

**MINUTES OF THE COUNCIL MEETING  
OF THE CITY OF PAOLA, KANSAS  
5:30 O’CLOCK P.M.**

**December 9, 2008**

**HELD AT THE PAOLA PUBLIC WORKS BUILDING  
29370 Old KC Road in Paola**

The Governing Body of the City of Paola, Kansas, met with Mayor Stuteville presiding.

Councilmembers present: Mayor Stuteville, Council Members Pritchard, Dial, Rowlett, and Bell.

Council Members absent: None

Also present: City Manager Wieland, Clerk Droste, City Attorney Tetwiler, Fire Chief Martin, Public Works Director Bieker, Human Resources Director Belt, Rick Shipman, and Richard Lentz.

**Agenda Item 1 - CALL TO ORDER:** The regular council meeting was called to order by Mayor Stuteville.

**Agenda Item 2 - ROLL CALL:** Mayor Stuteville and Council Members Pritchard, Dial, Rowlett, and Bell were all present.

**Agenda Item 3 - PETITIONS, REMONSTRANCES, AND COMMUNICATIONS**

Mayor Stuteville asked the audience if anyone desired to address the Council about any issue that is not an agenda item.

No one addressed the Council.

Clerk Droste presented an amended agenda which included the addition of the following: Agenda Item 5f – Consider an Ordinance changing the name of Cedar Court in Hidden Meadows Estates to Hidden Meadows Court.

**Agenda Item 4 - CONSENT AGENDA**

- a. Approval of minutes of the meetings of November 25, 2008.
- b. Approval of Salary Ordinance number 08-24 and 08-25.
- c. Approval of Appropriation Ordinance No. 642.
- d. Approval of the Journal Entries Report for November, 2008.
- e. Approval of CMB License renewals for:
  - 1) Price Chopper at 309 N Hospital Drive
  - 2) Casey’s General Store #1 at 119 N Hospital Drive
  - 3) Casey’s General Store #2 at 404 S Silver Street

- 4) Darrel's Last Resort at 807 S Silver Street
  - 5) BBQ Shack at 1613 E Peoria Street
  - 6) Emery's Steak House at 16 W Peoria Street
  - 7) Pizza Hut at 816 N Pearl Street
  - 8) Walmart at 310 Hedge Lane
  - 9) Zarco 66 at 1005 N Pearl Street
- f. Approval of Pool Table License renewals for:
    - 1) Rounder's at 2 W Piankishaw Street
    - 2) Darrel's Last Resort at 807 S Silver Street
    - 3) Veterans of Foreign Wars at 202 Delaware Street
  - g. Approval of the renewal of the Drinking Establishment License for Cactus Jacks at 602 N Pearl Street.
  - h. Approval of a leak allowance in the amount of \$198.77 for Don Brickman at 1000 N Pearl.

Clerk Droste reported that the leak allowance for the property at 1000 N Pearl was being requested due to a problem with a water softener. He indicated that the property was not occupied at the time of the problem and that problem has been corrected and the appropriate documentation had been submitted by the property owner.

Councilmember Rowlett made a motion to approve the Consent Agenda as presented, and authorize the Mayor to sign. Councilmember Dial seconded the motion and all voted aye. The motion passed 4 to 0.

## **Agenda Item 5 - REPORTS OF OFFICERS, BOARDS AND COMMITTEES**

### **Agenda Item 5a – Consider the conditional approval of the renewal of the Retail Liquor License for Shipman Liquor at 115 W Wea Street.**

Manager Wieland reported that during the fire safety inspection for Shipman Retail Liquor, several major fire safety issues were noted that have yet to be resolved.

Fire Chief Martin reported that the property was first inspected on November 24<sup>th</sup> by Captain John Hinman. A follow up inspection performed by Chief Martin and Building Inspector Brian Love found the following unresolved issues:

- 1) Holes in ceilings, walls and other avenues for fire spread shall be tightly patched or covered with 5/8" Fire Rated Gypsum throughout.
- 2) All debris is to be removed from the 2<sup>nd</sup> floor stairwell.
- 3) Roof Leaks are to be repaired. Documentation of these leaks goes back to 2004. Water infiltration is causing failure of the roof and floor structures.
- 4) Remove existing floor loads. Inoperable cooler used for storage in the rear storeroom is in danger of falling over due to the sag in the floor. Remove barrels of water and other materials stored on the second floor.
- 5) Repair floor in rear storeroom. Floor is pitching severely and appears in danger of collapse.
- 6) Remove the open electrical box and any open wiring on the second floor.
- 7) Remove Storage from under stairs. Compressed gas cylinders are to be removed and chained. Boxes and debris are to be removed. Remove inoperable cooler from under the stairs or seal underside of stairs with a double layer of 5/8" Fire Rated Gypsum.

Chief Martin indicated that many of these deficiencies are the same issues that have been addressed in previous inspections. The owner has resolved similar issues in the past in a manner sufficient to pass inspection and get the license issued. However, the root of the problem appears to be the leaking roof which is causing damage to the structure.

Mayor Stuteville indicated that Mr. Shipman visited with her this morning about the situation and he presented her with a copy of a 2006 letter from a structural engineer indicating that the structure was sound. Mayor Stuteville asked Mr. Shipman if the engineer has looked at the building since the date of the letter. Mr. Shipman indicated that he had not.

Mr. Shipman indicated that he has replaced about two-thirds of the roof and that most of the leaks are fixed.

Councilmember Rowlett indicated that this would be the third year in a row that the Council has considered a license renewal subject to fire safety issues. He expressed concerns about continuing to approve the license with these issues coming up time after time.

Clerk Droste reported that in December of 2006 a similar situation existed whereby Mr. Shipman did not resolve the safety and building issues prior to the expiration of his liquor license. The business was closed for a number of weeks while the issues were being resolved. The liquor license was issued after Mr. Shipman obtained a building permit to resolve the remaining issues and the liquor license was issued in anticipation that the repairs would be done. The work was never completed.

Councilmember Bell indicated that he walked through the building a few days ago and he indicated that he observed only a tremendous cosmetic problem. He indicated that he was not an engineer and could not contradict the letter from the structural engineer who states that the building is structurally sound. He discussed the issues outlined in his notice and asked Chief Martin if these repairs are going to force Mr. Shipman out of business or if they are really cosmetic.

Chief Martin stated that the real issue is the floor in the storeroom. He asked at what point to you say this needs to be dealt with. It can be ignored but what happens if the building collapses and someone is injured? He stated that the City has been working with Mr. Shipman for the last three years to get things fixed and it is still unresolved.

Councilmember Rowlett indicated that everyone is expected to comply with fire safety issues. Each of the seven deficiencies was discussed and the Council agreed that all of the issues could be resolved easily with the possible exception of the floor in the back storeroom. Councilmember Bell indicated that the floor could be big deal depending on how it needs to be fixed.

Clerk Droste stated that the recommendation is to approve the retail liquor license subject to the completion of the seven items identified in the Fire Chief's notice to Mr. Shipman. The current license expires on January 1<sup>st</sup> and the items would need to be resolved prior to the issuance of the renewal license.

City Attorney reminded the Council that there may be building code issues that are independent of the fire safety issues, but those relate to a "dangerous structure action" which has not been brought to the Council.

Mr. Shipman stated that the pictures that were presented to the Council were from 2006. Clerk Droste attested that the pictures were taken by Building Inspector Brian Love when he inspected the property with Fire Chief Martin on November 24, 2008.

After a discussion, Councilmember Dial made a motion to approve the renewal of the Retail Liquor License for Shipman Liquor at 115 W Wea Street subject to the satisfactory completion of the required fire safety inspection and resolution of the seven deficiencies outlined in the fire safety inspection notice. Councilmember Bell seconded the motion.

The motion was discussed. Councilmember Bell suggested that additional time should be given to resolve the issue with the floor and indicated that 90 days was a fair compromise. Mr. Shipman asked if it would be sufficient if he were to get an updated engineers report stating that the floor was structurally sound. Councilmember Bell indicated that the floor really does need to be fixed to satisfy the concerns of the fire department. After further discussion, the motion was called for a vote. Councilmember Bell voted nay and Councilmembers Rowlett, Dial and Pritchard voted aye. The motion passed 3 to 1.

**Agenda Item 5b - Consider approval of an invoice to be paid from the Goss Donation Fund.**

Manager Wieland presented a request for approval of an invoice from the Goss Donation Fund for the purchase of 2 airline respirators for confined space rescue for the SCBA equipment. Fire Chief Martin indicated that the only remaining invoice for equipment to be paid from the Goss Fund was for air hose that is on back order that should cost approximately \$500 to \$600.

Councilmember Dial made a motion to approve an invoice from Municipal Emergency Services, Inc. for the purchase of 2 airline respirators for confined space rescue for the SCBA equipment for the Paola Fire Department in the amount of \$1,998.00 to be paid from the Goss Donation Fund. Councilmember Bell seconded the motion and all voted aye. The motion passed 4 to 0.

**Agenda Item 5c – Consider approval of pay estimate #12 for the Paola Justice Center.**

Manager Wieland presented a pay estimate from Altmar, Inc. for the Paola Justice Center in the amount of \$201,968.69. He reported that the scheduled “move in date” for the new facility was set for January 5<sup>th</sup>.

After discussing the request, Councilmember Pritchard made a motion to approve pay estimate #12 in the amount of \$201,968.68 to Altmar, Inc. for the Paola Justice Center. Councilmember Dial seconded the motion and all voted aye. The motion passed 4 to 0.

**Agenda Item 5d – Consider a Resolution amending and adopting the Personnel Manual, Position Classification Pay Plan and Human Resources Administrative Policies.**

Manager Wieland reported that the proposed amendments to the Personnel Manual, Position Classification Plan, and Human Resources Policies were discussed at the Council Work Study meeting on December 2<sup>nd</sup>. Human Resources Director Belt indicated that all of the changes that were recommended by the Council have been incorporated as suggested.

Councilmember Dial made a motion to approve A Resolution amending and adopting the Personnel Manual, Position Classification Pay Plan, and Human Resources Administrative Policies, effective January 1, 2009. Councilmember Bell seconded the motion and all voted aye. The motion passed 4 to 0. Clerk Droste assigned No 2008-008 to the Resolution.

**Agenda Item 5e – Report on elected offices that are to be placed on the April 2008 ballot.**

Clerk Droste reported that the offices of Mayor, Councilmember Ward 1, and Councilmember Ward 3 will be placed on the ballot for the April 7, 2009 general election. The Candidates Declaration of Intention for running for office is due at 12:00 Noon on Tuesday, January 27, 2009. A primary, if necessary, would be held on March 3, 2009.

Clerk Droste also reminded the Council that all elected officials are required to annually file a Statement of Substantial Interests.

Councilmember Rowlett reported that the Statutes regulating primary elections have changed and primary elections are now only held if more than three candidates file for the same office.

**Agenda Item 5f – Consider an Ordinance changing the name of Cedar Court in Hidden Meadows Estates to Hidden Meadows Court.**

Clerk Droste presented an ordinance changing the name of Cedar Court in Hidden Meadows Estate to Hidden Meadows Court. After discussing the issue, Councilmember Dial made a motion to approve AN ORDINANCE CHANGING THE NAME OF A CERTAIN STREET RIGHT-OF-WAY IN THE CITY OF PAOLA, KANSAS. Councilmember Bell seconded the motion and all voted aye. The motion passed 4 to 0. Clerk Droste assigned No. 2982 to the Ordinance.

**Agenda Item 6 – NEW BUSINESS.**

Clerk Droste reported that the updated draft of the Municipal Code Book after the completion of the legal review has been received. The balance of the codification process will be completed after the holidays.

City Manager Tetwiler reported that the City received a favorable ruling in a Municipal Court Case that was moved to District Court.

Manager Wieland reported that the Library Board has approved the payment of merit bonuses to Rosy King, Linda Prothe, Helen Roberts, and Bev Looney. No action was necessary by the City Council on this issue.

Manager Wieland reported that second interviews for the City Planner position will begin tomorrow and that the candidates are very promising.

Manager Wieland reported that a substantial amount of time has been spent revisiting the flood plain issue as it pertains to certain properties on Osage Street. He reported FEMA will not be removing Mr. Elliott's property from the 100 year flood plain.

Councilmember Bell thanked Mayor Stuteville for the flowers and he apologized for missing the last Council Work Study Meeting.

Councilmember Bell reported that he is a member of the American Legion and he will be involved in soliciting funds from the City and from USD 368 for lighting improvements to the baseball fields. He asked the City Attorney if he should recuse himself from voting on the issue. City Attorney Tetwiler indicated that whenever a “perceived” conflict of interest may exist, it is always best to error on the side of caution and abstain from voting on the issue.

Councilmember Bell asked if there would be any discussion about the County Planning Commission’s recent recommendation to eliminate the Growth Area Agreements. Manager Wieland indicated that he did discuss the issue with County Administrator Shane Krull while they were both at a conference in Wichita last week. Mr. Krull was not in attendance at the County Commissioners meeting where this issue was discussed. The reasons behind the Planning Commission’s recommendation have not been discussed.

Councilmember Rowlett asked about the status of the utility rate study. Manager Wieland reported that he and Public Works Director Bieker would be meeting with Wilson and Company next week to work on the study as there were several questions about the assumptions presented in the initial report. He indicated that the report should be ready to share with the Council in January.

Councilmember Rowlett reported that at the last LKM Board Meeting, Don Moler reported that the Kansas Legislature may be considering the elimination of the payment of the gasoline tax revenues and the machinery & equipment slider payments to the cities. This would have a significant budget impact on all cities in Kansas. He also reported that the reinstatement of the demand transfers is unlikely.

**Agenda Item 7 –ADJOURNMENT.**

With no additional business to come before the Council, Councilmember Dial made a motion to adjourn. Councilmember Pritchard seconded the motion and all voted aye. The motion passed 4 to 0.

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Artie Stuteville, Mayor

ATTEST: (seal)

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Daniel G. Droste, City Clerk