Director; Mary Schauf, Clearwater Fire Department; Justin Blevins, Gary Whitney, Karl May, Chris Griffin, Lenn Stearns and Rick Boots, citizens; Seth Dills, Clearwater High School Government student; Paul Rhodes, The Times-Sentinel.

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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 Clearwater City Council Meeting**

**MOTION:** Council Member David FitzGerald made a motion to approve the minutes of the 12-11-12 City Council Meeting. The motion was seconded by Council Member Jim Whitney and passed unanimously.

**MOTION:** Council Member Jim Whitney made a motion to approve the minutes of the Special Meeting of the City Council from 12-20-12. The motion was seconded by Council Member David FitzGerald and passed unanimously.

**2. Consent Agenda**

**MOTION:** On a motion by Council Member Jim Whitney, second by Council Member David FitzGerald, all voted to approve the Consent Agenda:

1. Authorize Payment to Kansas Municipal Insurance Trust for 2013 Worker's Compensation Insurance Premium (\$38,617.00).

**3. Mayor's Recommendations**

Mayor Mike York did not have any recommendations.

**4. Public Forum**

Lenn Stearns, 5140 W. 103<sup>rd</sup> Street South, stated that he brought his neighbor Rick Boots with him tonight. Stearns read a letter regarding his concerns about the City's application to increase its water rights to the State. In late October, 2012, the residents surrounding the city well sites, located approximately five miles east of town, were notified by the State Of Kansas of the City's intentions to increase its water pumping rights. Stearns stated that he contacted Douglas Schemm with the Kansas Division of Water Resources to seek more information about the application and process. Stearns relayed the discussion to his neighbors. Stearns stated that he and his neighbors were alarmed about the proposed 27% increase in current water rights. The 27% does not seem to reflect Clearwater's population and housing increase. Stearns stated that the region has been subjected to a drought for the past two years and he and his neighbors are concerned about the depleting water supply. The residential water wells are reported to have a depth of 60' - 65' feet. The city wells are reported to have a depth of 90-95'. The shallowest wells will run out of water first, and he is concerned about the City's increased draw down on current water levels.

Stearns stated that it is his understanding in his discussion with Mr. Schemm that residential properties get second rights. Stearns stated that it would be costly for him and his neighbors to drill to a lower depth. Stearns stated that he hopes that he and his neighbors' concerns go unwarranted. Stearns explained that he would continue to seek counsel about water rights legal issues. Stearns is hoping that the city will look into other alternatives.

Mayor Mike York stated that the application to the State is to allow the City to be able to pump more water, only if it is needed. The application process has been a long process. York explained to Stearns that if the City were to be approved for the additional gallons to pump, it does not mean that the City needs to pump it. The City has approximately 900 water customers. For the last several years, the City has been pumping approximately 90% of its annual allotment. Mayor York stated that the City is getting a little too close to reaching its maximum pumping capacity. The City started the application process prior to the drought conditions. York asked if the City has ever applied for an application prior to this current application. City Administrator Kent Brown stated not in recent history. A perfection period for 20 years was performed based on the city's usage. During that period, the city pumped freely. The state then determined a usage percentage. The city was granted an annual allotment of 85 million gallons. For the past decade, the city has been within the 70 to 80 million gallon range. Based on a water system study from Ground Water Associates and the engineer's report, Ground Water Associates came across a recharge rate study by US Geological Survey that identifies a higher recharge rate than currently allowed. In 2010, the City made an application to the State based on the study and

results from Ground Water Associates. City Attorney Janet Amerine stated that the comprehensive plan also speaks to the predicted increase of housing and water supply. Mayor Mike York stated that he and his wife moved to Clearwater in 1967 and the population was 1,100. Council Member Papish stated the population was 1,600 in 1979. The population now for Clearwater is approximately 2,400. York stated that the City is experiencing a slow and steady growth.

Stearns stated that he now understands the reasoning behind the application. However, he and his neighbors did not understand the magnitude of the request and conducted their own research into the matter. He is asking that the Council consider an alternative remedy. If water were to run out for him and his three neighbors, their properties would be financially ruined.

Mayor Mike York asked what alternatives Stearns suggests for the city. Stearns stated that he and his neighbors suggest two options: a guarantee from the city to place a water line and three meters to his and his neighbors' residences, or the city to guarantee that they would pay for drilling deeper wells for him and his neighbors.

Mayor Mike York explained that a few properties north of the city have requested to be annexed into the city. They are island annexations (located 1-2 miles north of the city). City Administrator Kent Brown explained that becoming annexed means that the property owners pay city utilities and taxes. Brown explained that this was Council policy in the past. Stearns stated that he is not sure if he would want to go through that process. Stearns stated that he would rather work on this matter before it becomes a problem. He wants to protect the significant investment of his house for him and his family and neighbors. Administrator Brown stated that he will mail a copy of the study from Ground Water Associates to Stearns.

## **5. Public Hearing for Property at 210 S. Gorin**

City Administrator Brown stated that the resolution was sent to the property owner at 210 S. Gorin. The home has been under repair for a long period of time. A fire occurred at the location in mid-December.

Mayor Mike York opened the public hearing at 7:04 p.m.

Attorney Janet Amerine noted that no person representing the property owner is present. City Administrator Brown stated that the city has requested that the property owner complete the ongoing exterior repairs at the property. The property owner has not made progress. As of December 2012, approximately \$1,000 of damage has occurred because of a fire. The city was notified that the property has been sold to the previous property owner's father, also a Bridwell. Administrator Brown stated that he has spoken with the new homeowner. The current property owner is not sure what his plans are for the property. Bridwell told Brown that he has since secured the building and has changed the locks on the building. Administrator Brown has requested that the new property owner send a written declaration of what the intent is on the building. Brown has not received anything prior to today's public hearing.

Mayor Mike York asked how the city should proceed with this matter. City

Attorney Janet Amerine asked if the original owner received the notice of public hearing. Brown stated that they were notified.

City Attorney Amerine stated that with the Council's direction, defined amount of time, and the type of work that needs to be completed, she would prepare the order to be ready by the next meeting.

Mayor Mike York closed the hearing at 7:09 p.m.

Council Member Jim Whitney stated that he has been personally involved in buildings such as this. The building is still accessible and dangerous.

**MOTION:** Council Member Jim Whitney made a motion to authorize this building to be condemned as soon as possible. Council Member Sandi Keeler stated that the new property owner is not even sure what to do with the property right now. Council Member David FitzGerald asked if the county inspector has inspected it and granted it as condemnable property. City Administrator Kent Brown stated that the inspector noted what repairs were necessary. Council Member David FitzGerald seconded the motion. The motion carried unanimously.

City Attorney Janet Amerine stated that staff would have an order ready for the next Council Meeting. Council Member Jim Whitney noted that Council has granted the homeowner extensions. The Council has not seen any progress. The homeowner did not appear or respond to the City's contact methods, and in December 2012, a fire started in the building.

**6. Utility Easement for Proposed Utility Easement Located within Reserve "A" of Chisholm Ridge Addition**

City Administrator Kent Brown stated that PEC has requested an easement along the south side of Reserve A of the Chisholm Ridge Addition. This is to accommodate the water line that is being constructed toward the commercial properties. The easement is on the city's property. Since the water line is going into the utility easement, the easement will protect the city in the event that the property changes owners in the future.

**MOTION:** Council Member David FitzGerald made a motion to authorize the mayor's signature on the utility easement. Council Member Jim Whitney seconded the motion. The motion carried unanimously.

**7. Addendum to the Interlocal Service Agreement for Code Inspection and Enforcement of Building, Electrical, Mechanical and Plumbing Codes by Sedgwick County**

City Administrator Kent Brown that the city received an addendum request regarding the Wichita-Sedgwick County Unified Building and Trade Code. Administrator Brown explained that the city has an agreement with the County where permits are filed

with City Hall, and the County performs the plan review and the inspections. Sedgwick County Code Inspection is merging with the City of Wichita.

**MOTION:** Council Member Jim Whitney made a motion to enter into the Agreement and authorize the Mayor to sign the addendum. Council Member David FitzGerald seconded the motion. The motion carried unanimously.

**8. Designate Times Sentinel as Official Newspaper for Legal Publication**

City Administrator Kent Brown stated that the city has been with The Times-Sentinel for several years. Administrator Brown stated that he would recommend the city continue its relationship with The Times-Sentinel. Paul Rhodes, Times Sentinel, stated that in light of recent legislative changes, the city now only has to publish summaries of ordinances. Rhodes asked that the Council consider thinking of The Times-Sentinel as a marketing tool for City events in consideration of the savings it has gained in minimizing legal publishing.

**MOTION:** Council Member Laura Papish made a motion to authorize designating The Times-Sentinel as the city's official newspaper for legal publications. Council Member Sandi Keeler seconded the motion. The motion carried unanimously.

**9. Department Head Reports**

Donald Schauf, EMS Director, stated that he received a quote from Mel Hamblenton for repairs on the 2006 ambulance. The ambulance is sluggish and squeals. Schauf distributed a quote to the Council. The ambulance tech from Sedgwick County has helped him decipher the issue and thinks the problem is with the injector heads. Schauf explained other necessary repairs and inspections that are quoted to cost \$5,188.03. Council Member Jim Whitney stated that the ambulance should be on a regular maintenance schedule to avoid costly repairs. Schauf stated that he agrees with Whitney. Schauf asked for the Council's authorization to make the necessary repairs. Schauf asked if he should look into an extended warranty. Council Member Jim Whitney stated no. Whitney asked when Schauf plans to order the new ambulance. Schauf stated that he is in the process of writing up the order with Osage. City Administrator Kent Brown asked if he is seeking a quote from any other dealers. Schauf stated no as there are no other dealers within the Wichita area. Council Member Whitney recommended that Schauf get another quote from another company since this will be a high cost item.

**MOTION:** Council Member David FitzGerald made a motion to authorize Donald Schauf to obtain the necessary repairs for the 2006 ambulance for \$5,188.03. Council Member Sandi Keeler seconded the motion. The motion carried unanimously.

Council Member Jim Whitney asked Schauf if Fire Chief Marvin Schauf has received anything in writing from ISO yet. Donald Schauf stated that he does not know.

Public Works Director Ernie Misak reported the following:

- They discharged in January. The sewer ponds have not been discharged since last July. They will take the samples in next week. The ice coverage helped kill off the algae. The detention time has been over seven months.
- There has been a lot of clean up at the shop and at the brush dump during the cold weather.
- Installed water service at 1021 Silverado Court for the new duplexes.

Council Member Jim Whitney asked if the streets could be swept on the southeast side of the city (Nancy Avenue, and under trees).

Council Member Jim Whitney asked if the barricades by the Mills building belong to the city. Misak stated yes. Whitney asked that the barricades be picked up. City Administrator Brown stated that Mills has the materials to construct a barricade.

Council Member David FitzGerald stated that he requested heat at the shop in 2009/2010. FitzGerald asked if Public Works Director Misak has looked into the cost of installing a heater. Council Member Jim Whitney stated that it would be very expensive to heat the open building, which has no insulation. Misak stated he has not pursued this because it would be very expensive.

Police Chief Gene Garcia stated that the Police Department would like to thank the City Council for the Mize's gift cards. Garcia reported on the following:

- Staff working on ordinance compliances.
- When he started with the City, there were 1,200-1,300 cases. Since the initiation of a School Resource Officer, there were 1,600 cases in 2011 and 1,800 cases in 2012. Many of the cases are public service calls such as lock outs and doors that are left open.
- An inquiry was made from residents on the south side of Park Glen regarding trap shooting across their property line onto the neighboring farm property. The city has no jurisdiction on the neighboring property, which is County jurisdiction. Council Member Jim Whitney asked about noise ordinances. Mayor Mike York asked if the trap shooting would be a one-time event. Police Chief Garcia stated that he thinks the inquiry comes from the same group of individuals that have requested similar shoots on police property.

## **10. Committee Reports**

No meeting minutes were distributed in the Council Packets. The 1-01-13 Planning Commission Meeting was canceled. The following committees are scheduled to meet and are open to the public to attend:

Planning Commission: Meeting scheduled for 2-05-13  
Park Advisory Board: Meeting scheduled for 1-21-13

**11. Claims & Warrants**

City Clerk Liza Donabauer presented the claims and warrants as of 1-04-13 for \$12,604.75. Since the Friday deadline, staff received additional claims totaling \$16,204.89, which are listed on a separate memo and were placed on the Council Member's chairs. Donabauer asked that the Council authorize payment of the claims for a total of \$28,809.64. In addition, she requested that the Council authorize payment of the Kansas Gas and Westar invoices, which are due to arrive in the mail on Wednesday, 1-09-12. These two vendors have a short turn-around time on their payment due dates.

Donabauer noted that the claims listing for the late December claims, which were pre-approved at the 12-11-12 Council Meeting, is also included in the packet for Council's review. The claims from late December totaled \$45,633.16.

**MOTION:** After discussion, Council Member Jim Whitney moved to authorize payment of the claims and warrants for \$28,809.64. The motion was seconded by Council Member David FitzGerald and passed unanimously.

City Council gave consensus to approve payment of Kansas Gas and Westar invoices.

**12. Old Business**

Council Member Jim Whitney stated that the landowner interested in using grey water on his field has been in contact with Ground Water Associates and the Kansas Water Resource Board. A biologist can assist the landowner in determining a combination of using fresh and grey water. Public Works Director Ernie Misak stated that the reported high salt level is a result of one test. Misak is going to get the lab to do an additional salt analysis to determine whether there is a high salt level. Misak stated that he would like to run a phosphate analysis with Council authorization. Whitney stated that there is some work being done on this. There may be a possibility to pump the water instead of flushing it down the river.

Mayor Mike York asked about contacting the Wichita Eagle about additional coverage on City events. City Administrator Kent Brown stated that he has not made much headway.

**13. Staff Reports**

City Clerk Liza Donabauer asked that the Council bring their ordinance books into City Hall to have them updated. Donabauer also invited Council to the Employee/Volunteer Dinner and Bingo Night on 1-19-13.

City Attorney Janet Amerine stated that she was going to comment on citizen Stearn's concern regarding the city's water rights application. The state is following a legal process with regard to reviewing the city's application. There is no basis for the City Council to enter into an agreement with Stearns at this time. Stearns and his neighbors appear to be assuming that the City will be approved. The citizens are talking about agreements for future potential issues and this Council cannot bind future councils.

City Administrator Kent Brown stated that one issue came up over the last few weeks. A new business is proposed at the 100 block of East Ross Avenue. The proposed use for the property is a used car business. This same location has been used as a used car lot in previous years. Currently, there is an ordinance that declares there shall be no parking on the front yard without a designated parking space and without a dustless surface. Administrator Brown is seeking clarification from the Council regarding the meaning of "parking on the front yard". Mayor Mike York stated that the building and the office is subject to building codes. Administrator Brown stated that the property is zoned commercial and the Sedgwick County Code Enforcement addresses the building issues.

City Attorney Janet Amerine stated that the Council could amend the parking ordinance to clarify whether the referenced properties are solely residential or include commercial properties. Mayor Mike York stated that the overall opinion of the parking ordinance has been successful in keeping the city cleaner. Amerine asked the Mayor if he recalls whether the parking ordinance pertained to just residential or all properties. Council Member David FitzGerald stated that he recalls it being all properties. Council Members Keeler and Papish stated that they would be concerned whether the property would be kept maintained.

Justin Blevens introduced himself as the owner of the used car business. He stated that in his contract with Gary Whitney, Blevens is supposed to keep it mowed and orderly.

Council Member Laura Papish asked if this means the ordinance should be amended. City Attorney Janet Amerine stated that if the Council were not to require gravel, then the ordinance would have to be amended. Police Chief Gene Garcia stated that he interpreted the words "private property" to mean residential. Attorney Amerine stated that "private" means non-governmental.

Gary Whitney stated that he has owned the property for over 20 years. The property is as hard as concrete. Gary Whitney stated that he previously had rocks on it and kids would pick up the rocks and throw them at cars and buildings. Whitney stated that he has kept the property well mowed. Council Member Laura Papish stated that she is okay with the property as long as the property is mowed and properly maintained. Council Member David FitzGerald stated that he does not mind that the ordinance remains as-is pertaining to residential. FitzGerald stated that he is concerned about whether there was a heavy rain and rutting. Blevens stated that he would repair ruts with a tractor or rake.

The Council, with consensus, agreed that the current ordinance is intended to be residential. The Council asked staff to clean up the language within the code.

City Administrator Kent Brown stated that the City's trash route has changed to Thursdays beginning the week of 1-03-13. Waste Connections left notices on customers'

trash carts. The City placed a notice on the City website and Facebook page. The automated trash service will begin starting the first week of February. Citizens will need to have their trash carts on the streets prior to 6:00 a.m. on Thursday. Recycle will occur on the same day, every other week. City Attorney Janet Amerine clarified that the previous contract with Waste Connections allowed alley pick-up.

Brush dump personnel will be provided a city cell phone, traded between two employees, for safety reasons.

The Senior Center Director was appointed at the last Special Council Meeting. City Administrator Kent Brown asked that the Council determine the salary for the position.

#### **14. Council Reports**

Council Member Laura Papish asked if anybody had seen the movie The Promise Land about fracking. Papish inquired whether there is a list of the chemicals that are used for fracking in the area. Brown noted that the fracking is done outside of city limits. Papish asked if the City could look into seeing if there is anything the City can do to protect its water source.

Council Member Sandi Keeler stated that she had nothing to report.

Council Member Jim Whitney stated that over a year ago, he reported on a shed located at 200 S. Second that had holes in it and has a roof that is half gone. Half of the roof is still missing (southeast corner of Second and Kansas).

Council Member David FitzGerald stated that he would like the new Senior Center Director to utilize Mize's when possible as opposed to Sam's Club.

Mayor Mike York stated that he received a complaint from a citizen about property at 250 S. First. The yard contains Styrofoam and excess trash. Mayor York asked staff to send a notice to the property owner about the trash.

#### **15. Executive Session - Consultation with an attorney on matters that would be deemed privileged in attorney-client relationship**

**MOTION:** At 8:45 p.m., Council Member David FitzGerald made a motion to enter into executive session for 10 minutes. The motion was seconded by Council Member Sandi Keeler and passed unanimously.

At 8:55 p.m., Council returned to regular session with no action taken.

#### **16. Executive Session - Personnel**

**MOTION:** At 8:55 p.m., Council Member David FitzGerald made a motion to enter into executive session for 10 minutes. The motion was seconded by Council Member Jim Whitney and passed unanimously.

At 10:40 p.m., Council returned to regular session with no action taken.

City Administrator Kent Brown stated that he would recommend \$10.50 for the new Senior Center Director. With Council consensus, the City Council approved the starting salary of \$10.50/hour for Pamela Riggs, Clearwater Senior Center Director.

**17. Adjournment**

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

The Meeting adjourned at 10:45 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 January 8, 2013 City Council meeting.

Given under my hand and official seal of the City of Clearwater, this 22nd day of January 2013.

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Liza Donabauer, City Clerk