

# CITY OF OGDEN

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Ogden, Kansas 66517-0843

## Council Meeting

September 15, 2010

The Regular Meeting of the Governing Body for the City of Ogden was scheduled on Wednesday, September 15, 2010 at 7:00 p.m. in City Hall.

The meeting was called to order at 7:04 p.m.

The following members were present; David Ward, Ward Nations, Rae Harris, Brian Still and Mayor Pence. Attorney Irvine was present. Kenneth Carroll was not present.

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

Nations moved to place consideration of an Ordinance Authorizing the Mayor to Approve the Issuance of Temporary Special Event Cereal Malt Beverage Licenses for Private Events at the Community Center on the October 6, 2010 Agenda and approve the Agenda as amended. Seconded by Harris. Motion carried.

Ward moved to approve the minutes of the September 1, 2010 Council Meeting. Seconded by Nations. Motion carried.

Mardee Hutchinson was not present.

Mayor Pence commented that Riley County Parks and Recreation has allotted the City \$2,500 and the lettering and installation for labeling Puett Field cost \$950, leaving a balance of 1,550. Mayor Pence commented that the targets for a nine-hole disc golf course cost approximately \$1,900. Mayor Pence inquired whether the Council would prefer to pay the \$950 from the General Fund and use the Riley County Park and Recreation allotment for the disc golf course or use the allotment to pay for the lettering and purchase as many targets as the remaining allotment would allow.

Clerk commented that installation of the targets would be at an additional cost. Clerk commented that there is a locking mechanism available that allows the target to be removed should the need arise. Clerk commented that most courses have a display board that outlines the course.

Ward moved to fund the cost of labeling Puett Field from the General Fund and apply the \$2,500 towards the disc golf course. Seconded by Nations. Motion carried.

Charles McDaniel, present, requested an Occupational License for DCMAC, LLC Hair Salon at 202 Riley Avenue for cosmetology services.

Mayor Pence stated that at the August 4, 2010 Council Meeting the Council granted an Occupational License to Charles and Dylan McDaniel for DCMAC, LLC at 202 Riley Avenue for retail clothing sales, music, hair salon and nail shop. Subsequent to the required fire inspection, Patrick Collins-Riley County Emergency Management required that the two adjacent commercial spaces within the structure, which had previously been modified to have a common access between them, must have separate customer accesses. As a result, the

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retail clothing sales and music would be located at 200 Riley Avenue and the cosmetology services would be located at 202 Riley Avenue.

Ward moved to grant Charles McDaniel an Occupational License for DCMAC, LLC Hair Salon at 202 Riley Avenue. Motion carried.

Virginia Stilley-Ashwood MHC, present, requested an adjustment to the sewer charge for Account 2840-02 at 412 South Park Street due to a leak.

Ward moved to refund Virginia Stilley-Ashwood MHC \$437.49 as an adjustment to the sewer charge for Account 2840-02 at 412 South Park Street as a result of a leak. Seconded by Still. Motion carried.

Mayor Pence informed the Council that John Mayberry-USD#383 Facilities approached him and stated that Shilling Construction was not going to apply an asphalt overlay on the Elementary School parking lot. Previously, an option available was to have Shilling Construction overlay the parking lot when the 200 Block of 14<sup>th</sup> Street was overlaid. The Council decided at the September 1, 2010 Council Meeting to authorize a chip seal on 14<sup>th</sup> Street rather than the asphalt overlay. Mayberry inquired whether the City could chip seal the parking lot when 14<sup>th</sup> Street was chip sealed. Mayor Pence stated that USD #383 would pay up to \$5,000 towards the chip sealing of the parking lot. Terry Morrand, Jr.-Foreman, present, commented that Mayberry requested the City to repair an excavation by Kansas Gas Service located in the parking area and USD #383 would reimburse the City for the cost.

Morrand commented that he met with the contractor regarding the issues of leaving the fence open, sidewalk repair and 13<sup>th</sup> Street repairs. Morrand stated that the contractor assured him that the repairs would be made.

Attorney Irvine stated that the only issue to be decided by the Council with regard to the smoking prohibition is one of enforcement. Attorney Irvine stated that the Kansas Indoor Clean Air Act prohibits smoking in any enclosed city facility. Attorney Irvine commented that should the Council decide to remove the smoking prohibition reference from the Uniform Public Offense Code, violations would be prosecuted in Riley County District Court.

Attorney Irvine stated that the Act requires all employers to adopt a smoke-free workplace policy.

Ward moved to adopt Ordinance #660 – Adopting the Uniform Public Offense Code for the Code of the City of Ogden, Kansas and Repealing Ordinance No. 650, and all Other Ordinances in Conflict Therewith. Seconded by Nations. Motion carried.

Ward moved, as an employer, to adopt a policy for a smoke-free workplace in all areas of employment. Seconded by Nations. Motion carried.

Clerk informed the Council that the River Trail Unit 8/Cimarron Extension project was complete and requested authorization to close the River Trail Unit 8/Cimarron Extension checking account.

Ward moved to authorize the closing of the River Trail Unit 8/Cimarron Extension checking account. Seconded by Still. Motion carried.

Clerk commented that Community 1<sup>st</sup> National Bank is requesting a motion from the Council authorizing and documenting the designated signatories for the City's bank accounts.

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Nations moved to authorize Mayor Robert R. Pence, Jr., Vincent L. Kramer II and Sharon M. Pence as signatories for the City's bank accounts with Community 1<sup>st</sup> National Bank. Seconded by Ward. Motion carried.

Clerk presented six Resolutions reflecting a change in the signatories on the City's bank accounts and Certificates of Deposits with Kansas State Bank.

Nations moved to adopt Resolution 09-15-10-A - Government/ Municipal/Public Funds Banking Establishing a Checking Account for the CDBG 08-PF-829 Account, Resolution 09-15-10-B - Government/Municipal/Public Funds Banking Establishing a Checking Account for the CDBG 09-PF-834 Account, Resolution 09-15-10-C - Government/ Municipal/Public Funds Banking Establishing an Account for Certificate of Deposit No. 16200, Resolution 09-15-10-D - Government/Municipal/Public Funds Banking Establishing an Account for Certificate of Deposit No. 19497, Resolution 09-15-10-E - Government/ Municipal/Public Funds Banking Establishing an Account for Certificate of Deposit No. 19498, Resolution 09-15-10-F - Government/Municipal/Public Funds Banking Establishing an Account for Certificate of Deposit No. 19500. Seconded by Still. Motion carried.

Harris commented that she has reviewed the bills of the month found them acceptable.

Attorney Irvine commented that with regard to the Lowery Lawsuit settlement, Farmers Alliance Insurance through mediation efforts initially agreed to contribute \$100,000 towards the settlement. Later, Farmers Alliance Insurance refused to contribute. To enable the settlement to go forward, the City of Manhattan and Riley County paid the \$100,000 portion of the settlement. Attorney Irvine stated that Ogden decided to assign the right to sue Farmers Alliance Insurance for the \$100,000 over to the City of Manhattan and Riley County. Attorney Irvine stated that a Judge ordered Farmers Alliance Insurance to pay the \$100,000, plus interest, which has been done.

Attorney Irvine commented that Michael Noble-Aventura, LLC, contacted the City late this afternoon with the information that he has negotiated a change in location of the proposed hotel site. The new location is adjacent to existing development within the River Trail Development which would allow for a lower cost of infrastructure extension. Noble is requesting the Council to issue the Notice of Intent in order for the project to continue to move forward. Attorney Irvine commented that he replied that the Council did not have sufficient information to issue the Notice of Intent. Noble requested an expedited process whereby the Mayor was authorized to issue the Notice of Intent. Attorney Irvine replied that the Council would demand involvement regardless. Attorney Irvine commented that he told Noble that he should gather all the information and present it at the October 6, 2010 Council Meeting.

Attorney Irvine stated that he was concerned about title issues regarding the property. Attorney Irvine commented that both Textron and CoreFirst have mortgages on the property and that would have to be settled before clear title can be obtained.

Attorney Irvine commented that he contacted Patrick Cox-BG Consultants regarding the utilities and Cox will investigate further. Attorney Irvine commented that Cox is aware of the Council's preference not to have any financial obligation in development of the project.

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Attorney Irvine recommended that the Council should not issue a Notice of Intent until more information is received from all areas of concern. Consensus of the Council was in agreement with Attorney Irvine's recommendation.

Attorney Irvine commented that he had extensive conversations with Attorney Tim Orrick regarding flowage easements through the River Trail Development. Attorney Irvine stated that KDOT was worried that during a 100-year flooding event the flow may not be contained within the Overflow Channel and flow through the River Trail Development. Therefore, the flowage easements were created. The flowage easement can be removed when the site being developed is elevated to one-foot above Base Flood Elevation. Attorney Irvine commented that KDOT is willing to pay the Special Assessments on the properties affected in pro-rata amounts related to the percentage of flowage easement through the property. Attorney Irvine commented that the situation needs to be carefully analyzed to the extent to which the partial takings has potentially rendered the property unusable. Attorney Irvine questioned whether KDOT would pay 100% of the special assessments should the taking render the property unusable. Attorney Irvine stated that Attorney Orrick responded that he was unsure but that KDOT did not want the City to be out anything and if the situation did arise he would be open to suggestions. Attorney Irvine suggested that each lot should be reviewed individually to determine the resulting usability.

Ward inquired about City property that was purchased from Irwin Miller which is located south of K-114 and east of the City Limits. KDOT will be constructing the new alignment of K-114 and the proposed designated Skyway Drive through portions of the two tracts.

Clerk commented that when KDOT was purchasing K-18 right-of-way he inquired of Attorney Peter Rombold why the City was not being contacted. Clerk commented that he was told by Attorney Rombold that there was an understanding that the City was to relinquish ownership to KDOT without compensation.

Ward commented that the property has a monetary value and the City has not been compensated for it.

Attorney Irvine stated that he would talk to Attorney Rombold regarding the issue.

Attorney Irvine informed the Council that the RIM Development Bankruptcy Confirmation Hearing was to be held on September 7, 2010 but RIM Development withdrew their plan. Attorney Irvine stated that Textron is proceeding forward with foreclosure. Attorney Irvine commented that payment of the KDOT condemnation of RIM Development property for right-of-way would be soon.

Clerk commented that the adoption of the 2020 Comprehensive Plan is intended to be on the October 6, 2010 Agenda and suggested that the Council schedule a Work Session before the meeting to review and discuss the Plan prior to adopting it.

Attorney Irvine commented that the Council will have several options: 1) approve the Comprehensive Plan by adopting an ordinance, 2) override the Planning Commission recommendation with a 2/3 majority vote, or 3) return the document to the Planning Commission with comments.

Council decided to schedule a Work Session on September 21, 2010 and September 28, 2010 at 7:00 p.m. for review of the Comprehensive Plan.

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Nations commented that the brush along the 8<sup>th</sup> Street Bridge needs cut along with the limbs overhanging the streetlight at the same location.

Harris commented that information on a flyer from Dave Lewis, who is a candidate for the Riley County Commission, should be of interest to the Council and suggested that he be invited to a meeting to determine whether the City should support his campaign. Attorney Irvine recommended that the Council refrain from getting involved in the election.

Brian Still inquired of what the final elevation of the depth of the Overflow Channel would be. Attorney Irvine commented that Cimarron Trail would have a bridge over the channel and sanitary sewer on the east side of the channel would require a lift station.

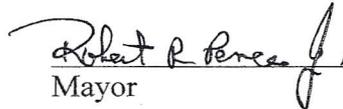
Mayor Pence inquired of Attorney Irvine regarding the letter from CoreFirst Bank & Trust requesting release of the Letters of Credit Nos. 82150000, 8216000 and 8217000 by September 15, 2010. Attorney Irvine replied that he has asked for an extension, and it was granted, until after October 6, 2010 in hopes that additional information would be forthcoming regarding payment from the KDOT condemnation award.

Attorney Irvine commented that Tim Miller-Prairie View Estates is contacting other contractors to repair the detention pond embankment because the first contractor contacted declined.

Mayor Pence commented that the decision made regarding the repairs to the parking of the Elementary School was a time sensitive issue and suggested that the parameters of the Mayoral authority be more specific. Mayor Pence stated that he is in total agreement with limiting the authority of the Mayor. Mayor Pence inquired of the Council whether they sensed that the decision made was within the parameters of Mayoral authority. Council was satisfied that the decision was reasonable.

Nations moved to adjourn the meeting. Seconded by Still. Motion carried.  
Time: 8:30 p.m.

Vincent L. Kramer II  
City Clerk

  
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Mayor