

**City of Edgerton, Kansas
Minutes of City Council Regular Session
June 11, 2020**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on June 11, 2020. The meeting convened at 7:01 PM with Mayor Roberts presiding.

1. ROLL CALL

Ron Conus	present
Clay Longanecker	present
Josh Lewis	present
Katee Smith	present
Josh Beem	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator Beth Linn
- City Attorney Lee Hendricks
- City Clerk/Planning and Zoning Coordinator Chris Clinton
- Development Services Director Katy Crow
- Finance Director Karen Kindle
- Public Works Director Dan Merkh
- Marketing and Communications Manager Kara Banks
- Mike Mabrey Utilities Superintendent

2. WELCOME

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

4. Approve Minutes for May 28, 2020 Regular City Council Meeting.
5. Approve Agreement with BG Consulting for Engineering Design Services for the 1st Street and West Meriwood Lane Stormwater Repair Project
6. Approve Ordinance No. 2039 Amending Section 14-205 of Article 2 of Chapter XIV of the City Code to Include Parking Restrictions on East Nelson Street/Sunflower Road

Mayor Roberts removed Item 6 from the Consent Agenda.

Councilmember Longanecker motioned to approve the Consent Agenda Items 4 and 5, motion seconded by Councilmember Lewis. The Consent Agenda was approved, 5-0.

Mayor Roberts stated he removed Item 6 because the ordinance number should be 2040. He explained the no parking area would be from 6th Street to the entrance to Martin Creek Park. The no parking area has been done temporarily in the past and it isn't a safe place to park so it is best to make the no parking area permanent. Councilmember Smith motioned to approve Ordinance No. 2040 amending Section 14-205 of Article 2 of Chapter XIV of the

City Code to include parking restrictions on East Nelson street/Sunflower Road.
Councilmember Longanecker seconded the motion. Ordinance No. 2040 was approved, 5-0.

REGULAR AGENDA

7. Public Comments.

There were no public comments made at this time.

8. Declaration.

There were no declarations made at this time.

BUSINESS REQUIRING ACTION

9. CONSIDER ADDING A LOAN PROVISION TO THE CITY'S 457 RETIREMENT PLAN

Ms. Karen Kindle, Finance Director, spoke before the Council. She stated in May of 2013, the City partnered with the Kansas Public Employees Retirement System (KPERS) to offer an IRS section 457 retirement plan to City employees. The 457 plan is a way for employees to voluntarily contribute pretax dollars to the retirement savings via payroll deduction. Employees are immediately 100% vested in their account balance since it is their money that is contributed.

She explained under the IRS guidelines, the City may add a provision to the plan to allow loans. There are two types of loans available, general purpose loans and loans for the purchase of a principal residence. The general-purpose loans can be for anything, the term can be twelve (12) to sixty (60) months, and the maximum loan amount is \$50,000 or 50% of the employee's account balance, whichever is less. The Loans for the purchase of a principal residence can only be used for that purpose. Ms. Kindle stated there are documentation requirements the employee must meet to obtain the loan. The term is 12 to 240 months with the same loan amount available as the general-purpose loans. Payments must be made at least quarterly. If payments are not made, the loan could be deemed a distribution and taxed accordingly.

Ms. Kindle said administration of the loan is handled by Empower Retirement which is the company KPERS contracts for 457/401a retirement plan administration. Employees apply online directly with Empower and all loan approvals are handled by Empower. A \$100 loan fee is paid by the employee from the loan amount at the time of approval. She explained loan repayment can be done via payroll deduction or debited directly from the employee's personal bank account via ACH payments. The City can only offer one repayment method for all loans. Ms. Kindle stated if an employee leaves the City and has a loan, City Staff and the employee will work with Empower to set up the ACH payments from the employee's bank account. City Staff recommends the ACH payment method as it is the simplest and requires the least amount of City staff resources. Ms. Kindle stated the Governing Body needs to approve the addition of the provision, and an authorized representative of the plan must sign the KPERS loan policy document. The City must also notify Empower of the loan repayment method selected.

Ms. Kindle explained employees automatically have the option for a hardship withdrawal per plan documents and IRS regulations. These are not loans and the amounts are not repaid. The hardship withdrawals are treated as distributions and taxed accordingly. She said there are special circumstances employees must prove in order to obtain a hardship withdrawal. The main test is that it is an extraordinary and unforeseeable circumstance resulting from events beyond the employee's control that is not covered by insurance, liquidating assets, or stopping contributions to the plan. Ms. Kindle said some examples are funeral expenses for the employee or a dependent, medical expenses, or property loss caused by a natural disaster that is not covered by insurance. She stated the 401a plan established in February 2019 to hold the City's matching contributions is not eligible for loans. The City Attorney has reviewed and approved the KPERS Plan Loan Policy Document.

Mayor Roberts stated he agrees with the City Staff recommendation to use the ACH payment to be used for loan payment, so City Staff is not involved in the process from start to finish. Councilmember Lewis motioned to approve adding a loan provision to the City's 457 Retirement Plan with the ACH repayment to be utilized, seconded by Councilmember Smith. The loan provision was added, 5-0.

10. CONSIDER MASTER SERVICES AGREEMENT WITH GEORGE BUTLER ASSOCIATES, INC (GBA) FOR BUILDING PERMIT PLAN REVIEW AND BUILDING PERMIT INSPECTION SERVICES

Ms. Katy Crow, Development Services Director, addressed the Council. She stated the City currently has a consulting agreement with Institute for Building Technology and Safety (IBTS) for site plan review and building inspection services. This contract has been in place since August 23, 2018 and was initially entered into as a backup for the full-time building inspector to cover inspections if he was out of the office. She said in October of 2019, the City's full-time Building Inspector resigned his position. IBTS has been performing the plans review and inspection portion of the Building Inspector position in the meantime, but there are other aspects to the position that are not being adequately fulfilled, such as codes interpretations, answering code requirement questions, and document filing.

Ms. Crow stated at this time City Staff would like to establish services with GBA in order to efficiently handle building permit plan review and building inspection requests. Current City Staff do not have the expertise necessary to perform building permit plans review or building inspection services. Having an additional third-party service provider in place will provide a seamless service delivery to Edgerton residents, business owners, and commercial developers.

Ms. Crow said the draft proposed service agreement with GBA has been reviewed by the City Attorney. It is still a draft as there are some edits required pursuant to City Staff's and City Attorney's reviews. She said City Staff recommends approval of the Master Services Agreement pending any changes or recommendations from the City Attorney.

Ms. Crow stated she reached out to the City's insurance provider to ensure the coverage of GBA and the City are compatible. She explained the limited liability clause is in the agreement and GBA requires it to remain in the agreement. Many other firms have included those clauses in their agreements. The limited liability clause is to limit GBA the amount

they can be exposed to in a legal dispute. Mr. Lee Hendricks, City Attorney, stated he has seen these clauses in more and more contracts. He explained the amount GBA is being limited to is amount the City pays them for the services. Mr. Hendricks said a contract the Council recently approved had a limited liability clause, but the City and the other party agreed to a set amount instead of a sliding scale. This clause does help keep the contracted services provider's insurance cheaper.

Mr. Hendricks requested the Council consider a change in the policy with how these clauses should be addressed. Typically, the City has the clause completely removed from the contract. He is requesting the Council allow himself, City Staff, and the Mayor to negotiate these clauses going forward. Mayor Roberts said the City has taken a hard stance to remove these clauses but it could be beneficial for the City to weigh the pros and cons of each agreement to see if it needs to be taken out of each contract. Councilmember Longanecker said he understands the flexibility needed by others to negotiate contracts. Councilmember Conus asked the status of those negotiations with GBA. Mayor Roberts answered this particular contract is low risk for the City as GBA would be considered a representative of the City. Mr. Hendricks agreed and said the clause in this contract does not bother him, but the City should continue to negotiate whenever possible. He recommends the City counters with a set dollar amount, similar to the contract approved on the Consent Agenda.

Councilmember Lewis asked if GBA would be secondary to the contracted services with IBTS. Ms. Linn answered GBA would become the primary inspector as City Staff needs a more reliable service. Mayor Roberts said he has received many calls regarding the services rendered. Ms. Linn explained the Building Inspector position has not been filled due to the ongoing pandemic. City Staff is looking towards the future and attempting to forecast what construction activity might look like. She said as of now it is increasing. Ms. Linn said the service with GBA would be like that of BG Consultants as there would be many people assigned to Edgerton.

Mayor Roberts said negotiating the terms of the limited liability clause should be done before it is brought to the Council. Councilmember Conus stated he wants to limit the clauses as much as possible because there is always risk in everything. Mayor Roberts agreed and said it will depend on each project. Mr. Hendricks explained the clause has been removed 30-40% of the time, but the City always asks it to be removed. The City should request it be removed and see what the other party says then the City can negotiate amounts. Mayor Roberts said the practice of always requiring it be removed could cost the City good contracts in the future.

Councilmember Lewis said he has no problem with City Staff, Mr. Hendricks, and Mayor Roberts negotiating the terms of the liability clauses as it would allow the process to move more efficiently. Councilmember Longanecker motioned to empower City Staff, in concert with the Mayor and City Attorney, the ability to negotiate liability clauses in contracts based on the assessment of risk, to then bring forth a final draft to the City Council. Councilmember Conus seconded the motion. City Staff, the City Attorney, and the Mayor were empowered to negotiate liability clauses in contracts before the contract is presented to the Council, 5-0.

Mr. Hendricks stated the City will continue to negotiate the terms of the clause with GBA. Ms. Linn asked the Council if they would allow the mayor to sign the agreement with a set amount not to exceed \$500,000 limitation liability. Councilmember Smith motioned to approve the Master Services Agreement with GBA for building permit plan review and building permit inspection services pending any changes from the City Attorney and authorize the Mayor to sign the Agreement. The motioned was seconded by Councilmember Longanecker. The Master Services Agreement was approved pending any changes made by the City Attorney, and the Mayor was authorized to sign the Agreement, 5-0.

Councilmember Longanecker inquired as to why the Building Inspector position has not been filled. Ms. Linn answered there are concerns as the pace of development is unknown at this time. The City does not want to hire for a position that might not have work to be done. She said she would like to see the level of development activity to continually increase before hiring a new staff member. Ms. Crow explained a contracted service would still be needed as backup to a full time Building Inspector. Councilmember Longanecker asked about the cost of the contracted service. Ms. Crow answered while GBA might cost more, City Staff believes GBA has the staff to devote to Edgerton. Councilmember Longanecker asked if IBTS did not have the staff. Ms. Crow replied they do not, and the City has been letting the developers and residents down. Mayor Roberts explained a Building Inspector is to protect the residents and everybody in a building they inspect. If City Staff does not feel the services are meeting those standards, it is best for the City to contract with a company who can meet those standards.

11. Report By The City Administrator

Ms. Linn stated she does not have anything to report at this time.

12. Report by the Mayor

- Report on Impact of COVID-19 to City Operations

Mayor Roberts said meetings and calls have backed off regarding the pandemic and other issues have taken precedence. Mayor Roberts requested City Staff to keep everybody up to date on all of the guidelines that the insurance company says the City needs to follow. Ms. Linn said City Staff is back at work in Edgerton and some items are in place to promote social distancing. The City is taking some hall rentals with a waiver and shelter rentals are increasing.

Ms. Linn stated the City is preparing for the 3rd of July Community Picnic and Fireworks Show. Ms. Linn stated the Council will have a new role this year. Two Guys and A Grill will be cooking and serving the food this year. Inflatable games are being brought in and the Council will be attending to those. She said there are some other adjustments that have been made to bring the community together yet be understanding of what is going on with COVID-19. Mayor Roberts said not serving food will help the Council interact with the public more. Mayor Roberts said food will be served and the games will be opened up around 6:00 PM at the 3rd of July Community Picnic. He said this is a great small-town event and City Staff has improved it over the years. Ms. Linn explained little to no contact activities is what the staff is looking for. She anticipates a lot of people showing up due to it being a Friday and an observed holiday for

many. She stated many cities have canceled or reduced their event while Edgerton's is mostly the same as previous years. Ms. Linn said there will be plenty of things to do so people can do whatever they are comfortable with. Mayor Roberts said the community is ready to get out and about.

Mayor Roberts said there were no furloughs of City Staff, but also no new hires either. Sales taxes were up 18% for the last month that was provided to the City. Ms. Linn said property tax information will be provided next at the next Council meeting. Mayor Roberts said he has heard it has been the same.

13. Future Meeting Reminders:

- June 25th: City Council Meeting – 7:00 PM
- July 9th: City Council Meeting – 7:00 PM
- July 14th: Planning Commission Meeting – 7:00 PM
- July 23rd: City Council Meeting – 7:00 PM
- August 11th: Planning Commission Meeting – 7:00 PM
- August 13th: City Council Meeting – 7:00 PM
- August 27th: City Council Meeting – 7:00 PM

Mayor Roberts explained the seniors are going to have a drive by lunch this month.

Ms. Linn stated on Saturday June 20, 2020, there will be a parade starting at 11:00 AM to congratulate the graduating seniors from Gardner-Edgerton High School. Signs will be posted along Nelson Street and she would like to see people line the streets. Councilmember Smith asked if people could toss candy at the graduates like a reverse parade. Mayor Roberts replied there are safety concerns with that but something could be done in a safe manner. Councilmember Smith said she can make some small grab bags to hand out to the graduates as they go by.

Councilmember Longanecker motioned to recess into executive session pursuant to K.S.A 75-4319(B)(2) for consultation with an attorney deemed privileged in the attorney-client relationship to include the City Attorney, Public Works Director, and the City Administrator for the purposes of ongoing litigation for fifteen (15) minutes. Councilmember Beem seconded the motion. The meeting recessed into executive session at 7:56 PM, 5-0.

Councilmember Smith motioned to return to open session. Councilmember Longanecker seconded the motion. Open session resumed at 8:11 PM, 5-0.

Councilmember Longanecker motioned to recess into executive session pursuant to K.S.A 75-4319(B)(2) for consultation with an attorney deemed privileged in the attorney-client relationship to include the City Attorney, Public Works Director, and the City Administrator for the purposes of ongoing litigation for ten (10) minutes. Councilmember Beem seconded the motion. The meeting recessed into executive session at 8:11 PM, 5-0.

Councilmember Smith motioned to return to open session. Councilmember Longanecker seconded the motion. Open session resumed at 8:21 PM, 5-0.

Councilmember Longanecker motioned submit payment to the Owens at 410 West Braun Street in the amount of \$435,000 and \$500 to THS Investments LLC at the Sunflower Ridge Development in conjunction with the condemnation proceedings. Seconded by Councilmember Beem. The motion carried, 5-0.

Councilmember Longanecker motioned to empower the Mayor to sign and release payment for the settlement agreement in conjunction with the condemnation proceedings to Phillips Pipeline not to exceed \$3,500. Councilmember Smith seconded the motion. The motion carried, 5-0.

Motion to in conjunction with condemnation proceedings. Owens 410 Braun 435k THS investments 500 at sunflower ridge development.

14. **Adjourn**

Councilmember Smith motioned to adjourn the meeting, seconded by Councilmember Longanecker. The motion carried and the meeting adjourned at 8:22 PM, 4-0.

EVENTS

June 23rd: Municipal Court

June 27th: Low-Cost Animal Vaccination Clinic – 8:30 AM to 1:30 PM RESERVATIONS

ARE REQUIRED – Visit petvaccinationclinic.eventbrite.com to make a reservation

July 3rd: Community Picnic and Fireworks Show (Park Opens at 5:00 PM, Fireworks around 9:45 PM)