

**City of Edgerton, Kansas
Minutes of City Council Regular Session
January 13, 2022**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on January 13, 2022. The meeting convened at 7:00 PM with Mayor Roberts presiding.

1. ROLL CALL

Clay Longanecker	present
Josh Lewis	present
Josh Beem	present
Jody Brown	present
Josie Stambaugh	present

With a quorum present, the meeting commenced.

Staff in attendance: City Administrator Beth Linn
City Attorney Lee Hendricks
City Clerk Alexandria Clower
Marketing & Communications Manager Kara Banks

Staff via videoconference: Finance Director Karen Kindle
Development Services Director Katy Crow
Public Works Director Dan Merkh
CIP Manager Brian Stanley

2. WELCOME

3. PLEDGE OF ALLEGIANCE

Consent Agenda (*Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action*)

4. Approve Minutes from December 9, 2021 Regular City Council Meeting
5. Approve Application FP2021-03, Final Plat for Logistics Park Kansas City (LPKC) Fifth Plat Generally Located North of 187th Street Between Kill Creek Road and Waverly Road, Edgerton, Kansas

Councilmember Beem asked that item 5 be removed for further discussion.

Mayor Roberts requested motion on Consent Agenda Item 4, approval of the minutes from December 9, 2021 City Council meeting.

Councilmember Brown made motion to approve consent agenda item 4, seconded by Councilmember Longanecker. The minutes were approved, 5-0.

Consent Agenda Item 5 -

Councilmember Beem stated the reason he wanted to remove this item was because it had been brought to his attention that concerns were raised about him possibly having a conflict of interest with Hillsdale Land and Cattle. He stated he has spoken with the City Attorney and does not believe he has a conflict of interest that would prevent him from voting on items but wanted to bring this to the Council and public's attention.

City Attorney Lee Hendricks stated he was the one who contacted Councilmember Beem because of claims that there might be a conflict of interest. He stated he does not think there is one but would like to discuss this matter in open session in front of the councilmember who raised the alleged conflict and the public who is entitled to understand his review of the matter.

He stated he received Councilmember Stambaugh's email yesterday (January 12, 2022) from Mayor Roberts that raised questions/concerns regarding a possible conflict involving Councilmember Beem. He read the email from Councilmember Stambaugh. A copy of that email is attached as **Exhibit A**.

Mr. Hendricks stated there is nothing in the City Code that has any regulation over, or penalty for, a conflict of interest. There is nothing written that says, in the event of 'x', the Governing Body has to do 'y'. He stated Councilmember Stambaugh is concerned there is a conflict of interest because Councilmember Beem rents from NorthPoint, specifically Hillsdale Land and Cattle which is a subsidiary of NorthPoint, and he therefore should not vote on anything involving NorthPoint. Mr. Hendricks stated he asked Councilmember Beem if he pays rent monthly and if he received any benefits with this agreement. Councilmember Beem stated he has not received benefits of any kind and has paid timely rent each month.

Mr. Hendricks stated he began pulling documents from the Kansas Statutes related to this topic because of the statute referenced in Councilmember Stambaugh's email. He handed out five documents (**see Exhibit B**) to the Governing Body related to the current Kansas Statutes. He stated there is a form councilmembers are required to file with the County which contains certain criteria listed that determines if an elected official has a "substantial interest" in a company or other entity.

He referenced Document 1 and read the highlighted portion, which reflects the five items that fall under the term "substantial interest."

He stated there is no claim that Councilmember Beem has any interest in Hillsdale Land and Cattle; therefore, item 1 would not apply.

He stated regarding item 2, there is no claim that Councilmember Beem has received any income from any business or combination of businesses that the City has dealt with. Councilmember Beem confirmed he has not received any income from those sources.

Mr. Hendricks stated he will come back to item 3.

He stated regarding item 4, Councilmember Beem does not hold position of office in any business.

He stated regarding item 5, Councilmember Beem stated he does not have a conflict, nor has he received any sort of compensation paid to him.

He returned to item 3. Mr. Hendricks stated Councilmember Beem is not benefiting in any way from the agreement he has; Hillsdale Land and Cattle provides a residence, Councilmember Beem provides payment to reside there. He asked Councilmember Beem if this was the agreement. Councilmember Beem stated yes, it is a normal lease. He asked Councilmember Beem if he has received or paid anything beyond rent for the residence. Councilmember Beem answered no.

Mr. Hendricks stated he then began asking himself if there was any possible way there could be a claim under item 3. He stated the only thing he came up with was if Councilmember Beem has the lease and decides to transfer the interest of that lease to another party and asks for money for that lease. He stated this cannot happen because the lease agreement signed has a non-assignment clause.

Mr. Hendricks then referenced document 2 and read the highlighted portion.

He stated based on his review of the situation, he does not believe there is substantial interest in this matter.

Mr. Hendricks then referenced document 3 and read the highlighted portion.

He stated the reason he included documents 2 and 3, has to do with document 4 which specifies the penalties for violations. He stated the penalty for violation of this substantial interest doctrine is a Class B Misdemeanor.

He stated if Councilmember Beem makes disclosure of this situation, which he has done now, there is no substantial interest. Mr. Hendricks stated his recommendation to Council is to follow the guidelines set forth in KSA 75-4303a and asked Council to reference Document 5.

He stated this is Councilmember Beem's call if he decides to vote. Mr. Hendricks stated it is his opinion to Council that the Councilman does not have substantial interest but he recommends the Council seek an advisory opinion from the state's Ethics Commission as allowed by Kansas Statute. He asked Councilmember Beem if he had any objection to getting that report. Councilmember Beem stated he did not have any objection.

Mr. Hendricks asked for a motion to allow him to request that advisory opinion.

Councilmember Stambaugh stated before proceeding, she had some questions and comments. She stated she spoke directly with the attorney at the ethics committee, and he stated this report will have to go to the Johnson County District Attorney himself. She questioned why Councilman Beem is allowed to live in a home that is not zoned for residential dwelling.

Mr. Hendricks said he intended to address the zoning question and would come back to this question.

She continued by saying Hillsdale Land and Cattle is a part of NorthPoint. Mr. Hendricks stated yes, they are a subsidiary, which he had stated before. She stated when she spoke with the attorney, he said if there is any thought of a possible conflict, a person can get in more trouble if deemed in conflict. She stated her opinion would be for Councilmember Beem to recuse himself until there is an answer.

Mr. Hendricks stated he would disagree on the District Attorney portion. He stated he must follow what the City Code and state statutes say to do. He stated the DA must work within the bounds of the Kansas Statutes. He stated the role of the council does not involve judgement, regulation or penalty on this item. The state statute clearly states that these questions should be sent to the Ethics Committee and that is his recommendation.

He stated Councilmember Stambaugh mentioned Councilmember Beem living in a NorthPoint owned home that is not zoned for residential dwelling. He stated the property was rezoned from RUR to L-P, but the City has seen multiple situations with property owners that remained in residential dwellings post-rezoning. He stated the use occurring prior to rezoning is allowed as a non-conforming prior use, so long as it is continuous for a year. He stated this is how the City's UDC is specifically listed and this is also allowed until buildings start being built and the land begins to change for the new zoned use.

He stated this is not a violation as it is clearly stated in the City's UDC. He added however, were it a violation, it would be a violation against the property owner, not against the resident who is leasing. He stated this has no bearing on the question of Councilmember Beem being able to vote or tonight's agenda item.

Councilmember Stambaugh asked if Mr. Hendricks could circle back around to timeframe of dwelling.

Mayor Roberts stated the clock starts from the point of rezoning.

Mr. Hendricks said Councilmember Beem's residential zoning has no bearing on the issue at hand or if Councilmember Beem should be allowed to vote on this item or any item.

Councilmember Stambaugh stated when she saw this happen, she was confused and concerned because of the conflict. She asked Councilmember Beem how he came into a lease agreement with them. She stated he must know someone with NorthPoint, which she believes would be a conflict of interest.

Mr. Hendricks stated this meeting should not be a deposition on Councilmember Beem. He stated in a city the size of Edgerton, there are connections all over the City. He stated if there is an ethical conflict, it needs to be dealt with. He stated rather than saying it is Councilmember

Beem's call and moving on, the Council can ask for an official opinion using a tried-and-true method from the Kansas Statute to get that answer.

Mayor Roberts stated the Kansas Ethics Commission is obligated to give an opinion.

Mr. Hendricks stated it is rare that the statutes are this clear, but Document 5 clearly states the process for filing for an opinion. He stated once the City receives that opinion, the City is legally protected. He stated again that Councilmember Beem can vote how he so chooses or recuse himself, but tonight is about a request for motion to send the letter to the Ethics Commission and get an answer on this matter.

With no further questions or comments, Mayor Roberts requested a motion to direct the City Attorney to obtain an opinion from the Kansas Ethics Committee.

Councilmember Longanecker moved to approve the above-mentioned motion, seconded by Councilmember Lewis. The motion was approved, 5-0.

Mayor Roberts stated he is not sure how long this process will take but does know the Ethics Commission posts everything on their website and their opinion will be there once it is complete.

Mayor Roberts asked Councilmember Beem what he would like to do related to voting or abstaining on Consent Agenda Item 5.

Councilmember Beem stated with all the information presented tonight, he believes he does not have a conflict in this matter. He stated he will vote.

With no further questions or comments Mayor Roberts requested a motion to approve Consent Agenda Item 5, approval of Application FP2021-03.

Councilmember Longanecker made motion to approve consent agenda item 5, seconded by Councilmember Brown. The item was approved, 4-1 with Councilmember Stambaugh voting no.

Regular Agenda

6. **Declaration.** There were no declarations made by the Governing Body.
7. **Public Comments.** There were no public comments.
8. **Announcement.** Holiday Home Decorating Contest Winners.

Ms. Kara Banks addressed the Council. She showed photos of the winning homes from the 2021 Holiday Home Decorating Contest.

She said the first-place winner is in the audience tonight, Mr. Randy Clements. She invited him up to the dais to accept a certificate and a gift card for his participation.

Mayor Roberts thanked Mr. Clements for putting lights up each year and added this is great for the community and everyone loves getting out to look at the lights.

Mr. Clements thanked Council for the prize and stated he enjoys setting up the lights each year.

Business Requiring Action

9. CONSIDER A CONTRACT FOR SERVICES AND SCOPE OF WORK WITH ETC INSTITUTE FOR THE 2022 CITIZEN SURVEY

Ms. Kara Banks addressed the Council. She stated in 2012, 2015, 2018, and 2020 the City contracted with ETC Institute perform a citizen survey. She stated the results of those surveys have been used to assist the Governing Body in prioritizing funding and resources during the preparation of the annual budget. She stated staff would recommend contracting again with ETC Institute to perform the 2022 citizen survey.

She stated the draft contract includes the responsibilities for both ETC and the City. She stated new this year, ETC is including a question on the survey asking residents to opt in for a chance to win a \$500 Visa gift card funded by ETC.

Mayor Roberts asked if staff could give a brief description of who ETC is for those that are new to Council.

City Administrator Beth Linn stated ETC is headquartered in Olathe, and they are one of the nation's most well-known municipal survey companies. She stated one thing that is different for Edgerton than most other cities is that every household in Edgerton receives a survey. In Olathe for example, only a certain percentage of households receive a survey. She stated for ETC to say the City will receive 200 surveys back is a large amount for about 650 households.

Mayor Roberts stated the survey has been a useful tool to determine those overall community desires. He stated he is very supportive of this.

Councilmember Longanecker asked if 200 surveys are the rough estimate of what they think they will get back.

Ms. Linn stated it is the requirement. She stated usually in the first push of surveys out, they get about half that back, they'll then send emails, phone calls, etc. to pull data and get people participating to make sure they get the 200 surveys back.

With no further questions or comments, Mayor Roberts requested motion to approve the 2022 Citizen Survey with ETC Institute.

Councilmember Lewis moved to approve the contract with ETC Institute for the 2022 citizen survey, seconded by Councilmember Brown. The contract was approved, 5-0.

10. CONSIDER ON-CALL MASTER SERVICES AGREEMENT BETWEEN CITY OF EDGERTON AND BURNS & MCDONNELL INC. FOR ON-CALL WATER & WASTEWATER ENGINEERING SERVICES

Public Works Director Dan Merkh addressed the Council. He stated during the 2021 Wastewater Master Plan work session, staff presented the need for additional services to maintain the model, run development scenarios, analyze existing infrastructure for capacity, as well as many other services. He stated these services are best acquired through a Master Services Agreement (MSA) which defines a scope of services for Engineering Services for the Water and Wastewater disciplines for the City to select and utilize.

He stated this MSA is an on-call contract, which means whenever a need arises, staff will solicit the contract holder and create a task order. That order will identify the scope of work, set a budget and set a schedule to complete. He stated the task order is project specific and the only method of payment is to the MSA contract holder. He stated the City will only pay for hours worked.

He stated one thing to note is that the funding source could change depending on the task order issued.

He asked Cliff Cate, representative for Burns and McDonnell, to give a brief background for the company.

Mr. Cate stated he appreciates being able to work with the City for 20+ years. He stated much of the work the company does is in the KC Metro area. He stated they are excited to continue working with the City and provide these services for the community.

Mayor Roberts stated having this system in place allows for the City to be more proactive than reactive to calls concerning the Water and Wastewater systems. He then requested a motion to approve the On Call Master Services Agreement with Burns and McDonnell.

Councilmember Longanecker moved to approve the agreement, seconded by Councilmember Beem. The agreement was approved, 5-0.

11. CONSIDER A MONTH-TO-MONTH CONTRACT EXTENSION WITH CLEMENTS CLEANING SERVICE TO PROVIDE JANITORIAL SERVICES FOR THE EDGERTON CITY HALL AND AUXILIARY OFFICE SPACE UNTIL MARCH 31, 2022

Ms. Linn addressed the Council. She stated in November 2021, the Governing Body approved a one-year contract extension with Clements Cleaning Service, the City's janitorial services vendor since 2012. She stated following that meeting, staff further discussed with Clements regarding the increase in costs of cleaning supplies, etc. and based on those discussion, staff issued a Request for Bid for Janitorial Services for 2022.

She stated in the meantime, staff would recommend a month-to-month contract extension with Clements for January 1, 2022 to March 31, 2022. Before the end date of the contract, staff will present the bid results for consideration by the City Council. The City Attorney also added a requirement that Clements provide written thirty-day notice of desire to terminate the contract, but the City may terminate at any time. She stated all other elements of the contract remain the same as was approved in November 2021.

Councilmember Longanecker asked if the budget of \$19,000 is the yearly amount.

Ms. Linn stated yes, that is the annual amount budgeted. She stated the governing body approved the annual contract, this one for consideration tonight is for a month-to-month until bids are brought to the Governing Body for consideration and approval.

With no further questions or comments, Mayor Roberts requested a motion to approve the month-to-month contract for janitorial services with Clements Cleaning Service.

Councilmember Lewis moved to approve the contract with Clements Cleaning Service, seconded by Councilmember Brown. The contract was approved, 5-0.

12. Report by the City Administrator

- Marketing and Communications Update:

Ms. Banks addressed the Council. She stated since August, the City's Facebook page has grown to more than 1,100 followers with an average post reach of 6,500 in the last 30 days. She stated the audience continues to be mainly women, with the City's website reaching more men. She stated Twitter has nearly 160 followers. She stated as far as media coverage, the top 3 stories were related to the Edgerton Crossing development and the Wichita State study.

- Miscellaneous Updates:

Ms. Linn stated the final code enforcement report is at the Council's dais for 2021. She stated there will be a new community development format coming in April for 2022.

She stated the newest Governing Body handbook from the League of Kansas Municipalities is at each Councilmember's seat. She stated staff is working on additional training as we move forward.

She stated she also put at the dais the current COVID-19 mitigation measures that are in place for City staff. She stated this includes measures such as all staff being required to wear masks inside City facilities. Staff must also work in place, which means staff does not travel to and from other facilities unless necessary. All staff meetings are conducted via Teams if possible, and if an in-person meeting is required, social distancing and masks are required of staff. She stated changes have been made to court to allow for more social distancing and fewer people within the space.

She stated Mayor Roberts signed two executive orders that declare a local declaration of emergency which postpone or cancel events within the City through the end of January. She stated for example, the annual town hall meeting with the Sheriff's Office has been postponed.

She stated senior lunch, dominoes and a few other recreation programs had to be either cancelled or postponed as well.

Mayor Roberts stated reports are saying the new COVID-19 strain is more contagious than prior strains. He stated many businesses are having issues opening due to lack of staff. He stated City Hall was pretty lean this week with only two people working, so the measures are temporary until the City can get through this season.

Ms. Linn stated she would like to have Council save the date for a new community event approved by the Governing Body. This event, called Meat Inferno, will take place October 7th & 8th, and will be Edgerton's first Kansas City Barbeque Society-sanctioned competition in downtown. She stated more details are to come, but right now they are looking at trying to do a backyard competition and a kid's barbeque competition.

13. Report by the Mayor. Mayor Roberts had no report to give.

14. Future Meeting Reminders:

- January 27th: City Council Meeting – 7:00PM
- February 8th: Planning Commission – 7:00PM
- February 10th: City Council Meeting – 7:00PM
- February 24th: City Council Meeting – 7:00PM
- March 8th: Planning Commission – 7:00PM
- March 10th: City Council Meeting – 7:00PM
- March 24th: City Council Meeting – 7:00PM

15. Adjourn

Councilmember Beem moved to adjourn, seconded by Councilmember Longanecker. All in favor. The meeting was adjourned at 8:03 PM.

Submitted by Alexandria Clower, City Clerk

EXHIBIT A

DRAFT

EXHIBIT B

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