

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

September 22, 2009

**HELD AT THE PAOLA JUSTICE CENTER
805 North Pearl Street in Paola**

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

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

Council Members absent: None

Also present: City Clerk Droste, City Planner Gotfredson, Public Works Director Bieker, Police Chief Smail, Harold Achey, Kathy Minden, Wayne Johnson, Mike Hudgeons, Mike Gibson, Justin Aude, Carla Wheeler, Roger Wright, Glenda Wright, Rob George, and Carol Everhart with the Paola Chamber of Commerce.

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

Agenda Item 2 - ROLL CALL: Mayor Stuteville and Council Members Pritchard, Dial, Rowlett, and Bell were all present. No one was absent.

Agenda Item 3 - PETITIONS, REMONSTRANCES, AND COMMUNICATIONS
Council Mayor Stuteville asked the audience if anyone desired to address the Council about any issue that is not an agenda item.

Wayne Johnson with the Miami County Historical Society addressed the Council to thank the City for supporting the Potawatomi Indian Trail of Death Regional Historic Highway dedication that was held on Monday, September 21st. Mr. Johnson explained the history behind the effort to memorialize the Trail of Death route.

Glenda and Roger Wright addressed the Council regarding the proposed skate park. Mayor Stuteville indicated that the City has previously dedicated \$50,000 and the Baehr Foundation has donated \$30,000 for the project. She indicated that the City is working on estimates for the project.

Agenda Item 4 - CONSENT AGENDA

a. **Approval of minutes of the meeting of September 8, 2009.**

- b. **Approval of Salary Ordinance number 09-18.**
- c. **Approval of Appropriation Ordinance No. 661.**
- d. **Approval of the renewal of a Retail Liquor License for Park Plaza Liquor.**
- e. **Approval of the renewal of Class A Private Club Licenses for the VFW and American Legion.**

Councilmember Dial made a motion to approve the Consent Agenda including the minutes of the meeting of September 8, 2009, Salary Ordinance No 09-18, Appropriation Ordinance No 661, Retail Liquor License for Park Plaza Liquor, and the Class A Private Club Licenses for the VFW and the American Legion; and authorize the Mayor to sign. The motion was seconded by Councilmember Rowlett. Councilmember Bell stated that he was a member of the American Legion and abstained from voting. Councilmembers Rowlett, Dial, and Pritchard voted aye. Per the Code of Procedure, an abstained vote counts toward the majority, therefore the motion passed 4 to 0.

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 Neighbors, LLC doing business as Neighbors Bar and Grill at 2 W Piankishaw.

Clerk Droste explained that a Public Hearing was being held to consider waiving the restriction for selling or serving any alcoholic beverages within 500 feet of a church, school, or park for the property located at 2 W Piankishaw. Although the previous business located at this property was issued a Drinking Establishment License, these licenses are not transferrable and the Public Hearing was required to consider the waiver for the new business.

Councilmember Pritchard made a motion to open the public hearing. The motion was seconded by Councilmember Rowlett and all voted aye. The motion passed 4 to 0.

No one addressed the Council with any written or oral objection concerning the matter.

Councilmember Rowlett made a motion to close the public hearing. The motion was seconded by Councilmember Pritchard and all voted aye. The motion passed 4 to 0.

Agenda Item 5b - Consider waiving the restriction for selling or consuming any alcoholic beverage within 500 feet of a park, school, or church.

Councilmember Dial 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 Neighbors, LLC doing business as Neighbors Bar and Grill at 2 W Piankishaw. The motion was seconded by Councilmember Rowlett and all voted aye. The motion passed 4 to 0.

Agenda Item 5c - Consider approval of a new Drinking Establishment License for Neighbors, LLC doing business as Neighbors Bar and Grill at 2 W Piankishaw.

Clerk Droste presented an application for a Drinking Establishment License for Neighbors, LLC at 2 W Piankishaw. He explained that since the property is still being remodeled, it was recommended that the application be conditionally approved subject to the issuance of a satisfactory fire safety inspection, a certificate of occupancy, and a State of Kansas issuing a Drinking Establishment License.

Councilmember Dial made a motion to approve a new Drinking Establishment License for Neighbors, LLC doing business as Neighbors Bar and Grill at 2 W Piankishaw subject to the issuance of a satisfactory fire safety inspection, a certificate of occupancy, and a State of Kansas Drinking Establishment License. The motion was seconded by Councilmember Rowlett and all voted aye. The motion passed 4 to 0.

Agenda Item 5d - Consider a Conditional Use Permit for a heavy retail business at property commonly known as 410 North Silver.

Planner Gotfredson presented a Conditional Use Permit (CUP) for a heavy retail business at 410 N Silver. He reported that the applicant plans to open a used car dealership at this location. He reported that at their September 15th meeting, the Planning Commission voted unanimously to recommend approval of the CUP subject to the following conditions:

- 1) Provide additional screening to the south of the property with 2.75 plant units per 100 linear feet and replace street trees if needed.
- 2) No parking of inventory or customer vehicles is permitted in clear view area.
- 3) Exterior lighting must use cut-off fixtures.
- 4) 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.

Councilmember Dial asked for clarification on the requirement for cut-off light fixtures. Councilmember Bell questioned the requirement to require screening with landscaping on the south side of the property. Councilmember Bell indicated that he did not think that the landscaping requirement was necessary given the proposed use as compared to the recent previous uses of the property. The issue regarding the requirement for the landscaping buffer was discussed at length. Mayor Stuteville asked the applicant if he had any comments on the landscaping requirements. Mike Hudgeons indicated that he did not have a problem with the requirement.

Councilmember Pritchard made a motion to approve AN ORDINANCE APPROVING CONDITIONAL USE PERMIT 09-CUP-10, as presented. The motion was seconded by Councilmember Rowlett and all voted aye. The motion passed 4 to 0. The Ordinance was assigned No. 3000.

Agenda Item 5e - Consider approval of the site plan for the Lighthouse Presbyterian Church.

Planner Gotfredson presented the preliminary and final site plan for the Lighthouse Presbyterian Church at the northwest corner of 303rd Street and Hedge Lane. He reported

that the plans meet all of the requirements of the Land Development Ordinance at their September 15th meeting, the Planning Commission voted unanimously to recommend approval.

Councilmember Rowlett asked if there was sufficient right of way allowed for Hedge Lane. Public Works Director Bieker indicated that there was a 120 foot right of way for Hedge Lane which should be sufficient. Councilmember Rowlett asked about the possibility of the property being included in a benefit district for future improvements to Hedge Lane. Clerk Droste indicated that since Hedge Lane was an arterial street, a benefit district could not be used to finance street improvements.

After further discussion, Councilmember Dial made a motion to approve the preliminary and final site plan for the Lighthouse Presbyterian Church as presented. The motion was seconded by Councilmember Rowlett and all voted aye. The motion passed 4 to 0.

Agenda Item 5f - Consider a request for a water leak allowance.

Clerk Droste presented a request for a water leak allowance from Glenn Evans at 29449 Palmer Drive. The leak was caused by a faulty irrigation system. A leak allowance is calculated by doubling the highest usage over the past 12 months and using this amount as the usage amount for the month that the leak is discovered. In this case, there was a large volume of usage for two consecutive months, 44,800 gallons in July and 105,300 gallons in August. Clerk Droste explained that Mr. Evans contends that the same leak caused the high usage in both July and August; therefore the 44,800 usage should not be used in determining the base usage amount. The next highest usage in the past 12 months was 12,800 gallons in October of 2008. Using this number, the leak allowance would be calculated on 25,400 gallons and the leak allowance would be \$421.00.

Councilmember Bell stated that since the City is now purchasing water, consideration should be given to modifying or eliminating the leak allowance policy. Mayor Stuteville agreed that the policy should be revisited.

After additional discussion, Councilmember Pritchard made a motion to approve the request for a water leak allowance in the amount of \$421.00 for Glenn Evans at 29449 Palmer Drive. The motion was seconded by Councilmember Bell and all voted aye. The motion passed 4 to 0.

Agenda Item 5g - Adoption of the 2009 Uniform Public Offense Code.

Clerk Droste presented an Ordinance adopting the 2009 Uniform Public Offense Code. He explained that the UPOC was first adopted in 2004, the City has chosen to omit certain sections of the UPOC, specifically:

Section 3.8	Violation of Protection From Abuse Order
Section 6.16	Giving a Worthless Check
Section 6.19	Equity Skimming
Section 8.1	Denial of Civil Rights
Section 9.5	Maintaining a Public Nuisance
Section 9.6	Permitting a Public Nuisance

These sections are omitted because the natures of these offenses are such that they are more appropriately dealt with in District Court rather than in Municipal Court.

Additionally, the City Council recently adopted an Ordinance amending Section 10.1 Criminal Use of Weapons to include a restriction on the open carry of firearms. This language has been included in this adopting ordinance so that the amendment to Section 10.1 will be contained in the UPOC document as well as in the City's Municipal Code Book.

Councilmember Bell questioned why tasers were not included in the definition of dangerous weapons. Police Chief Smail indicated that tasers are considered a self defense weapon, are not lethal, and that they are not illegal to possess. After additional discussion, the Council agreed that the City Attorney should respond to questions about the inclusion or exclusion of tasers in the definition of a dangerous weapon.

Councilmember Bell stated that item 8 on page 2 circumvents the second amendment by stating that you cannot carry a firearm on you in the open or concealed unless you have a permit.

After additional discussion, Councilmember Dial made a motion to approve AN ORDINANCE AMENDING SECTION 205.005 OF THE CODE OF THE CITY OF PAOLA, KANSAS, 1997, REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF PAOLA, KANSAS; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES," EDITION OF 2009, WITH CERTAIN OMISSIONS AND AMENDMENTS. The motion was seconded by Councilmember Rowlett and all voted aye. The motion passed 4 to 0. The Ordinance was assigned No. 3001.

Agenda Item 5h - Consider Adoption of the 2009 Standard Traffic Ordinance.

Clerk Droste reported that the City has adopted the Standard Traffic Ordinance (STO) annually since 1993. This document is published annually by the League of Kansas Municipalities incorporating any new statutory changes passed by the State Legislature. He stated that in past years, the City Council has adopted the STO without modification or omission. However, since it is the desire for the City Council to adopt an Ordinance authorizing the operation of Golf Carts and Micro Utility Trucks in the City of Paola, it will be necessary to omit the following sections in the STO:

Section 114.2	Unlawful Operation of a Micro Utility Truck
Section 114.4	Unlawful Operation of a Golf Cart

After discussion, Councilmember Bell made a motion to approve AN ORDINANCE AMENDING SECTION 300.010 OF THE CODE OF THE CITY OF PAOLA, KANSAS, 1997, INCORPORATING BY REFERENCE THE "STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES", EDITION OF 2009, WITH CERTAIN OMISSIONS. The motion was seconded by Councilmember Dial and all voted aye. The motion passed 4 to 0. The Ordinance was assigned No. 3002.

Agenda Item 5i - Consider an Ordinance authorizing the operation of golf carts and micro utility trucks in the City of Paola.

Clerk Droste presented an ordinance authorizing the operation of golf carts and micro utility trucks (MUTs) in the City of Paola. He explained that at the last work study meeting, the City Council discussed the possibility of authorizing the operation of golf carts and MUTs on the streets of Paola with certain restrictions.

Anyone 17 years of age or older would be allowed to operate a golf cart without the requirement of possessing a valid drivers license. Additionally, insurance and tags would not be required for golf carts. Clerk Droste also discussed the addition of language to the golf cart ordinance that prohibits the operation of a golf cart while carrying more persons than the golf cart was designed to carry.

A valid driver's license would be required for the operator of a MUT. Insurance would also be required.

Councilmember Dial asked if insurance would be difficult to obtain on a micro utility truck. Clerk Droste indicated that he had not researched that issue. Councilmember Dial also stated that some golf carts have three bench seats that can actually carry 6 persons. She recommended that the definition of a golf cart be amended to accommodate golf carts that are designed to carry 6 persons.

After additional discussion, Councilmember Rowlett made a motion to table action the ordinance pending further research by City staff. The motion was seconded by Councilmember Dial and all voted aye. The motion passed 4 to 0.

Agenda Item 5j - Consider approval of a pay request for the Fire Station project.

Clerk Droste presented a pay request on the Fire Station project. He reported that the project is ahead of schedule and the second floor areas are in the process of being painted. The project is now 73% complete including stored materials.

Councilmember Pritchard made a motion to approve a pay request #7 in the amount of \$237,395.00 to Legacy Contractors, LLC for the Fire Station project. The motion was seconded by Councilmember Dial and all voted aye. The motion passed 4 to 0.

Agenda Item 6 – NEW BUSINESS

Public Works Director Bieker reported that sometime later this week, the intersection at Peoria and Walnut Streets would be closed for improvements related to the Fire Station project.

Clerk Droste reported that he has been in contact with City Manager Wieland and he is enjoying his vacation.

Councilmember Bell asked about the status of the new water plant. Clerk Droste reported that there is an issue with the ozone treatment process and that the manufacturer is on site working on the issue. It is hopeful that the plant will be producing water soon. Councilmember Bell asked that someone from the water plant come to the next council meeting if it is not on line by that time.

Mayor Stuteville reported that the League of Kansas Municipalities is hosting a reception for Jack Rowlett as the outgoing President of the LKM on Sunday, October 4th at the LKM Annual Conference.

Councilmember Bell thanked Clerk Droste for assisting with the flags for the Patriot Guard at the funeral of former Kansas Supreme Court Justice Miller.

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.

Artie Stuteville, Mayor

ATTEST: (seal)

Daniel G. Droste, City Clerk