

**City of Edgerton, Kansas**  
**Minutes of City Council Regular Session**  
**March 23, 2023**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on March 23, 2023. The meeting convened at 7:00 PM with Mayor Roberts presiding.

**1. ROLL CALL**

Clay Longanecker	present
Josh Lewis	absent
Josh Beem	present
Deb Lebakken	present via phone
Bill Malloy	absent

With a quorum present, the meeting commenced.

Staff in attendance:      City Administrator, Beth Linn  
   City Attorney, Lee Hendricks  
   Planning and Zoning Coordinator/Deputy City Clerk, Chris Clinton  
   Public Works Director, Dan Merkh  
   Development Services Director, Zachary Moore  
   Accountant, Justin Vermillion

**2. WELCOME.** Mayor Roberts welcomed all in attendance.

**3. PLEDGE OF ALLEGIANCE.** All present participated in the 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 March 9, 2023 Regular City Council Meeting.
5. Approve Professional Services Agreement with Denton Excavating DBA Midland Wrecking for Demolition of Structures at 305 and 307 East Nelson Street.

Mayor Roberts stated City staff requested the Minutes from March 9, 2023 be removed from the Consent Agenda. Councilmember Longanecker made a motion to approve the Professional Services Agreement, and the motion was seconded by Councilmember Beem. The Professional Services Agreement was approved, 3-0.

Ms. Beth Linn, City Administrator, stated that after the packet was published with the Minutes from March 9, 2023 included, Mr. Lee Hendricks, City Attorney, made minor edits to them. The edits are on page six (6) of the Minutes and are at the dais for review.

Councilmember Beem moved to approve the Minutes from March 9, 2023 as amended. Councilmember Longanecker seconded the motion. The Minutes from March 9, 2023 were approved, 3-0.

### **Regular Agenda**

6. **Declaration.** The Councilmembers had nothing to declare at this time.

7. **Public Comments.**

Mr. Cliff and Ms. Colleen Cole, 19911 Pepper Tree Lane, Edgerton, KS, approached the Council. Ms. Cole provided documents to the Council, which have been attached to the end of these Minutes. Mr. Cole stated they did file lawsuits against the City that were dismissed. Mr. Cole stated they were promised things ten (10) years ago that were not done. He explained the rezoning ordinance required certain items be done at a certain time. He said it was discussed that a pond, berm, and a 200-foot setback would be required. However, the setback is from the house, not the property line, and a pond and berm were excluded from the rezoning ordinance. He stated he is before the Council due to the extension requested by Woodstone properties. What was included in the ordinance was at the time of the first development of 20800 Homestead Lane, a landscape screen is to be provided adjacent to their house and consist of a fifteen (15) foot wide strip with three (3) staggered rows of evergreen trees planted twelve (12) to 15 feet apart. He said if Woodstone Properties wants a year extension in their Development Agreement, then the Council needs to hold them accountable to the ordinance and require the landscape screen to be put in. He claimed that development has started since there is earthwork and piping being put in. He believes Woodstone Property is well past the first moment of development. Mr. Cole claimed he has not been able to sell his home. He requested the Council help him protect his property.

### **Business Requiring Action**

8. **PUBLIC HEARING REGARDING RESOLUTION NO. 03-23-23A CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO ELHC IX, LLC, OR ITS SUCCESSORS IN INTEREST**

Mr. Scott Anderson, Bond Council, approached the Council. He stated that the City had previously adopted Resolution No. 04-27-17B assigning a portion of the master Resolution of Intent to ELHC IX, LLC for a project that never came to fruition. The City has now received a new application for Industrial Revenue Bonds (IRB) and property tax abatement from ELHC IX, LLC. The applicant desires to construct an approximately 1,006,016 square foot warehouse, distribution, or manufacturing facility to be located at approximately 30500 and 30700 W. 183<sup>rd</sup> Street in Edgerton. He explained that in order for the City to issue IRB and grant property tax abatement, the City must first hold a public hearing after publication, which was done last week, consider the cost-benefit report, and then approve a partial assignment of the Master Resolution on Intent. Mr. Anderson said Columbia Capital Management LLC has prepared a cost-benefit report for the proposed project. The report was included in the packet provided to the Council, but he wanted to highlight the fact that the school district will still get the eight (8) mills of their capital levy. The report also explains payments-in-lieu-of-tax (PILOT) will still be required. Those PILOT payments are

estimated to be just under \$310,000 per year to where the current property tax assessed is around \$4,000 per year. He explained the City previously adopted a Master Resolution of Intent for the benefit of Edgerton Land Holding Company, LLC for constructing various projects in Logistics Park Kansas City (LPKC) and provided for the issuance of up to \$1,000,000,000 in IRB. The Master Resolution of Intent allows Edgerton Land Holding Company, LLC to assign portion of the Master Resolution of Intent to various companies that located within LPKC. The partial assignment of the Master Resolution of Intent assigns \$80,000,000 of the Master Resolution of Intent to ELHC IX, LLC for the purpose of constructing the project and the approval of the resolution will repeal the prior resolution.

Mayor Roberts opened the Public Hearing. There were no comments made. Mayor Roberts closed the public hearing.

**9. CONSIDER RESOLUTION NO. 03-23-23A CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO ELHC IX, LLC, OR ITS SUCCESSORS IN INTEREST**

Councilmember Longanecker moved to approve Resolution No. 03-23-2023A consenting to the partial assignment of a Resolution of Intent from Edgerton Land Holding Company, LLC to ELHC IX, LLC or its successors in Interest. Councilmember Lebakken seconded the motion. Resolution No. 03-23-23A was approved, 3-0.

**10. CONSIDER RESOLUTION NO. 03-23-23B AUTHORIZING THE CITY OF EDGERTON, KANSAS TO ENTER INTO A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE EDGERTON CROSSING WOODSTONE PROJECT**

Mr. Anderson addressed the Council. He explained the City and the Developer entered into a Development Agreement for the development of the Edgerton Crossing project on September 10, 2021. The Development Agreement contained a project construction schedule which required the developer to commence vertical construction no later than July 1, 2023. A certificate of occupancy (CO) was to be obtained by December 31, 2025 per the schedule. The project was to include a travel center, one (1) hotel with conference center, and a quick-serve restaurant and a casual dining restaurant. Mr. Anderson stated the Developer has requested that the City agree to a 1-year extension of the project construction schedule. In the First Amendment, the developer agrees to commence vertical construction by July 1, 2024 and obtain a CO for the minimum improvements no later than December 31, 2026. This Resolution would authorize the City to enter into the First Amendment to the Development Agreement with Woodstone.

Councilmember Longanecker inquired if anything else had changed or if it was just the date. Mr. Anderson stated that is correct and explained other development agreements do hold the developer to same schedule but refer to the project schedule in the Development Agreement. Councilmember Longanecker asked if anything in the Development Agreement affected the Coles' property. Mr. Anderson replied there is not. Mayor Roberts asked if the rezoning ordinance was still in effect. Mr. Hendricks it is and there is no change to that ordinance.

Councilmember Longanecker moved to approve Resolution No. 03-23-23B authorizing the City of Edgerton, Kansas to enter into a First Amendment to Development Agreement for the Edgerton Crossing Woodstone Project. The motion was seconded by Councilmember Beem. The Resolution was approved, 3-0.

**11. CONSIDER RENEWAL OF CORPORATE INSURANCE POLICY FOR APRIL 1, 2023 – MARCH 31, 2024**

Ms. Linn spoke before the Council. She explained that the City considers the renewal of its corporate insurance policies annually. The policies include several coverages like property, crime for employee theft, inland marine for contractor's equipment, general liability, public officials' errors and omission, employment practices, business automobile, pollution liability for the treatment plant, and cyber liability. She stated City staff began working with Mr. Kevin O'Brien, with Reilly Insurance, on the insurance renewal process for 2023-2024 in December. Ms. Linn explained that due to the increase with the City's current provider, Travelers, deductible on Wind/Hail damage, Reilly Insurance obtained a quote from another agency, EMC Insurance. She stated that the City's property can be insured one (1) of three (3) ways; at replacement cost, actual cash value, or self-insured. Ms. Linn requested Mr. O'Brien explain the difference between some of the insurance quotes the City received.

Mr. O'Brien addressed the Council. He stated Ms. Linn and City staff have been a pleasure to work with and great at providing a lot of information requested by companies. He explained Travelers has been the insurance carrier for City for the last three (3) years. In the middle of January, Travelers informed its customers that there will be an increase in the wind and hail damage deductible starting on April 1, 2023. The current deductible of \$25,000 will be changed to 1% of the value of the property, subject to a minimum of \$100,000 per occurrence. He explained Travelers did this to customers across the country and not just in the Midwest. Mayor Roberts stated that is a huge increase with a high minimum deductible. Mr. O'Brien stated EMC is another company that provided insurance quotes to the City, and they only focus on customers in the Midwest and are not a nationwide provider like Travelers. Their prices are very competitive, and the preliminary recommendation is EMC for the next insurance year. He said the format of the proposals are different and information on the provided coverage was available in the packet for easier comparison.

Mr. O'Brien stated there are 3 major differences between Travelers and EMC on the property coverage. The first difference is that Travelers will cover 100% of the values of the City's property while EMC will cover 90% of the values. With EMC's coverage, it doesn't matter the location of the claim or where it happens, they will cover up to 90% of the total value. This is only an issue if a tornado or something else would damage all of the City's property at once. The second difference is the deductible as discussed earlier. Mr. O'Brien stated the deductible could be reduced to \$25,000, but the premiums would increase about \$20,000. The final difference is the coverage to when a roof replacement will be covered. He explained Travelers covers wind and hail damage even if the damage is only cosmetic. Many companies will cover a roof if there is structural damage that hinders the functionality

of the roof and that is how EMC will cover the roofs. He said this will be an issue if there are any reasons why the roof needs to be cosmetically perfect.

Mr. O'Brien stated there is only 1 major difference in the equipment coverage between the two (2) companies. Travelers has a \$25,000 deductible for Flood or Earthquake coverage for contractors' equipment and EMC did not have this type of coverage. It is a huge difference especially since the City had a big claim in 2017 due to a flood.

Mr. O'Brien discussed the 2 key differences on the general liability coverages. Travelers will automatically cover firework displays as long as there is a licensed pyrotechnic conducting the display. EMC requires the pyrotechnician or company to list the City as an additionally insured party with minimum liability limits of \$1,000,000. He said this is already recommended to make the pyrotechnician have insurance, so they are responsible for the claim instead of the City. The other difference is a coverage called failure to supply. This will cover the water utility service. He explained if the City cannot provide water for whatever reason, EMC will cover the City but Travelers will not. He said that is exclusively to cover if water is not available. He stated if the City was sued due to people getting sick, both EMC and Travelers would cover that. Mayor Roberts said the City also provides the wastewater utility too. Mr. O'Brien responded that wastewater is covered under a pollution policy for the treatment plant. He explained in the case of a sewage back-up into a residence, the City would cover it if there was an issue with the wastewater system. If there was an issue with the resident's line that cause the back-up, then it would be on the resident's homeowners' insurance. Mayor Roberts asked if the City was negligent in repairing a part of the main that caused issues. Mr. O'Brien answered the coverage would then handle that case, but if the issues were an act of nature then the City will not cover it.

Mr. O'Brien explained there is only 1 difference in the public entity management liability and employment practices liability coverage. Travelers has separate \$1,000,000 and \$2,000,000 limits for management liability and employment practices liability. EMC combines the 2 coverages into 1 \$1,000,000 million policy. Ms. Linn added that the employment practices liability coverage also has a difference in terms of consent to settle. Mr. O'Brien stated Travelers has a provision that a claim will not be settled upon unless the City consents to the settlement and EMC does not have that provision. Mayor Roberts stated he does not want any claims settled unless the City consent to the settlement. Mr. O'Brien replied that EMC will work within the parameters outlined by the City only. He added EMC provides \$1,000,000 defense coverage for non-monetary claims where Travelers is only \$10,000.

Mr. O'Brien explained the cyber and pollution coverage are by different companies that provided them in the previous year.

Mr. O'Brien stated Travelers' premiums are up about 7% from last year and EMC is up 3%. The premiums for Travelers will cost \$4,000 more than EMC's premiums. While the premium is an important factor, it is not the only factor. He said the biggest advantage for Travelers is the consent to settle provision and the fireworks coverage, the coverage of cosmetic roof damage. He stated he does not believe that the lack of flood coverage with EMC is a major factor. He stated if there is an area that is prone to flooding, Travelers will not be covering

items there anyway. Mr. O'Brien said the biggest advantage for EMC is the lower wind and hail deductible. The other key component is that EMC does have a dividend program. He said while this is not guaranteed, once the coverage year, April 1 to March 31, is closed, EMC examines the premiums paid and the claim amounts paid out. If the premiums paid is larger, the excess premiums are divided between the municipalities they cover and returned to the cities. He said over the last five (5) years, the return to cities have averaged around 19% of the cost of the premiums and it has been paid out the last ten (10) years. EMC has a good track record of it happening, but it is always a possibility that it will not.

Ms. Linn stated after the flood in 2017, the City learned that the willingness to work with and communicate with the insurance company is key. If they can help the City walk through the process, it is extremely beneficial. Ms. Linn asked if Mr. O'Brien could share experience on engagements with EMC. Mr. O'Brien replied he has worked with EMC and has good contacts within their organization. He lauded their customer service. Mayor Roberts stated it would be critical to have good communication with EMC. Councilmember Longanecker inquired if Travelers was hard to deal with. Ms. Linn stated they were not, but it was clear that they were a nationwide company instead of someone more local. Mayor Roberts stated when there is hurricane damage, Travelers would rightfully so focus its resources there and not as much focus on smaller towns away from the hurricane. Mayor Roberts stressed the City does not want to be with the wrong company and have a disaster.

Councilmember Longanecker stated the companies seem very similar in terms of coverage. Mr. O'Brien stated that is correct and EMC has the dividend program that could lower the premiums the City pays in the end. Mayor Roberts stated the wind and hail deductible is significant or could be if the right storm hits. He said those are going to be the most claims that are seen around here by insurance companies. The Travelers deductible is high enough that the City most likely won't pay all of it. Mr. O'Brien stated Travelers should have lowered the premiums significantly with that drastic of change in the deductible, but that has not been done.

Mayor Roberts asked if the replacement values from EMC are the same or better than Travelers. Mr. O'Brien answered the equipment cost is actual cash value and are about equal if not better under EMC. Ms. Linn explained how the City covers each item will not be changing.

Councilmember Longanecker asked if it was last year when the cyber coverage increased drastically. Mr. O'Brien stated it has been the last 2 years and ransomware has been the key factor in that. Councilmember Longanecker Clay asked if EMC is keeping up to date with cyber coverage. Mr. O'Brien explained the City is insured by Evolve, a separate company, and they have the best coverage he has seen. He said premiums are rising due to more claims being submitted.

Councilmember Longanecker stated he is always skeptical of changing insurance companies, but EMC has better incentives and Mr. O'Brien has been a great resource in these matters in the past for the City. Mayor Roberts agreed and stated the liability coverage is a better value for the citizens.

Councilmember Longanecker moved to have EMC, Crum & Forster Specialty Insurance Company, and Evolve to be the City's insurance providers from April 1, 2023 to March 31, 2024. The motion was seconded by Councilmember Beem. EMC, Crum & Forster Specialty Insurance Company, and Evolve were selected to be the City's insurance providers for the next insurance year, 3-0.

**12. CONSIDER EARLY PROCUREMENT FOR GENERATOR AS PART OF GREENSPACE PROJECT**

Mr. Dan Merkh, Public Works Director, spoke before the Council. He stated that on February 9, 2023, the City of Edgerton amended the purchasing policy to include the option for early procurement. The policy states three (3) reasons to justify the need of early procurement are lead time for fabrication or delivery, pricing volatility, and to control the contractor markup.

Mr. Merkh explained the Greenspace Project does include a backup generator. The City's Architect has identified this item to have met all 3 justifications within the purchasing policy to warrant early procurement as well as requirements for specialized and licensed installation. During the design phase of the project, City staff learned that there is a potential delay in delivery when the generator is purchased by a contractor, but if the generator is purchased by a government entity, delivery timelines are protected. The specifications of the generator are set by the City's Architect, City staff, and their subcontractor. The City does plan on utilizing cooperative purchasing for the generator.

Councilmember Beem moved to approve the use of early procurement for the generator as part of the Greenspace Project. Councilmember Longanecker seconded the motion. Early procurement for the generator was approved, 3-0.

**13. CONSIDER ORDINANCE NO. 2131 AMENDING CHAPTER XV, ARTICLE 1, SECTION 15-115 OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS AND REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH.**

Ms. Linn addressed the Council. She stated City staff has been working with Tyler Technologies to implement the new ERP software, and the City recently went live on the Utility Billing module. An issue that surfaced was the reconnection charge for accounts that are shut off for nonpayment. Previously, City staff applied the charge to the account once the service was reconnected. However, in the first shut off process in the new system, it caused a lot of confusion with customers as the charge did not appear in the account balance on the portal. She said in addition to that, when City staff did collect the reconnection charge as well as the amount due, there was a mismatch of the charge and the payment. This caused those accounts to have a credit balance when bills were generated. She explained that after speaking with the consultants, City staff learned that the software is designed to charge the fee at the time of services are disconnected for nonpayment, which is how most other customers of the software company handle the fee.

It is immediately applied to the account and appears in the balance in the system and on the customer portal. This makes it visible to both City staff and customers who pay online.

Ms. Linn said City staff reviewed the code section regarding the reconnection charge and realized that the wording of the section was ambiguous regarding the timing of the charge being placed on the customer's account. City staff does recommend changing the code to clarify that the reconnection charge is charged to the customer account at the time that service is shut off for nonpayment. She stated a draft of the ordinance which would update Section 15-115 was provided in the packet. The ordinance changes the verbiage of the fee to match what the software calls it so there wouldn't be any confusion as to what the fee is.

Councilmember Longanecker stated there are no changes to the fee amount, just the name of the fee. Ms. Linn answered that is correct.

Mr. Justin Vermillion, Accountant, inquired if the ordinance should refer to the fee as interest. Mr. Hendricks inquired if the fee compounds or reoccurs. Mr. Vermillion stated it is a one-time charge. Mr. Hendricks stated it would then need to be updated to either fee or penalty. Ms. Linn stated City staff will amend the ordinance to penalty and not interest.

Councilmember Lebakken moved to approve Ordinance No. 2131 amending Chapter XV, Article 1, Section 15-115 of the Municipal Code of the City of Edgerton, Kansas and repealing all other ordinances or parts of ordinances in conflict therewith as amended. Councilmember Beem seconded the motion. Ordinance No. 2131 was approved, 3-0.

**14. WALK ON ITEM: CONSIDER RESOLUTION NO. 03-23-23C ESTABLISHING FEES AND RATES FOR PERMITS, LICENSES AND SERVICES WITHIN THE CITY OF EDGERTON, KANSAS**

Ms. Linn explained due to the approval of Ordinance no. 2131, the fee names need to be updated in the City's Fee Resolution.

Councilmember Longanecker moved to approve Resolution No. 03-23-23C establishing fees and rates for permits, licenses and services within the City of Edgerton, Kansas. The motion was seconded by Councilmember Beem. Resolution No. 03-23-23C was approved, 3-0.

**15. Report by the City Administrator**

- Mr. Linn had nothing to report at this time.

**16. Report by the Mayor**

- Mayor Roberts had nothing to report at this time.

**17. Future Meeting Reminders:**

- April 11<sup>th</sup>: Planning Commission – 7:00PM



- April 13<sup>th</sup>: City Council Meeting – 7:00PM
- April 27<sup>th</sup>: City Council Meeting – 7:00PM
- June 8<sup>th</sup>: City Council Meeting – 7:00PM
- June 13<sup>th</sup>: Planning Commission – 7:00PM
- June 22<sup>nd</sup>: City Council Meeting – 7:00PM

Ms. Linn apologized that the May meetings are not included on that list and City staff will add them to the next agenda.

#### **18. Adjourn**

Councilmember Beem moved to adjourn, seconded by Councilmember Longanecker. The meeting was adjourned at 7:54 PM,

Submitted by Christopher Clinton, Planning and Zoning Coordinator/Deputy City Clerk