

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

March 28, 2006

**HELD AT THE MIAMI COUNTY COMMISSIONERS CHAMBERS
IN THE MIAMI COUNTY ADMINISTRATION BUILDING**

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

Councilmembers present: Mayor Stuteville, Council Members Shields, Rowlett, Moulder, and Pritchard.

Council Members absent: None.

Also present: Manager VanderHamm, Clerk Droste, City Attorney Tetwiler, Engineer/Planner Faust, Public Works Director Bieker, Police Chief Smail, a representative from the Miami County Republic, and others.

The regular council meeting was called to order.

Agenda Item 1 - ROLL CALL: Mayor Stuteville and Council Members Shields, Moulder, Rowlett, and Pritchard were all present.

Agenda Item 2 - PLEDGE OF ALLEGIANCE: Mayor Stuteville invited everyone in attendance to join in the Pledge of Allegiance.

Agenda Item 3 - PETITIONS, REMONSTRANCES, AND COMMUNICATIONS

Mrs. Beverly Clemens, Chairperson of the Sesquicentennial Committee addressed the Council thanking the City for its support of the Sesquicentennial Events throughout 2005. The Sesquicentennial Committee presented 8 Sesquicentennial Banners and 21 Banner Brackets to the City of Paola; and 1 Banner each to Sarah Maloney, Verla Thomas, Jack Rowlett, Rob Nichols, Joan Fehling, Marsha Prothe, Swan River Museum, Paola Chamber of Commerce, and The Shamrock Club for their efforts. She also thanked Michael Hamilton at the Post Office for the commemorative cancellation.

Floyd Grimes thanked Mrs. Clemens for her work and leadership on the committee. Wayne Johnson also thanked Mrs. Clemens for her leadership.

Mayor Stuteville presented a Proclamation honoring the Sesquicentennial Committee and presented a copy of the Proclamation to each of the Committee Members.

Agenda Item 4 - CONSENT AGENDA

- a. **Approval of minutes of the meetings of March 14, 2005**
- b. **Approval of Salary Ordinance number 06-05**
- c. **Approval of Appropriation Ordinance No. 578**

Councilmember Pritchard recommended that the motion on page 3 of the minutes regarding the insurance bids include a statement that the coverage would be bid every 3 to 5 years. Councilmember Shields made a motion to approve the Consent Agenda as amended and authorize the Mayor to sign. Councilmember Pritchard seconded the motion and all voted aye.

Agenda Item 5 – REPORTS OF OFFICERS, BOARDS, AND COMMITTEES.

Agenda Item 5a - Public Hearing for the purpose of considering a request to waive the restriction for selling any alcoholic beverage within 500 feet of a park, school or church for Cactus Jack's at 602 N Pearl.

Councilmember Pritchard made a motion to open the public hearing. The motion was seconded by Councilmember Rowlett and all vote aye.

Clerk Droste explained that the Public Hearing was necessary for the Council to consider a waiver of the restriction for selling alcoholic beverages within 500 feet of a church, school, or park. Cactus Jack's has applied for a Drinking Establishment License and the restaurant is across the street from the Pearl Street Baptist Church. Currently, Cactus Jack's does have a Cereal Malt Beverage License, but the new license would require a new Public Hearing.

No one addressed the Council in regard to the waiver.

Councilmember Rowlett made a motion to close the public hearing. The motion was seconded by Councilmember Pritchard and all vote aye.

Councilmember Rowlett made a motion to approve a waiver of the restriction for selling any alcoholic beverage within 500 feet of a park, school or church for Cactus Jack's at 602 N Pearl. The motion was seconded by Councilmember Pritchard. Councilmembers Pritchard, Shields, and Rowlett voted aye, Councilmember Moulder voted nay, the motion passes 3 to 1.

Agenda Item 5b - Consider approval of a new Drinking Establishment License for Cactus Jack's.

Clerk Droste presented the application from Cactus Jack's for a Drinking Establishment License. He explained that the restaurant had passed the required fire safety inspection and paid the \$250 application fee. The application would be subject to receipt of a copy of the State Liquor License and surrender of the existing Cereal Malt Beverage License.

Councilmember Rowlett made a motion to approve a new Drinking Establishment License for Cactus Jack's subject to the receipt of a copy of a State Liquor License and the surrender of the existing Cereal Malt Beverage License. The motion was seconded by Councilmember Pritchard. Councilmembers Pritchard, Shields, and Rowlett voted aye, Councilmember Moulder voted nay, the motion passes 3 to 1.

Agenda Item 5c - Consider a request for waiver of a water connection fee from the Master Gardeners.

Bernard Armstrong presented a request from the Master Gardeners group to waive the fees on the installation of a 1" water meter on the grounds of the Ursuline Convent.

Councilmember Rowlett expressed concern that if the fee would be waived, would the Council be setting a precedent that would inadvertently create problems in the future. Manager VanderHamm suggested that since the Master Gardeners group is associated with the County Extension Office, they are an "unfunded, volunteer, quasi-governmental group" and the precedent could be narrowly defined by this type of group.

Councilmember Pritchard made a motion to approve the waiver of the \$2,000 connection fee for a 1" water meter to be installed just east of Monica Hall on the Ursuline Convent grounds for the Master Gardeners because it is a unfunded, volunteer, quasi-governmental agency. The motion was seconded by Councilmember Shields and all vote aye.

Agenda Item 5d - Presentation / request from Larry Smith of L&K Services, Inc.

Mr. Larry Smith with L&K Services, Inc. addressed the Council regarding the solid waste disposal contract with the City. He offered to freeze the existing price for collection services until September of 2007 in exchange for renewing the five year contract now. By renewing now, L&K would be able to take advantage of the lower cost of a new truck. In a few weeks, there will be a significant price increase due to more stringent emissions requirements on these vehicles.

Mayor Stuteville questioned if the Council was required to bid the solid waste disposal contract when the existing contract expires in September. Mr. Smith indicated that there is a renewal clause in the contract that would allow the Council to consider renewing rather than bidding the contract.

After discussing the request, the Council agreed that the contract should not be renewed at this time and that at the end of the existing contract, the service should be competitively bid.

Agenda Item 5e - Consider the preliminary and final development plan for Lot 2 of Oliver's Addition.

Engineer Planner Faust presented the preliminary and final development plan for Lot 2 of Oliver's Addition to the City of Paola. The applicant desires to construct an office building

on this lot which is located between Reece & Nichols and Farmers Insurance Group in the 600 block of Baptiste Drive.

During their March 21st meeting, the Planning Commission recommended approval of the submitted preliminary/final development plan for Lot 2 of Oliver's Addition contingent upon approval of a landscaping plan. Engineer Planner Faust recommended that the Council accept the recommendation of the Planning Commission.

After discussing the plan, Councilmember Shields made a motion to approve the preliminary and final development plan for Lot 2 of Oliver's Addition, 607 Baptiste Drive, contingent upon staff's approval of a landscaping plan. The motion was seconded by Councilmember Pritchard and all vote aye.

Agenda Item 5f - Consider an Ordinance granting a Conditional Use Permit for a Day Care Center at 29300 W 303rd Street.

Engineer Planner Faust presented a report on a Conditional Use Permit (CUP) for a day care center for a property at 29300 W 303rd Street. The Paola Planning Commission conducted a public hearing on March 21st, 2006 for the conditional use application at 29300 W. 303rd Street. It is the desire of the applicant, Angela Frizzell, to operate a Day Care Center from her home.

The Planning Commission recommended approval of the conditional use application and site plan for a Day Care Center at 29300 W. 303rd Street with the following conditions:

- 1) Maximum number of children limited to ten (10) at any one time.
- 2) Hours of operation are 7am to 6pm.
- 3) Applicant must seek renewal of the CUP after one year.

Engineer Planner Faust recommended that the Council adopt the Planning Commission's recommendation by approving the Ordinance.

After discussing the Conditional Use Permit and its restrictions, Councilmember Rowlett made a motion to approve the Ordinance granting CONDITIONAL USE PERMIT 06-CUP-01 as presented. The motion was seconded by Councilmember Pritchard and all vote aye. The Ordinance was assigned number 2909.

Agenda Item 5g - Consider an Ordinance granting a Conditional Use Permit for Light Automobile Service Usage at 1121 E Kaskaskia.

Engineer Planner Faust presented a report on a Conditional Use Permit for "Light Automobile Service" usage at 1121 E Kaskaskia. The Paola Planning Commission conducted a public hearing on March 21st, 2006 for the conditional use application at 1121 E. Kaskaskia. It is the desire of the applicant, Chad Oehlert, to open an oil/lubrication business at a new building he plans to construct at this address.

“Light Automobile Service” is defined as ‘Gasoline service stations, gas-convenience marts, and quick service oil, tune-up, brake, and muffler shops where repairs are made in fully enclosed bays, the repairs are completed in less than (2) two hours, and no vehicles are stored overnight.’ In the Thoroughfare Access Zoning District, this usage requires a conditional use permit.

The Planning Commission recommended approval of the conditional use application and site plan for Light Automobile Service on Lot 10, Block 2 of Academy Addition (1121 E. Kaskaskia) with the following conditions:

- 1) Require a 6’ privacy fence around the south and west section of the building along with landscaping to buffer between the commercial and residential usages.
- 2) All work shall be completed within an enclosed structure.
- 3) Normal hours of operation shall be limited to 7am – 7pm Monday through Saturday and Noon – 5pm on Sunday. One ‘late’ evening will be permitted each week until 8:30pm. The late night shall be restricted to Tuesday or Thursday.
- 4) The maximum decibel level shall not exceed 70 decibels at the property line.
- 5) All oils/fluids shall be disposed of by approved methods and shall not enter the sanitary sewer system.
- 6) No overnight parking shall be allowed except for two (2) after-hours drop-off spaces at the rear of the building.
- 7) After one year, the conditional use permit shall be reviewed by the Planning Commission to ensure compliance. The property owner shall be responsible for notifying adjoining property owners (as identified by the abstractor’s search for the original CUP request) by regular mail two weeks in advance of the Planning Commission’s review. If the owner will be requesting an amendment to the CUP, the notification shall follow the same procedures as the original CUP notification. Adjoining property owners will have an opportunity to comment on compliance to the conditions of the CUP.
- 8) At any time, the City may institute revocation of the conditional use permit for violations of the conditions of approval, expiration, or the reasons specified in Section 21.225 of the Land Development Ordinance. The City shall provide notice to the landowner and public in the same manner as was provided for the establishment of the conditional use permit.

Engineer Planner Faust recommended that the Council adopt the Planning Commission’s recommendation by approving the Ordinance.

After discussing the Conditional Use Permit, Councilmember Rowlett made a motion to approve the Ordinance granting CONDITIONAL USE PERMIT 06-CUP-02 as presented. The motion was seconded by Councilmember Shields and all vote aye. The Ordinance was assigned number 2910.

Agenda Item 5h - Consider an Ordinance establishing rates for utility services for Low Income Senior Citizens.

Clerk Droste presented an Ordinance establishing rates for utility services for low income senior citizens. The ordinance would continue to offer a discounted rate of \$5.00 per month for trash collection and would “freeze” water and sewer rates for qualified senior citizens at the then current rates in effect for residential services as follows:

- a. Future increases in metered volume rates and service charges associated with the construction of the new water or sewer treatment plants, as determined by the City Council, shall not be assessed to qualified residential units.
- b. Service and volume charge increases associated to increased operational costs of the water or sewer plant, as determined by the City Council, shall be assessed to qualified residential units.

Clerk Droste also presented a brief explanation of the financial impact of the ordinance based on current participation of 30 accounts and projections assuming a total of 100 qualified accounts. The current financial impact for 30 accounts for both trash and the latest sewer rate increase is approximately \$1,980.00 per year.

After discussing the Ordinance, Councilmember Moulder made a motion to approve AN ORDINANCE AMENDING TITLE II, CHAPTER 225 REFUSE TRASH AND SOLID WASTE, SECTION 225.170 B 5; AMENDING TITLE VII UTILITIES, CHAPTER 700 WATER DEPARTMENT, BY ADDING SECTION 700.265 METERED VOLUME RATES AND SERVICE CHARGES FOR LOW INCOME SENIORS; AMENDING TITLE VII UTILITIES, CHAPTER 715 SEWERS, BY ADDING SECTION 715.240 SCHEDULE OF CHARGES, BY ADDING A NEW ITEM C.; AND AMENDING TITLE VII UTILITIES, CHAPTER 720 UTILITY BILLING POLICIES, BY ADDING SECTION 720.090 RATES FOR UTILITY SERVICES FOR LOW INCOME SENIOR CITIZENS; OF THE MUNICIPAL CODE OF THE CITY OF PAOLA, KANSAS; that the ordinance be effective prior to the sewer rate increase that was passed at the March 14th meeting; and that qualified seniors have 90 days from this date to apply to qualify prior to the March 31st sewer rate increase. The motion was seconded by Councilmember Shields and all voted aye. The Ordinance was assigned number 2911.

Agenda Item 5i - Consider Automatic Aid and Tender Aid Agreements with the Miami County Rural Fire Board.

Manager VanderHamm explained that the agreements that were being presented related to rural fires only. He introduced Bob Harris, Fire Chief and Andy Martin, Assistant Fire Chief to discuss the documents.

City Attorney Tetwiler questioned why the Rural Fire District was not a party to the agreement. He felt that the Rural Fire District should sign the agreement in addition to the four cities.

Andy Martin indicated that one of the goals of the Fire Chiefs was to decrease the ISO rating in the County. In order to accomplish that goal is to have written Automatic Aid and Tender Aid Agreements. He indicated that the agreements reduce to writing the procedures for responding to a call in the County.

Manager VanderHamm indicated that he did not want the Fire Chief to sign the agreements without Council approval. There was some disagreement on how to dispatch for a call under the agreement. One method would call a full company and send the first two firefighters to show at the station, or call two specific firefighters for the alarm.

City Attorney Tetwiler indicated that he did not feel that the Agreements were complete as the attachments that are referred to in the text were not included. He also expressed concern about the Rural Fire District not being a party to the agreement.

After discussing the agreements in detail, Councilmember Shields made a motion to table action on the Automatic Aid and Tender Aid Agreements until the next meeting. The motion was seconded by Councilmember Rowlett and all voted aye.

Agenda Item 5f - Consider a 2% merit pay increase for the City Manager.

Councilmember Rowlett reported that the annual review of the City Manager has been completed. Councilmember Rowlett made a motion to approve a 2% merit pay increase for City Manager Ross VanderHamm effective on his one year anniversary. Councilmember Moulder seconded the motion and all voted aye.

Other Unfinished Business.

City Attorney Tetwiler addressed the Council regarding the Marais des Cygne Public Utility Authority Agreement with Bartlett & West on the engineering and design services for the new water treatment plant. He explained that there were some issues in the amended agreement that he recommended be changed.

After discussing the issues of concern with Bartlett & West, changes were agreed to that satisfied the City Attorney's concerns with the exception of guaranteeing that the design of the plant would work. Bartlett & West was emphatic that they would not be able to obtain liability insurance if they guaranteed the performance of the plant. Bartlett & West indicated that they could not be held accountable for contractors, equipment manufacturers, etc. as it relates to their design of the plant.

After discussing the document in detail, Councilmember Moulder made a motion to approve the Addendum to the Agreement with Bartlett & West. The motion was seconded by Councilmember Rowlett and all voted aye.

Agenda Item 6 - NEW BUSINESS

Manager VanderHamm presented a Legislative Update. He expressed concerns that the Eminent Domain Bill (HCR 5025) has been amended to include restrictions that apply to the use of eminent domain for any purpose, including public projects. He also reported that the City's ¼% sales tax bill (HB 2794) was heard by the Senate Assessment and Taxation Committee Wednesday, March 22nd. Senator Apple called to advise that Revenue Secretary Wagnon had told him we did not need this special legislation, but could simply pass a Charter Ordinance. There has been some question by local governments for many years as to the legality of that method. He also discussed Sales Tax Uniformity (HB 2023), Statewide Video Franchise (SB 449), and Concealed Carry (SB 418).

Manager VanderHamm reported that bids were opened by KDOT on the Baptiste Drive project this past week. KDOT is now verifying the 3 bids and will be sending us the breakdown and a recommendation in the next couple of weeks. The City will be required to submit its share of the project within 50 days of acceptance of the bids; a 2 year temp note will be issued to cover that cost.

Members of the Safety Committee will begin regular meetings soon, the committee includes: Jody Kimzy, Street; Chad Crandell, Water/Sewer; Brad Kinamon, Parks; Kevin Colwell, Police; Jodie Livingood, Dispatch; Dan Droste, Administration; Elizabeth Trigg, Library, and Harry Fickel, Fire. Human Resources Manager Vicki Belt is in charge of this committee.

Manager VanderHamm reminded the Council that Spring Cleanup Week is April 10th thru the 14th. He also indicated that he will be presenting the Advanced Municipal Finance Seminar in Hays on Friday, April 7th and Emporia on Saturday, April 8th as part of the League's Municipal Leadership Academy.

Manager VanderHamm also reminded the Council that he will be leaving for Poland on Tuesday, April 11th and will returning on Monday, April 24th. He will be back in the office on Tuesday, April 25th.

The Council discussed the fact that April 4th is the next date for a Study Session; it is also the General Election. Without any pressing items to be addressed, the Council agreed not to hold a study session on April 4th.

Manager VanderHamm presented and reviewed a report on sales tax collections.

Councilmember Shields asked about traffic on Peoria Street in front of Lakemary. She suggested that the traffic is traveling much faster than the posted limit and requested that the police department patrol the area. Also, the man hole cover in front of Mr. Brown's house was loose and needed to be repaired.

Councilmember Moulder asked about the sewer issue with Mr. Turpen. He indicated that he has talked to other residents in the area and the problem appears to include more than Mr.

Turpen's home. Manager VanderHamm indicated that the problem does involve as many as ten homes and the issue is being addressed. Councilmember Moulder reported that truck traffic has been reported to him on Mulberry & Shawnee Streets. Police Chief Smail indicated that they are patrolling the area and issuing warnings to drivers.

Mayor Stuteville indicated that she had been asked about a storm shelter for the public in the event of severe weather. Manager VanderHamm indicated that the City does not have a public storm shelter, but that the basement of the Methodist Church and the Community Center have been identified as shelters should the need arise. Police Chief Smail explained that the City is looking into a "Code Red System" with the County. The system is a reverse 911 system that will notify residents of specific emergency situations by telephone. The system can make 1,600 calls per minute. Police Chief Smail also reviewed the procedures for evacuating the ball fields at Wallace Park and the campers at Lake Miola in the event of severe weather.

Agenda Item 7 – ADJOURNMENT.

With no additional business to come before the Council, Councilmember Moulder made a motion to adjourn the meeting. Councilmember Rowlett seconded the motion and all voted aye.

Artie Stuteville, Mayor

ATTEST: (seal)

Daniel G. Droste, City Clerk