

City of Edgerton, Kansas
Minutes of City Council Regular Session
July 14, 2022

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on July 14, 2022. The meeting convened at 7:01 PM with Mayor Roberts presiding.

1. ROLL CALL

Clay Longanecker	present via phone
Josh Lewis	absent
Josh Beem	present
Josie Stambaugh	present
Deb Lebakken	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator, Beth Linn
- City Attorney, Lee Hendricks
- City Clerk, Alex Clower
- Public Works Director, Dan Merkh
- Public Works Superintendent, Trey Whitaker
- Finance Director, Karen Kindle
- Marketing & Communications Manager, Kara Banks

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 June 9, 2022 Regular City Council Meeting
5. Approve Cost of Living Adjustments (COLA) for Employees
6. Accept Easements for 8th & Braun Intersection Improvements

Councilmember Lebakken made motion to approve the consent agenda, seconded by Councilmember Stambaugh. The items were approved, 3-0.

Councilmember Longanecker joined via phone conference at 7:05PM.

Regular Agenda

7. Declaration.

Councilmember Stambaugh stated she had would like to approach the podium to address the Governing Body. She provided the Governing Body and staff at the dais with a KORA request for activity on Facebook regarding a profile called "Fauxsie Stambaugh".

She stated as everyone is aware, she is a business owner and has a family, which are two of the most important things in her life. She stated she takes her role as a councilmember very seriously. She stated it has been brought to her attention that a Facebook page exists which she claimed to be slanderous and two of her fellow councilmembers have engaged with the page. She stated this page is using her business name, suggests she is breaking the law and includes a post(s) which is/are seemingly upset that she has a new car and goes on vacations.

She directed comments to Councilmember Lebakken and stated that although she was appointed and not elected, Ms. Lebakken is expected to act in a manner that is respectful.

She addressed Councilmember Beem and stated the same for him, but added she owns a new car because she has good credit and knows how to manage her money.

She stated she does support the people of Protect Rural Joco, which has not been kept a secret, they did donate to her campaign, but they do not fund her life.

She stated there have been multiple posts every week which she claimed degraded and harmed her character and those involved should be ashamed. She stated public officials could win a defamation lawsuit when there is intent to harm a public figure. She claimed since this page was created, other members of the governing body have engaged with this page, doing so with neglect and malice as elected officials. She stated she has worked hard and will not let others tarnish her reputation. She stated she expects a public apology, the site to be taken down, and a resignation from those involved.

Councilmember Lebakken stated she does not know who the page belongs to and that it is not her page.

Councilmember Stambaugh stated you have to be invited or added as a friend.

Mayor Roberts stated this is why the City Attorney has cautioned people many times about Facebook and social media in general as an elected official. He stated likes and comments on a page or post does not mean ownership.

City Attorney Lee Hendricks stated he understands there may be frustration about who created this page and who is posting on it. He stated he is against council being involved in Facebook. He stated he does not see exchanges on a private Facebook page as a city matter and does not think it benefits the governing body in any way to treat this as a City matter.

Councilmember Stambaugh stated this would not be a City matter if she were not on Council or if other Councilmembers were not involved.

Mr. Hendricks stated in the time he has represented the city, he has seen numerous posts involving members of staff, himself and Council that have been negative. He stated not one of them have come to the podium because it is not a city matter. He stated how people want to deal with private posts is their choice. He stated his recommendation to the council is to not dive into this any further as it is not a city matter.

Councilmember Stambaugh stated she wanted to shed light on people who have been appointed and elected to this council. She stated if she has to, she will go on her own.

8. Public Comments.

Mayor Roberts stated before he begins public comments, he would like to let everyone know that the Governing Body must have an Executive Session at 7:30PM due to scheduling with the City's Bond Counsel, Scott Anderson.

Mayor Roberts then requested public comments.

Jennifer Williams, 21993 Moonlight Rd., addressed the Council and handed out a packet. She stated the packet includes a copy of a transcript regarding what she described as narrow corridor annexation. She stated that also included is a letter Mayor Roberts wrote to the Board of County Commissioners and the section of the City's Unified Development Code regarding annexation. She claimed that the City violated their own code and state statutes. She stated during a hearing the judge said he could see the illegality, but that the attorney general should review it. She stated the timeline of events in this annexation are very misleading and show the intent to access. She stated the city was hanging on the fact that once it went to court, it would be dismissed for not having standing. She claimed the City's attorney volunteered to write the journal entry for the case, so that he would not have to include the judge's statement about illegality. She stated this is unfair to those that have made a life in this area and that it would be different if all the land already annexed was being used. She stated they are begging for the city to de-annex this land. She stated this is not ethical and asked Council to motion to de-annex the area.

Councilmember Stambaugh asked if they're saying the land was illegally annexed.

Ms. Williams claimed it was illegally annexed using a narrow corridor with intent to access. She stated the day the land was purchased by Treadstone Acquisitions, it was annexed at a Council meeting. She stated it was not on the agenda and added during the meeting. She stated the governing body then called a special meeting 7 days later for another annexation, which was a possibility due to this first purchase and annexation. She stated the day access was received, the next day the city filed for rezoning.

Councilmember Stambaugh asked if the next step would then be the attorney general.

Ms. Williams answered yes the statute could be rewritten to circumvent what she claimed to be an island annexation, so it is not unconstitutional.

Mayor Roberts stated Council will receive an update tonight from the City Attorney on the court case that was recently dismissed.

Business Requiring Action

9. CONSIDER ORDINANCE NO. 2111 AMENDING CHAPTER XI, ARTICLE 7, SECTION 11-706 OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS

**REGARDING THE ENFORCEMENT OF THE PROHIBITION OF MOTORIZED
WHEELED DEVICES AND REPEALING ALL OTHER ORDINANCES OR PARTS OF
ORDINANCES IN CONFLICT THEREWITH**

Ms. Beth Linn, City Administrator, addressed the Council. She stated in 2021 the Governing Body approved an ordinance that allows for some unconventional vehicles within city limits and on city streets by obtaining city tags. She stated this summer there has been an increase in the usage of other wheeled devices that are not permitted by this ordinance, leading to a number of citizen complaints. She stated the code as it reads today prohibits the operation of motorized wheeled device on any city street, highway, or sidewalk. This means any wheeled device like electric minibikes, go carts, etc. but does not include unconventional vehicles when properly permitted and operated.

She stated the enforcement section of this code is outdated related to minors and only allows the Sheriff's Office to escort a child home and notify parents of violation. She stated staff would recommend updating this section of the code to deem the violation as a traffic infraction for either a minor or adult. This would allow the Sheriff's Office to write a citation for municipal court, the draft ordinance also includes escalating fine amounts for repeat offenders.

Councilmember Stambaugh stated there is nothing for children to do in this town. She stated she would be livid if her 8-year-old daughter were riding her electric battery powered scooter and an officer cited her for it. She stated kids should be able to have fun on a city street or sidewalk.

Ms. Linn stated this is currently illegal per code today, what staff is asking for is instead of escorting a child home, they will be able to cite for a violation. She stated having an 8-year-old on a electric dirt bike on those streets with truckers is not safe.

Mayor Roberts stated this amendment to the code comes from numerous complaints of children riding with no care for what is around them.

Councilmember Stambaugh stated the increased truck traffic and truck routes throughout town have more to do with the unsafe conditions than children riding their toys.

Councilmember Lebakken asked for a definition of motorized.

Ms. Linn stated anything with a battery or motor.

With no further questions or comments, Mayor Roberts then requested a motion to approve Ordinance No. 2111, amending the city code regarding the enforcement of the prohibition of motorized wheeled devices.

Councilmember Beem moved to approve the ordinance, seconded by Councilmember Longanecker. Ordinance No. 2111 was approved, 3-1 with Councilmember Stambaugh voting against.

10. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) UNDER THE ATTORNEY/CLIENT EXCEPTION TO INCLUDE THE CITY ATTORNEY, CITY ADMINISTRATOR AND BOND COUNSEL TO DISCUSS CONTRACT NEGOTIATIONS.

Mayor Roberts requested motion to recess into executive session pursuant to KSA 75-4319(B)(2) under the attorney-client exception to include the City Attorney, City Administrator and City Bond Counsel to discuss contract negotiations with no action taken for 20 minutes.

Councilmember Lebakken moved to approve the motion, seconded by Councilmember Beem. The motion was approved, 4-0.

The meeting recessed into executive session at 7:29PM.

Mayor Roberts requested motion to return to open session.

Councilmember Lebakken made motion to return to open session with no action taken, seconded by Councilmember Stambaugh. The motion was approved, 4-0. Open session resumed at 7:49PM.

11. CONSIDER THE PURCHASE OF TWO (2) STANDARD LARGE METRO MATRIX MESSAGE BOARDS FROM C-HAWKK CONSTRUCTION INC.

Mr. Dan Merkh, Public Works Director, addressed the Council. He stated in July 2021 at the 2022 Budget Work Session, staff made the recommendation to move several pieces of equipment from the unfunded list to the funded program for 2021-2022. He stated this included the purchase of two changeable message boards. He stated the department currently rents the boards for local events, large scale road closures and to handle some annual traffic control needs. He stated the use of these boards has increased significantly in the past few years. He added staff has found it can be difficult to secure the rental boards on short notice and rental costs continue to trend upward.

He stated the Vehicle and Equipment Policy requires the preparation of specifications for the replacement of equipment with an effort for those to be as standard as possible to provide for economical and efficient repairs. He stated this policy also requires that the city first use cooperative purchasing partnerships, but currently there are no partnerships for this class of equipment. He stated staff solicited for four bids from local vendors as well as online retailers, out of this process C-Hawkk Construction Inc. is the lowest and most qualified bidder.

He stated purchasing equipment in our current economic climate has changed the bidding and quoting process. He stated currently the lowest bidder has provided the structured quote from the message boards supplier, Wanco, who will only honor the quote for a period of 10 days. He stated staff has obtained quotes over the last several months and the costs have significantly increased, from February to June the cost increased approximately 3.25%. He stated based on the current pricing outlined, the additional increase is still under the allocated budget for this

purchase. He stated staff is requesting approval to purchase two message boards, not to exceed the budget amount of \$34,000.

Councilmember Lebakken asked what the current rental cost of a sign is.

Mr. Merkh stated it depends on how many hours or days and size needed. He stated it could be anywhere from \$2,000-\$3,000 for an average two- or three-day rental.

Councilmember Lebakken asked what the average life span is.

Mr. Merkh stated he did not know, but it is a long time unless an accident were to occur. He stated this product is Wi-Fi enabled which means you can edit the board from anywhere. He stated mechanically the life span should be more than the 10-year typical.

Mayor Roberts stated there has been an increase in need, adding staff does not always rent because the money is not always available. He stated if the city had their own, it would be used more often than what is seen today.

With no further questions or comments, Mayor Roberts then requested motion to approve the purchase of two standard message boards in the amount not to exceed \$34,000.

Councilmember Longanecker moved to approve the motion, seconded by Councilmember Beem. The item was approved, 4-0.

12. Report by the City Administrator

Ms. Kara Banks, Marketing & Communications Manager, addressed the Council. She stated since the last report in January the city has received 100 new followers on Facebook and the top posts have been related to public safety town hall, Cyclones In The Outfield, the July 3rd celebration and the pop-up splash pad. She stated the top viewed pages on the City's website include the Community Picnic & Fireworks event, City Council Agenda and Packets and the Events page. She stated almost half of the users for the website are now accessing via mobile device, which is up 23% since January.

Ms. Linn provided to council a resolution to appoint Christopher Clinton as the Deputy City Clerk. She stated this will allow for Chris to execute documents and record meetings, etc. in the absence of the City Clerk as she expects her new addition to her family. She stated this will also allow redundancy to act in that capacity in the future without having to bring action forward each time.

Mayor Roberts stated he likes the idea of having a Deputy City Clerk because it builds redundancy that has been lacking.

With no questions or comments, Mayor Roberts then requested motion to approve the appointment of Christopher Clinton to Deputy City Clerk for the City of Edgerton, Kansas.

Councilmember Lebakken moved to approve the motion, seconded by Councilmember Longanecker. The item was approved, 4-0.

13. Report by the Mayor

Mayor Roberts invited the City Attorney to give an update related to the court case mentioned previously.

Mr. Lee Hendricks, City Attorney, addressed the Council. He stated he is pleased there is a large crowd so that the city can make clear what he believes have been misleading and dishonest comments made regarding pending litigation matters. He stated he wants to remind everyone that he does not represent the Mayor or councilmembers as individuals, rather he represents the City of Edgerton as a whole.

He stated that when there is pending litigation involving the city it is the City's approach not to comment on such cases. He stated that in this instance however, even though the parties are awaiting the judge's final journal entry on his dismissal ruling, given the comments made, he thinks it would be best in this instance to discuss the truth of what is going on.

He stated there are currently two lawsuits filed by the Plaintiff Protect Rural Joco pending against the City. He stated one is related to what has been mentioned this evening and the other is related to zoning actions which are still pending and will not be discussed.

He stated the matter that has been brought forward this evening is related to protocol the city took regarding annexations. The parties are currently waiting for a journal entry to be entered in that case.

He stated a petition was filed in that case and the normal routine is that when a petition is filed, an answer is then submitted by the defendant. He stated in this case, the city did not file an answer but instead immediately filed a motion to dismiss claiming the plaintiffs' had a lack of standing to bring the case. He stated that as a rule judges do not like dismissing cases, especially early in the case. He stated when a case is dismissed early on it is likely because the judge was presented with overwhelming evidence to do so. He stated a video conference was held on the motion to dismiss and it was a very short conference.

He stated the protocol following a ruling by a judge in smaller cases is to ask or have the successful party draft a journal entry for the judge to then sign off on. He stated that once that draft is created the journal entry is shared between with all parties to the lawsuit to make sure they agree on the language of the draft before presenting to judge for final approval. He stated there was a claim earlier that Todd Luckman, a partner in his law firm, volunteered to prepare the journal entry in this case but claimed he did so in an untoward manner. He stated he can assure the City and the public that what occurred in this instance was normal protocol. A draft journal entry was submitted to the opposing party for review prior to submission to the judge. He stated that opposing counsel in the lawsuit has continued to want to add additional

information to that journal entry and he and his partner at the firm do not believe that adding such additional comment, when a judge has already stated there is no standing and he does not have any jurisdiction to rule, is not proper in this instance. He stated when parties disagree on the language of a journal entry, they both draft journal entries which are sent to the judge and the judge then chooses which order to agree upon. He stated this process is still pending. He stated that the bottom line at this time is that the judge ruled that the Plaintiffs Protect Rural JOCO do not have standing to bring the case and dismissed it for that reason. The parties are just awaiting his decision on the language of the final ruling.

He stated following the hearing where the case was ruled dismissed, there was a discussion in front of the Johnson County Commission and comments were made which were incorrect related to how the judge ruled. He stated it was mentioned the Mayor's letter to the Commissioners is misleading, but that he and the city stand by everything that letter stated. He stated it was repeated many times by Ms. Williams that the City illegally annexed, and the judge did not rule that in any way.

Ms. Williams stated because the judge cannot rule on this.

Mr. Hendricks stated correct, because he cannot and has no jurisdiction, which is why the case was dismissed. He stated any comment made by the public believing that the judge ruled the annexations were illegal is untrue, he did not state that. He stated the decision was that case is dismissed.

Ms. Williams stated the judge also said the case needs to be reviewed.

Mr. Hendricks stated the judge said they can have this case reviewed if they believe it to be illegal but not that they should do so.

He stated as he completely understands that there have been times and will continue to be times that there are disagreements between the City and others. He stated he is open to and wants to be a party that can bridge gaps, but he is frustrated and believes it is a bad look to misread and continually mistate what have been clear comments and a clear ruling by the court.

He asked for any questions from the Council.

Councilmember Stambaugh asked what the next step would be if Protect Rural Joco decided to go to the Attorney General and pursue different action.

Mr. Hendricks stated the City would then respond to whatever that party brought forward.

Councilmember Stambaugh stated when you do send response, you then wait on an answer. She stated the journal entry the City submitted was very basic, but she is sure there were points that Protect Rural JoCo wanted to make. She stated comments online have been very rude.

Mr. Hendricks stated he understands there will be instances where people mistake what has happened. He stated he does not want incorrect information spread and it is important that the City take the time to correctly state the facts.

Councilmember Stambaugh stated when we're talking about someone's livelihood, we don't mock and laugh.

Mr. Hendricks stated he doesn't recall doing that and apologizes if that's what was interpreted.

Councilmember Stambaugh stated when we are making statements that are important, mocking and laughing while listening to others speak. She stated we should all be giving each other the same respect.

Mr. Hendricks stated he saw no instance of him mocking or laughing at others. In this instance the ruling was simple and straightforward and there was no need for additional language in the journal entry.

Councilmember Stambaugh stated due process would have been to get an answer, which they did not have the chance to do so because the city pushed to dismiss the case.

Mr. Hendricks answered if there was standing and the court ruled there was none.

Mayor Roberts stated legal action is black and white, it is facts. The reality is judges do not like to dismiss anything because a judge wants to hear both sides. He stated in this case, the ruling was that there was no standing. He stated he wanted to make sure everyone was aware of the process and of the correct court ruling.

Mr. Hendricks reiterated that the judge cannot issue a ruling on this case beyond the dismissal for lack of standing.

14. Future Meeting Reminders:

- July 28th: City Council Meeting – 7:00PM
- August 9th: Planning Commission Meeting – 7:00PM
- August 11th: City Council Meeting – 7:00PM
- August 25th: City Council Meeting – 7:00PM
- September 8th: City Council Meeting – 7:00PM
- September 13th: Planning Commission Meeting – 7:00PM

15. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) UNDER THE ATTORNEY/CLIENT EXCEPTION TO INCLUDE THE CITY ATTORNEY AND CITY ADMINISTRATOR TO DISCUSS PENDING LITIGATION.

Mayor Roberts requested motion to recess into executive session pursuant to KSA 75-4319(B)(2) under the attorney-client exception to include the City Attorney and City Administrator to discuss pending litigation with no action taken for 5 minutes.

Councilmember Stambaugh moved to approve the motion, seconded by Councilmember Lebakken. The motion was approved, 4-0.

The meeting recessed into executive session at 8:17PM.

Mayor Roberts requested motion to return to open session.

Councilmember Stambaugh made motion to return to open session with no action taken, seconded by Councilmember Lebakken. The motion was approved, 4-0.
Open session resumed at 8:22PM.

16. Adjourn

Councilmember Beem moved to adjourn, seconded by Councilmember Lebakken. All in favor. The meeting was adjourned at 8:23PM.

Submitted by Alexandria Clower, City Clerk