

MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF HAYS, KANSAS
HELD ON NOVEMBER 12, 2009

1. CALL TO ORDER BY CHAIRMAN: The Governing Body of the City of Hays, Kansas met in regular session on Thursday, November 12, 2009 at 6:30 p.m.

Roll Call: Present: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV
Absent: Barbara Wasinger

Chairperson Mellick declared that a quorum was present and called the meeting to order.

2. MINUTES: There were no corrections or additions to the minutes of the regular session held on October 22, 2009; the minutes stand approved as presented.

3. CITIZEN COMMENTS: There were no comments.

4. CONSENT AGENDA: Henry Schwaller IV moved, Troy Hickman seconded, that the following be approved:

A. Mayoral Appointments

Neighborhood Revitalization/Downtown Development Review Board

Wilbert Pfeifer – term to expire January 1, 2012

Northwest Kansas Community Corrections Board

Sue Rouse – two-year term to expire November 1, 2011

Sister Cities Advisory Board

Miriam Bolyard – unexpired term to expire January 1, 2011

B. Business Resolutions

Resolution No. AR – 05, Series of 2009, being a resolution expressing appreciation to Dr. Katrina Hess, MD, a new owner of a Hays business (Lindyspring Water Systems); and

Resolution No. AR – 06, Series of 2009, being a resolution expressing appreciation to Michael Berges, a new owner of a Hays business (Edward Jones).

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

NEW BUSINESS

5. PIT BULL/DANGEROUS DOG ORDINANCES: Per direction of the City Commission, the City Attorney and Police Chief have modified several of the current animal control ordinances in an attempt to address concerns about regulating Pit Bull dogs within the city limits of Hays. The recommended changes would place greater restrictions on Pit Bull owners who choose to possess a Pit Bull dog within the city limits, rather than banning them entirely. Modifications made to existing ordinances include identifying Pit Bull dogs as dangerous dogs by definition and requiring their registration as such. Some of the added restrictions placed on possessing a dangerous dog include micro chipping, proof of liability insurance, an identification photo, and language concerning signage and confinement in a locked pen, kennel, or in a secure house or structure. Dangerous dogs may not be tethered, and if taken out of the pen or residence, the dog shall be muzzled and on a leash. Three entirely new sections were suggested that address duties of dangerous dog owners, reimbursable costs associated with impounding dangerous dogs and a penalties section. It has also been recommended that the penalty for not registering a dog or cat with the City be increased from \$1 per month to \$10 per month with a maximum penalty of \$50.

A. Henry Schwaller IV moved, Troy Hickman seconded, that Ordinance No. 3781, being an ordinance amending Chapter 5 of the City of Hays, Kansas,

Municipal Code, by modifying Article II., Division 2., Section 5-58 regarding the penalty on delinquent tax pertaining to cats and dogs, be approved.

Vote: Ayes: Ron Mellick

Troy Hickman

Henry Schwaller IV

No: Christopher Channell

B. Henry Schwaller IV moved, Troy Hickman seconded, that Ordinance No. 3782, being an ordinance amending Chapter 5 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 4., Section 5-123 regarding the definition of dangerous dogs, be approved.

Mandy Wallgren, 401 East 16th Street, addressed the Commission regarding the definition of dangerous dogs. She felt it was unfair to put a Pit Bull dog in the category of dangerous dogs. Her service dog is a Pit Bull and she presented information about the breed. She stated that a dangerous dog should be defined by its behavior, not appearance. All dogs, regardless of the breed and size, should have consequences if they bite animals or people.

Commissioner Channell pointed out that the Supreme Court of Kansas has already stated that Pit Bull dogs represent a new public health hazard not presented by other breeds or breed mixes. Pit Bulls possess both the capacity for extraordinarily savage behavior and physical capabilities in excess of those possessed by many other breeds of dogs.

Police Chief James Braun reviewed the policy for defining a dog as dangerous. The Animal Control officer files the complaint. The dog can be charged as being vicious or dangerous; a municipal court judge will hear the facts and make a ruling. If the dog is deemed vicious, it cannot be kept in the city limits. If it is deemed dangerous, it falls under the current dangerous dog ordinance. Many times no charges are filed in these cases because the owner voluntarily surrenders the dog.

David Jensen, 205 West 34th Street, Warren Nietling, 3324 Country Lane, and Arilla Wear, 2006 Allen Apt. B, spoke against making the dangerous dog ordinance breed specific.

Megan Gramly, 209 East 20th Street and David Berry, 1101 Elm Street, questioned how a mixed breed dog would be determined to be a Pit Bull.

The Police Chief stated the veterinarian would determine the breed and the breed will be listed on the rabies vaccination certificate.

Commissioner Schwaller stated that when the Commission first started studying this matter, a Pit Bull ban was discussed. The Commissioners felt that would be wrong and difficult and expensive to enforce. The Commissioners relied on the legal opinion of the City Attorney and the State Supreme Court. He is not basing his decision on the two Pit Bull incidents that have occurred.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

C. Henry Schwaller IV moved, Troy Hickman seconded, that Ordinance No. 3783, being an ordinance amending Chapter 5 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 4., Section 5-125 regarding control, registration and confinement of dangerous dogs, be approved.

Henry Schwaller IV amended his motion to remove Section 5 (Insurance) of the proposed ordinance. Troy Hickman seconded the amended motion.

Commissioner Schwaller stated that he checked with two local insurance companies and neither of them would offer insurance policies for Pit Bull dogs because it is too risky. It would be a real burden to find insurance to cover Pit Bull dogs. He suggested that, at this time, the City drop the insurance requirement. If necessary, the insurance requirement could be revisited at a later time.

Commissioner Channell expressed concern about an uninsured person that cannot financially take care of the medical costs that their dog created. He feels it is important to have insurance. He will vote to strike the insurance requirement at this time, but would like to revisit the issue at a later date.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

D. Henry Schwaller IV moved, Troy Hickman seconded, that Ordinance No. 3784, being an ordinance amending Chapter 5 of the City of Hays, Kansas, Municipal Code by adding Sections 5-128, 5-129 and 5-130 regarding dangerous dogs, be approved.

Police Chief Braun stated that this ordinance sets out the duties of the owners possessing dangerous dogs, the costs incurred by the City that shall be charged against the owner of the dog, and the penalties for not complying with the ordinance.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

6. LINCOLN DRAW TUNNEL PROJECT UPDATE: Over this past year, nearly \$600,000 has been spent on repairs to the Lincoln Draw Tunnel. Most visible to the public was the replacement of a section under the intersection of 15th and Main. However, underground in the six foot diameter tunnel, which stretches over a mile in length from 19th and Lincoln Drive to 10th and Montgomery, workers have been busy repairing and lining over 1500 lineal feet of tunnel. All work is now complete.

Assistant Director of Public Works John Braun explained the process and showed pictures taken during and after the completion of the project.

City Manager Toby Dougherty stated this project was identified as top priority in the Stormwater Master Plan.

7. 2009 UNIFORM PLUMBING CODE: After considerable review of the 2009 Uniform Plumbing Code (UPC), and after consideration by the Building Trades Board, it is being recommended by staff and the Trades Board to adopt the 2009

Uniform Plumbing Code. Currently, the City of Hays is under the scope of the 2006 International Plumbing Code (IPC).

The driving reason for wanting to make this change is the fact that the current adopted code, IPC, leaves too much open to interpretation. The UPC provides greater detail and is more comprehensive than the currently adopted IPC. Other advantages are local training and code books will be provided at no charge.

Henry Schwaller IV moved, Christopher Channell seconded, that Ordinance No. 3785, being an ordinance amending Chapter 11 of the City of Hays, Kansas, Municipal Code, by modifying Article IV., Division 2., Section 11-209, Subsection (a) regarding plumbing, gas, and mechanical code, be approved.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

8. PROPOSED CHANGES TO SETBACK REGULATIONS: A public hearing before the Hays Area Planning Commission was conducted to consider an ordinance change to clarify setback regulations along some arterial and collector streets. The overall intention of the ordinance is not changing; however, there needs to be some verbiage changes for clarification regarding right-of-way in excess of 100 feet. Verbiage needs to be changed in 12 different ordinance sections for the different zoning districts.

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3786, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 3, Section 71-97, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3787, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 4, Section 71-133, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3788, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 5, Section 71-160, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3789, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 6, Section 71-199, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3790, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 8, Section 71-268, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3791, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 9, Section 71-295, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3792, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 11, Section 71-375, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3793, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 13, Section 71-441, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3794, being an ordinance amending Chapter 71 of the City of

Hays, Kansas, Municipal Code, by modifying Article II., Division 14, Section 71-478, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3795, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 15, Section 71-507, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3796, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 18, Section 71-607, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

Christopher Channell moved, Henry Schwaller IV seconded, that Ordinance No. 3797, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II., Division 19, Section 71-645, Subsection (a)(1), regarding yard regulations, be approved.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

9. HEART OF AMERICA FIRST ADDITION – CONSTRUCTION AWARD OF

BID: APAC-Kansas submitted the low bid for the construction of street, stormwater, sanitary sewer, and waterline improvements to the Heart of America First Addition, which includes the construction of improvements of approximately 480 feet of 9th Street lying just east of Commerce Parkway. The City of Hays has agreed to fund 100% of the costs of construction for the first 130 feet of improvements, which amounts to \$130,479.40. The remainder of the costs will be special assessed to the benefit district.

Henry Schwaller IV moved, Troy Hickman seconded, that the City Manager be authorized to enter a contract with APAC-Kansas, Inc. in the amount of \$301,929.05 for the construction of improvements to Heart of America First Addition.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

10. AMENDMENT TO NUISANCE ORDINANCE TO ALLOW FOR STORMWATER BEST MANAGEMENT PRACTICES (BMP):

The proposed ordinance allows for the exemption of engineered landscaping that meets Stormwater Best Management Practice criteria. The current ordinance limits such plant materials to a maximum height of 12 inches.

Ron Mellick moved, Christopher Channell seconded, that Ordinance No. 3798, being an ordinance amending Chapter 26 of the City of Hays, Kansas, Municipal Code, by modifying Article V., Section 26-193 regarding weeds, be approved.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

11. AMENDMENT TO WINTER STORM TRAFFIC EMERGENCY ORDINANCE – NEW STREETS AS EMERGENCY SNOW ROUTES:

The proposed ordinance

amends the Winter Storm Traffic Emergency Ordinance to include the extension of 22nd Street from Canterbury Drive to Commerce Parkway, and Vine Street from I-70 to 55th Street.

Henry Schwaller IV moved, Troy Hickman seconded, that Ordinance No. 3799, being an ordinance amending Chapter 62 of the City of Hays, Kansas, Municipal Code, by modifying Article III., Division 4, Section 62-151, Subsections (b) and (e) regarding winter storm traffic emergencies and emergency snow routes, be approved.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

12. 2010 STATEMENT OF LEGISLATIVE PRIORITIES: The 2010 Statement of Legislative Priorities contains what the City of Hays feels are the most pressing issues with regard to cities that the State Legislators will deal with in the upcoming session.

Henry Schwaller IV moved, Christopher Channell seconded, that the 2010 Statement of Legislative Priorities be approved.

Henry Schwaller IV moved that the 2010 Statement of Legislative Priorities be amended as follows: The section on water re-organized with water planning listed as the No. 1 water priority, followed by water and environment, and then water quantity. Additionally, to eliminate the section on library funding which states that State laws, regulations and grant requirements regarding state aid for local libraries should be amended to allow for the reduction in locally levied property tax support for libraries without a disproportionate loss in the amount of state aid available.

There was no second. The motion failed.

Henry Schwaller IV moved that the language on library funding be stricken from the 2010 Statement of Legislative Priorities.

There was no second. The motion failed.

Henry Schwaller IV moved that that the 2010 Statement of Legislative Priorities be amended to re-organize the section on water issues, with water planning listed as the No. 1 water priority, followed by water and environment, and last, water quantity. Troy Hickman seconded the motion.

Vote: Ayes: Ron Mellick

Christopher Channell

Troy Hickman

Henry Schwaller IV

Commissioner Schwaller stated he is concerned about the many priorities listed in the 2010 Statement; that in these times he feels it is inappropriate for the Commissioners to spend our resident's taxes to fight for such broad issues when the three main issues affecting the City of Hays are taxes, water, and home rule. Also, the Hays Public Library has a contingency fund as does the City; most of it comes from private donations and a portion of it is from savings. He understands the need to be frugal, but he does not believe the City has the authority to go to the Legislature and tell them what to do about another governing body.

Commissioner Channell stated that there is a concern that any reduction to the local library levy may cause the local library to lose their funding the next year. It could become a necessity for cities to readjust their levies in order to not jeopardize funding from the state. This is a concern around the State and was listed as such in the League of Kansas Municipalities 2010 Statement of Legislative Priorities.

Commissioner Schwaller disagreed. The City has taken the statutory authority to establish the funding mechanism for this completely separate, autonomous entity. The mill levy could be raised or lowered. The issue is not how much money the library will lose; the issue is how much money the library gets each year via the mill levy. He does not think fighting for such a small amount by jeopardizing 6 mills, which generates \$1,080,000, makes sense.

Commissioner Hickman stated he does not think that any language regarding library funding should be included in the 2010 Statement.

A discussion was held on how and when the library budget is prepared and given to the City for consideration at budget time.

Library Director Melanie Miller, Hays Public Library, read the following statement:

“Kansas forefathers showed uncommon vision in allowing Kansas citizens to decide to what degree they would fund their own community libraries. Kansas public libraries are authorized under Kansas Statute 12-1220, passed 1951, as non-taxing subdivisions of the State. The community-at-large decides through its library board and through charter ordinance, to what degree it will fund its public library.

We were shocked to learn that the City of Hays had developed a legislative agenda which proposed the reduction of a library levy without loss of state aid eligibility, a proposal emanating from the Kansas League of Municipalities.

Every few years, the Kansas League voices a desire to control library levy authority. The present initiative identifies that if a library’s budgeted revenues fall below the dollar amount of those of the previous year and the mill levy is also reduced, that the library is no longer ineligible to receive state aid.

In 1981, the Hays community supported a charter ordinance referendum raising the library levy to four mills. In 1983, with a library building which was falling to pieces, we requested 6 mills. It was unanimously approved and the 6 mills were unanimously ratified by the 1990 Hays City Commission following reappraisal. The 2000 library building expansion passed by a 61% margin. Clearly, the community has indicated multiple times that their public library should be funded at 6 mills.

I want to take this opportunity to publicly correct misinformation about the library budget that was aired at the City 2008 budget hearing. The Library’s 2009 Budget did not increase by the amount of 1 mill but by less than half a mill. The Library is not unaccountable for its budget since the Mayor is a member of the Library Board and appoints other Library Board members, among other accountability features. The Library’s capital improvement fund reserves are not

one million dollars, but half a million dollars, and a city which prides itself on functioning well in a depressed economy through the use of reserves cannot fail to applaud the library for using the same strategy. We promised the 1983 City Commission that we would never request more than 6 mills and we have kept our promise. Our 2010 Budget has a cumulative increase of \$1,000.

Libraries and the free access to information that we provide are never more critical than in a depressed economy. The last thing you want is to reduce a community's access to job-finding materials, the Internet, and after-school programs for children of working parents. This is not what this community has indicated it wants.

The League initiative will affect the entire state. We respectfully request that you eliminate the library funding initiative from the 2010 City of Hays legislative agenda.”

Commissioner Channell referred back to the minutes of the December 8, 1983 Commission meeting. At that meeting, the Commission voted to increase the mill levy to 6 mills. Commissioner Melly Schmidt stated she had no problem with raising the mill levy for repairs to the library, but she is concerned about continuing the mill levy indefinitely. City Attorney Robert Glassman advised that a charter ordinance would have to be adopted to provide for the increase. Likewise, a charter ordinance could be passed to repeal the increase. Commissioner Channell stated that 26 years later, the mill levy is still 6 mills.

The Library Director responded that the City Commission in 1990 had a chance to reduce the levy following reappraisal, but chose not to.

Commissioner Channell stated the 1983 increase in the mill levy was not for funding the library operations, but for repairs. He realizes that the size of the Library was increased; therefore increasing the costs. The support in 1983 was to preserve the Library structure.

Ms. Miller stated that in 1983, the Library was being operated on a \$3,000 maintenance budget. She disagreed that the increase in mill levy was solely for the structure. Everyone in the community was shocked about the condition of

the building; however there were other issues that were of concern over and above the building.

Commissioner Channell stated he does not want to reduce the mill levy for the Library at this time; however, he wants the library budget to be based on their needs rather than on the mill levy. He feels that when the Commission passed the charter ordinance in 1983 raising the mill levy from four to six mills, it was not intended to be permanent. He thinks it was meant to get the Library through a crisis.

Commissioner Schwaller stated he did not feel that assumption can be taken from the December 8, 1983 minutes.

Commissioner Channell feels that including the library funding issue in the 2010 Statement protects their state funding from being cut if any entity in the State has to reduce their dollar amount.

Commissioner Schwaller stated we have not had a problem with this. Like he stated earlier, to fight for such a small amount and possibly jeopardize the mill levy is absurd.

Ms. Miller stated that the intent of K.S.A. 75-2556, which is the statute that authorizes state aid, was a protection from the Legislature to make sure the local unit of government did its part; it was to protect libraries from having their local government reduce levies because they would lose state aid. She stated that after reappraisal the Library did not levy 6 mills; there have years recently when the full 6 mills were not levied.

Commissioner Hickman stated that he felt these issues could be worked out collectively.

The Commissioners then voted on the original motion made by Henry Schwaller IV, seconded by Christopher Channell, to approve the 2010 Statement of Legislative Priorities.

Vote: Ayes:

No: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

Troy Hickman moved, Henry Schwaller IV seconded, that the 2010 Statement of Legislative Priorities, with the section regarding library funding stricken from the document, along with the amendment re-organizing the water issues as approved in an earlier motion, be approved.

Commissioner Channell stated he still feels the library funding issue should be in the 2010 Statement. He does not feel it will be discussed this Legislative session and therefore, will vote in favor of the motion.

Vote: Ayes: Ron Mellick
Christopher Channell
Troy Hickman
Henry Schwaller IV

13. REPORT OF THE CITY MANAGER: The City Manager welcomed the new Assistant City Manager Paul Briseno who was attending his first Commission meeting.

14. COMMISSION INQUIRIES AND COMMENTS: Commissioner Schwaller expressed concern about the late flights arriving at the Hays Regional Airport.

The City Manager responded that the City has made its opinion known to Great Lakes; the arrival times have been getting better and are within the industry standard.

The meeting was adjourned.

Submitted by: _____

City Clerk