



**City Council Meeting**  
5/13/2013  
7:00 Regular Meeting

The Mayor opened the agenda at 7 p.m. with the pledge of allegiance. Councilmembers Kara Reed, Andy Gilner, Chris Donnelly, Bill Peak and Mayor Jason Ward were in attendance. Councilman Donnelly approximately 10 minutes late. Also in attendance were city staff Nathan McCommon, Jennifer Jones-Lacy, City Planner Kathy Kem, and City Attorney Michael Kelly.

A motion was made by Councilman Peak to approve the consent agenda, seconded by Councilwoman Reed. All Ayes, the motion carried.

The Mayor thanked Ms. Jones-Lacy for the work on the minutes for the last two council meetings.

**Open Agenda**

Dennis Bixby, 704 East Street –Mr. Bixby mentioned he has a neighbor that has roosters that crow and cause a nuisance. He also has a lot of junk cars. He said residents come to him thinking he can help. He said the residence is at 6<sup>th</sup> and Yoeke. He asked if residents should complain at the next court hearing. Across the street narrows and there is a parking issue. He asked that the City to drive by the house and look at the issue and do what they can. Councilwoman Reed said she walked by yesterday and saw the problems with the residence.

Councilman Peak asked what the highest level of punishment an individual can receive. Mr. Kelly said each day the nuisance is a separate offense. Councilman Peak asked what else can be done. Mr. Kelly said the first offense they have a 10 day abatement period, second offense they do not have an abatement period.

Mr. Bixby asked if the roadway in question could have a “no parking” sign put up.

The Mayor asked Mr. Bixby about the work session and if it was going to be about the take over of certain roads by the City, Mr. Bixby said no but when the City becomes a Second Class City, the County will no longer be obligated to maintain county roads in City limits. He said the County released the new proposed corridor plan for the next beltway which would connect the intermodal and hook up to I-29. This will give the City some flexibility.

Councilman Peak said he had some questions on the inter-local agreement. Mr. McCommon provided an update on where the agreement was and that it's with the County attorneys. Councilman Peak said the inter-local agreement had said that the County would maintain the road until Tonganoxie becomes a First Class City. Mr. McCommon said that was true but that point had not been agreed upon or put into the agreement yet.

Mr. Bixby said the County is doing paving contracts. He said the County engineer and public works director would like to make their improvements on Washington this year if possible. Mr. Bixby said his goal is to have a sidewalk in place on Washington Street by the time school starts in the fall.

## I. Old Business

- A) Update on Chieftain Trail
- BG is on the verge of getting bids out for construction. Survey stakes are in the ground on Mr. Depetry's property. Westar is positioned to relocate utilities as soon as we get confirmation from the attorneys.
  - Kelly said the appraisers are scheduled to have their report this week but that might get pushed back.
  - Councilman Peak asked when the City was going to bid on the construction.
  - Mr. Kelly said the City has the option to deny the purchase of Mr. Depetry's property if it disagrees with the appraiser's report.
  - Councilman Truesdell asked when utilities would be relocated and Mr. Kelly said about a week from this Friday.
  - Mr. McCommon said the process would be court, utility relocation while advertising for construction bids simultaneously.
  - The City has until July to hire a construction contractor.
  - Mr. Kelly said the Council will have to approve the amount on the appraisers report at the next meeting.
  - The Mayor asked Nathan to seek an extension with the state on getting a construction contractor in place.
  - Mr. Kelly said a Westar project is taking up a lot of the appraiser's time right now.
- B) Sale of property at 636 E. Third Street
- Mr. McCommon said that as of today we have three potential buyers. At least two of them are looking for vacant lots to place the house. He's not quite ready to give us solid yes.
  - Councilwoman Reed asked if we were just waiting for someone to make an offer for us to accept or is there going to be a bidding process?
  - Mayor Ward said it's like any other property we have the option to accept any offer and it's our job to decide what's reasonable.
- C) City of the Second Class Discussion
- Ms. Jones-Lacy said the first step needed to become a City of the Second Class is to send a letter to the Tonganoxie Township notifying them that becoming a Second Class City precludes them from taxing Tonganoxie residents for their operations. She explained the County has other mechanisms to replace that ½ mill of taxes that they would lose from the City. She said this change would affect the Township's 2015 budget and City residents would pay their taxes as they always have in 2013 and the change would take place in 2014.

- The next step is to submit a resolution to the Governor's office stating the City's intention to change to a City of the second class. She had recommended approval on June 14<sup>th</sup>.
- She explained that there wouldn't be an issue being out of compliance with the Second Class City status between proclamation by the Governor and implementation of the Charter Ordinance.
- Ms. Jones-Lacy said the cost of a special election would be \$3,500.
- A Motion to send a letter to the Township notifying them of the change and motion to approve the resolution made by Councilman Donnelly, seconded by Councilman Gilner.
- All Ayes, the motion carried.

D) Hwy 24-40 Improvements - Update

- Mr. McCommon said the Corridor Management committee met last week and that they held voting on changing the corridor plan until after the County Commission met on the topic.

Dennis Sneed, lives near 8<sup>th</sup> and Yoeke and said that the house at that corner of 6<sup>th</sup> and Yoeke has been a problem for a long time and he wanted to make his voice heard.

Mayor Ward said the nuisance code has been something the Council has been dealing with for years. He said Council asked the City Attorney to incorporate some escalating penalties for repeat offenders.

Mr. Sneed asked Council to drive by the house to see the house for themselves.

Mr. Kelly said the last municipal court the individual was fined for parking violation and noise violations. He hasn't been cited for the vehicles in a while.

Mr. Sneed said he had pride in his town and he would like to see something done about this issue.

Councilwoman Reed asked if it was just a matter of enforcement.

Mr. Kelly said that they were just made aware of the roosters on Friday. Mr. Sneed said that Steve Gumm said it was a problem when he was on the Council. He's concerned about anything being done on this issue.

The Mayor said that's where the escalating penalties come in.

Mayor Ward said he would like to see what else the nuisance code should address to help clean up this property and he would like to see an evaluation of the code enforcement process.

## II. New Business

- A. Request approval of a Temporary Cereal Malt Beverage License for the Abdallah Shrine Rodeo and Demolition Derby.

- May 22<sup>n</sup>d through 26<sup>th</sup> at the Leavenworth County Fair Grounds – Mr. McCommon requested that the Council approve the request.
  - Councilman Peak made a motion to approve the license, seconded by Councilman Donnelly. All Ayes, motion carried.
- B. *Second Reading*, Request approval of Ordinance 1363 – Amending text amendments to section 33 “Temporary Uses” and Section 25 “signs” to add regulations for Special Events, Street and Mobile Vending and Ice cream Vendors and update the table of contents for the new divisions
- Mr. McCommon provided a response to several questions asked at the last council meeting. The main question was whether this ordinance would have a negative impact on nonprofit groups. He said those groups are exempted from the ordinance. The target of this ordinance is for-profit organizations. Mr. McCommon said there was a young man who sold ice cream across from the swimming pool and this ordinance is targeting vendors like him.
  - Councilman Peak asked that in addition to a health permit, they would need a City vending permit and would they be restricted to the number of times they can sell?
  - City Planner Kathy Kem said that vendors can only sell in one location for four hours at a time and then they would need to move to another location.
  - Mr. McCommon said it would be the police and/or the code enforcement officer who would be responsible for enforcement and they would be educated on what to look for.
  - Ms. Kem said on the application, the vendor would have to provide the location they would sell and each location would be pre-approved.
  - Councilwoman Reed asked if we could contact those who have sold here in the past and let them know of the change.
  - The Mayor asked if Council would want to take action tonight.
  - Councilman Peak asked if a person would need one permit per cart.
  - Ms. Kem said yes, each cart would need a separate permit.
  - Ms. Kem said that she noticed a typo in the ordinance and would fix that prior to publication.
  - Mayor Ward asked if that four hour requirement was even necessary or if there was a precedent for having this type of requirement.
  - Ms. Kem said one of the reasons is fair competition among vendors.
  - Mr. Bixby said if there was a time restriction of four hours, he said that would help level the playing field for other restaurants that have a brick and mortar location.
  - Councilman Peak said he wants to restrict mobile vendors from setting up outside of existing restaurants.
  - Ms. Mary Crouse asked if those with a mobile cart paid sales tax. The Council said yes. She said she thinks it’s a good idea to have a time restriction.
  - Ms. Crouse asked if a business owner could shut down a mobile vendor.
  - Mayor Ward said we want to make sure that vendors selling food are safe and that we have contact with these food vendors to make sure they have all the proper forms.
  - The Mayor asked if Council had any other issues.
  - Councilman Truesdell said he thinks the ordinance should allow for some flexibility by the City Administrator on the time restriction.

- Mr. McCommon suggested the hours of operation just be a part of the application that would give the approver of the application the discretion.
- Councilman Donnelly made a motion to approve Ordinance No. 1363, seconded by Councilman Gilner.
- Ms. Kem said that vendors can only sell between certain hours of the day, but the four hour guideline would not be specifically designated in the ordinance.
- Mr. Kelly said the City Administrator is going to have some specific guidelines otherwise the ordinance will be up for attack. You can leave the location up to the City Administrator but without guidelines the ordinance could be challenged.
- Councilwoman Reed said that we've gone from a four hour limit to a 15 hour limit because this allows the City Administrator to make that call.
- Mr. Bixby said a lot of the sidewalk vendors are food vendors and that could add a challenge to filling the vacant spaces downtown. Might want to get the buy-in restaurants.
- Mayor Ward said right now there are no rules and vendors can set up wherever they want.
- Mr. Kelly said he thinks the City Administrator should have discretion on the hours and location but there should be specific guidelines on location that the City can fall back on if we are challenged.
- Mr. Kelly said the Council could approve the ordinance and then later approve the guidelines.
- Councilman Peak asked if the motion included the discretion of the Administrator as to the time and location of the setup of the cart.
- Roll call vote – all Ayes, the motion carried.

C. *Second Reading*, Request approval of Ordinance 1364 - Amending text amendments to the City Zoning Ordinance Regulations – Section 22 “Special Uses,” Section 32 Definitions and Appendix A to add regulations for Licensed Child Day Care, Child Care Centers and Preschools

- Councilman Peak made a motion to approve Ordinance 1364, seconded by Councilwoman Reed.
- Mayor Ward said this brings the City inline with guidelines established by the state which is important for consistency.
- All Ayes, motion carried.

D. *Second Reading*, Request approval of Ordinance 1365 - Amending text amendments to the City Zoning Ordinance Regulations Section 12 “HBD” – Historical Business District and Section 32 “Definitions” to add conditions that will allow residential use in the form of apartments(s) as an accessory use on all levels of the retail/commercial building

- Councilman Peak motioned to approve ordinance 1365, seconded by Councilman Truesdell.
- Mayor Ward asked Ms. Kem to comment on how this cleans up the ordinance.
- Councilman Donnelly asked if this ordinance would still create a violation of existing buildings. Ms. Kem said it would be a legal non-conforming business. Councilman Donnelly said he doesn't want to create a problem for existing businesses.

- If someone changes the purpose of a building then they would be bound to this ordinance.
- All Ayes, the motion carried

#### E. City Administrator Agenda

1. Motion to approve the appointments on the Planning Commission members made by Councilman Peak, seconded by Councilman Gilner. All Ayes, the motion carried.
2. Budget work session schedule
  - Mayor Ward suggested Tuesday, June 11<sup>th</sup> as a date for a budget work session at 6 p.m.
  - A motion was made by Councilman Gilner, seconded by Councilwoman Reed. All Ayes, the motion carried.
3. Request amendments to the Personnel Policy
  - a. Vacation accrual
  - b. Overtime eligibility
    - Mr. McCommon said that there are two conflicting pages in the personnel policy regarding overtime for police officers, which would require any hours over 86 would be overtime. He said we asked that the City follow FLSA standards.
    - Mr. McCommon explained the changes in vacation accrual, that the City move from a roll-over limit of vacation to a cap on vacation hours that is essentially double whatever they would earn in one year. For an employee earning two weeks, they cannot earn more than four weeks of vacation.
    - Mr. McCommon also explained that the vacation time does not change except in the first year, the employees would earn two weeks of vacation. There was also a modification for Fire Department staff working 106 hour shifts per week. This adjustment is in line with what neighboring Fire Departments have and it's also comparable to what other 40 hour per-week City employees get for vacation.
    - Councilman Donnelly asked how this would impact the Budget
    - Mr. McCommon said he expected the overtime budget to go down slightly.
    - Councilman Donnelly said he's wondering how the vacation change impact covering shifts and if that would increase the amount of overtime worked.
    - Ms. Jones-Lacy explained that the Fire Department could backfill with part-time employees that they could pay at straight time rates.
    - Councilman Peak said he doesn't see how changing the overtime threshold to 86 hours is fair to the Police Department when other employees get overtime over 40 hours. It doesn't make sense to add 6 additional hours per two week period before they get overtime. He said it doesn't make sense to make this decision based solely on budget.

- Mr. McCommon said the Police Chief has told him that most jurisdictions use FLSA when determining overtime. Plus their regular schedule creates overtime during a regular shift.
- Councilwoman Reed asked what the budget impact was on this and the Mayor said \$3,600/year.
- Mayor Ward said he doesn't want to adopt a policy solely for budgetary reasons and that doesn't have a lot of evidence to back it up.
- Councilwoman Reed said she has serious reservations against removing benefits for employees.
- Councilman Peak asked if the Police Chief could address if there's a way to have the police officers work within 80 hours in a two-week period.
- Ms. Jones-Lacy said the intention was not to have the Council approve this measure at tonight's meeting but to allow staff to provide an overview and Council to ask questions. The next meeting, we can discuss this issue again and have the police chief present to answer some of these questions.

#### F. City Attorney Agenda

1. Mr. Kelly said we got a request from a future resident who has a service dog that is a banned breed and said a change would be a policy decision by Council.

#### G. Mayor Agenda

1. Appointment of officers – City Attorney, City Prosecutor, Municipal Court Judge, City Treasurer and City Clerk, and naming a primary and secondary newspaper of record
  - Mayor asked for a motion. Motion made by Councilman Donnelly, seconded by Councilwoman Reed. All Ayes, motion carried.

#### H. City Attorney Agenda (Continued)

1. Executive session to discuss confidential matters of trade secrets
  - A motion was made by Councilman Peak to go into executive Session to discuss confidential matters regarding trade secrets for a period of 10 minutes. Seconded by Councilman Truesdell.
  - A motion to return from closed session was made by Councilman Peak Seconded by Councilman Gilner. All Ayes, the motion carried.
2. Executive session in consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship

#### I. Mayor Agenda (Continued)

1. Executive Session to discuss confidential matters of non-elected personnel
  - A motion to move into executive session for a period of 15 minutes was made by Councilwoman Reed, seconded by Councilman Peak. All Ayes, the motion carried.

- A motion to return from closed session was made by Councilman Gilner Seconded by Councilwoman Reed. All Ayes, the motion carried.
2. Executive Session to discuss confidential matters of non-elected personnel
- A motion to return to closed session was made by Councilman Gilner, seconded by Councilwoman Reed. All Ayes, the motion carried.
  - A motion to return from closed session was made by Councilman Gilner Seconded by Councilwoman Reed. All Ayes, the motion carried.
  - Councilman Donnelly made a motion to increase the City Administrator's Salary by \$10,000 annually, seconded by Councilman Peak. All Ayes, the motion carried.

A motion to adjourn was made by Councilman Peak, seconded by Councilman Gilner. All Ayes, the motion carried.

Respectfully Submitted,

Jennifer Jones-Lacy, Assistant City Administrator