

MINUTES OF A MEETING OF  
THE GOVERNING BODY OF  
THE CITY OF HAYS, KANSAS  
HELD ON FEBRUARY 26, 2004

**1. CALL TO ORDER BY CHAIRMAN:** The Governing Body of the City of Hays, Kansas met in regular session on Thursday, February 26, 2004 at 7:30 p.m.

Roll Call: Present: Troy Hickman  
Sunell Koerner  
Kent Steward  
Wayne Billinger  
Henry Schwaller IV

Chairperson Hickman stated that a quorum was present and called the meeting to order.

**2. MINUTES:** There were no corrections to the minutes of the meeting held on February 12, 2004; they stand approved as written.

**3. FINANCIAL STATEMENT:** City Clerk Susie Berger reported that sales tax collections for February 2004 totaled \$227,844 compared to \$211,561 for 2003. Year-to-date collections are approximately 2% above last year's collections.

Henry Schwaller moved, Wayne Billinger seconded, that the Financial Statement for the month of January, be approved.

Vote: Ayes: Troy Hickman  
Sunell Koerner  
Kent Steward  
Wayne Billinger  
Henry Schwaller IV

**4. CITIZEN COMMENTS:** There were no comments.

**5. CONSENT AGENDA:** Henry Schwaller moved, Wayne Billinger seconded that the following consent items, be approved.

**A. Mayoral Appointments:**

**Care Council**

Carolyn Bird – 2 year term to expire 3-1-06 (re-appointment)

Cynthia Elliot – 2 year term to expire 3-1-06 (re-appointment)

**Neighborhood Revitalization/Downtown Development Review Board**

Katherine Burnett – 1year term to expire 1-1-05 (Trades Board Rep)

**B. New Business Resolutions:**

Resolutions expressing appreciation were presented to the following businesses:

Dr. Luis Perez – Midwest Chiropratic & Kinesiology

John Flynn – Gone Logo

Vote: Ayes: Troy Hickman

Sunell Koerner

Kent Steward

Wayne Billinger

Henry Schwaller, IV

**UNFINISHED BUSINESS**

**6. STRATEGIC PLAN RESOLUTION:** The City Manager noted that this Resolution was previously approved; however the wording did not meet the required criteria of the Kansas Department of Commerce.

Wayne Billinger moved, Sunell Koerner seconded, that Resolution No. 460, being a Resolution that reconfirms support for the Qualifying Regional Strategic Plan, and requests the Kansas Secretary of Commerce of the State of Kansas to re-approve the County of Ellis, Kansas, as a Kansas Enterprise Zone, be approved.

Vote: Ayes: Troy Hickman

Sunell Koerner

Kent Steward

Wayne Billinger

Henry Schwaller IV

## **NEW BUSINESS**

**7. NORTH HAYS ADDITION FINAL PLAT:** A Final Plat of the North Hays Addition which includes the land bounded by the proposed reverse access roads between 48<sup>th</sup> and 55<sup>th</sup> Street was presented for consideration. The Planning Commission has approved the Final Plat. Approval of the Plat will dedicate the right-of-way for construction of Roth Avenue and General Hays Road this summer.

Henry Schwaller moved, Sunell Koerner seconded that Resolution No. 461, being a Resolution accepting the Final Plat of North Hays Addition, be approved.

Vote: Ayes: Troy Hickman  
Sunell Koerner  
Kent Steward  
Wayne Billinger  
Henry Schwaller IV

**8. CITY MANAGER EMPLOYMENT AGREEMENT ADDENDUM:** Chairperson Hickman presented an Addendum to the City Manager's existing Employment Agreement. This addendum incorporates a 4.5% increase in salary for the City Manager as per previous contractual agreement, and provides for an additional \$2,000 to be added to the Manager's deferred compensation plan.

Wayne Billinger moved, Kent Steward seconded, that the Addendum to the City Manager's Employment Agreement, be accepted, and made retroactive to January 1, 2004.

Commissioner Schwaller noted the performance of the City Manager has been evaluated, and it was determined that his performance was good. The raise is in line with other salary increases for employees of the City.

Commissioner Steward noted that the City Manager has done a very good job with the support of City staff, and this is the appropriate way of showing that opinion.

Vote: Ayes: Troy Hickman

Sunell Koerner  
Kent Steward  
Wayne Billinger  
Henry Schwaller IV

**9. HAYS AQUATIC PARK ADMISSION FEES:** City Manager Gustafson reported that on February 19, 2004, the City Commission held a joint meeting with the Hays Recreation Commission (HRC). In this meeting, the issue of increasing admission fees was discussed. The HRC is not recommending the City of Hays increase these fees due to a concern of decreased attendance. It was noted that the Aquatic Park has operated with a consistent yearly loss since it opened.

Commissioner Schwaller suggested the rates be raised by 25 cents per person on weekends and holidays. He thought this would be a good compromise.

Commissioner Koerner thought a higher rate on weekends would be a good idea. Expenses are higher when more people are in the pool, so it makes sense to charge more on weekends.

Commissioner Billinger said the Recreation Commission Board indicated they were concerned about the impact a rate increase would have on low income families. Their desire was to leave the rate the same this year, and develop a plan for an across-the-board increase next year.

Commissioner Steward said he would even favor a 50 cent increase on weekends. We are subsidizing this pool by a great amount of money and steps need to be taken to recoup some of that cost.

Chairperson Hickman said he is inclined to honor HRC's recommendation. They were not at all in favor of a 50 cent increase. Even though they did not recommend 25 cents, they thought 25 cents was a more reasonable approach.

Commissioner Steward pointed out that the Recreation Commission doesn't really have a concern about what it costs to operate the Aquatic Park. A Recreation Commission exists to make recreational activities available. We as a

Commission want to make the Aquatic Park available to as many people as possible, but the City has to consider the use of the taxpayer's money.

Commissioner Schwaller said he does not want to get into a position where we are not only losing money, but the pool is not being properly maintained.

Henry Schwaller moved, Sunell Koerner seconded, that the daily attendance rate at the Hays Aquatic Park remain the same, but the weekend rate for adults and children be raised by 25 cents on Saturdays, Sundays and holidays.

Commissioner Billinger said he will be voting no; he does approve of the step approach, but would like to honor the Recreation Commission Board's wishes. They didn't want two raises within three years and were concerned about the impact on some of the low income families.

Vote: Ayes: Troy Hickman

Sunell Koerner

Kent Steward

Henry Schwaller

No: Wayne Billinger

**10. CLEAN AIR ORDINANCE:** City Attorney John Bird has prepared four no smoking ordinances, one excludes bowling alleys from the smoking ban, one includes bowling alleys, and the two other ordinances have blanks for effective dates.

City Attorney Bird reviewed the basic content of the ordinance. He said this is a modified no smoking ordinance. It prohibits smoking in all of the following enclosed public places: elevators, buses, taxi cabs, restrooms, service lines, retail stores, but not retail tobacco stores, restaurants, aquariums, galleries, libraries, museums, movie theater facilities, stage productions unless smoking is part of the production, sports arenas, convention facilities, health facilities, lobbies, hallways and other common areas in department buildings, retirement facilities, and nursing homes. This ordinance exempts smoking in bars, private

homes, unless the home is a child care facility. Bowling alleys are still a debatable issue depending on which ordinance is approved.

The City Attorney said bars are defined as an area devoted to serving of alcoholic beverages for consumption by guests on the premises, and in which less than 70% of the estimated gross revenue from the business is derived from sources other than cereal malt beverages and alcohol.

The enforcement of this ordinance will be initiated by the Hays Police Department upon observation of a violation, or any citizen who desires to register a complaint, or any owner, manager or operator.

The monitoring of more than 30% of revenue derived from alcohol will be done by requiring the owner to sign an affidavit under oath. If it appears that there is a violation, it will be investigated. Attorney Bird said signing a false affidavit is a fairly serious offense.

Wayne Billinger moved, Sunell Koerner seconded, that the ordinance that prohibits smoking in bowling alleys and has an effective date of January 1, 2005, be approved.

Henry Schwaller moved, that the ordinance be amended to strike the following: Section 1, Paragraph K, M; Section 3, Paragraph C; Section 4, A1, A2, A3, A4, A5, A7, A8, A9, A11; Section 5, Paragraph A, B, C, E; Section 6, include an exemption (No. 6) for bowling alleys.

There was no second to Commissioner Schwaller's motion. The original motion remained on the floor.

Several citizens made comments regarding the no-smoking ordinance. Bruce Herreman, owner of Centennial Lanes Bowling Alley, asked for an exemption to allow smoking at Centennial Lanes, if there is not going to be a total ban in all establishments.

Pete Pilatus, said there are smoke free establishments in Hays, the people worried about secondhand smoke need to go to those places. He asked why the City has to step in and ruin everything for everyone else.

Mike Casey, vice president of the Kansas Restaurant Hospitality Association, said his organization strongly supports owners' rights to choose

smoking status. The trend towards nonsmoking establishments makes this ordinance unnecessary.

Dr. Jon Hauxwell read a quote from a publication that stated that the enactment of a smoking ban in El Paso, Texas, showed no decline in total restaurant or bar revenues, after the City smoking ban was implemented on January 2, 2002.

Alexis Wilson, Hays High School student, said her family knows from experience the health concerns of secondhand smoke and avoid smoking establishments.

Gary Casper, manager of the Smoke Shop in Hays, said he believed that telling a business owner what he can or cannot do with his business is a form of dictatorship.

Glen Teel, said if a person is so addicted to tobacco that they cannot spend 30 to 45 minutes eating a meal without a cigarette, he feels sorry for them.

Heather Winklepleck, asked the Commission to take into consideration all the comments, e-mails, surveys and petitions they have received in opposition to smoking in public establishments.

Wayne Billinger moved, Sunell Koerner seconded, that his motion on the floor be amended to exempt bowling alleys from the Ordinance and move the effective date of the Ordinance to July 1, 2004.

Commissioner Schwaller said he supports exempting the bowling alley, exempting the bingo halls; he supports exempting anyone. He is opposed to a start date of July 1, 2004; it will create legal problems if there is a petition, and force a burden for the City to hold an election that was not budgeted.

City Attorney Bird said if someone wants to repeal an ordinance that has been passed; they can file a petition signed by the appropriate number of registered voters to pass an ordinance to repeal the ordinance in place. The Commission has the option of passing that ordinance, and if the ordinance does not pass, the issue will be put on the ballot of the nearest election.

Vote: Ayes: Wayne Billinger

Sunell Koerner

No: Troy Hickman  
Kent Steward  
Henry Schwaller IV

Chairperson Hickman noted that the motion failed.

Chairperson Hickman asked for a vote on the original motion not exempting bowling alleys and with an effective date of January 1, 2005.

Vote: Ayes: Wayne Billinger  
Sunell Koerner

No: Troy Hickman  
Kent Steward  
Henry Schwaller IV

Chairperson Hickman stated that the motion failed.

Henry Schwaller moved to reconsider the amendments to the original ordinance as stated earlier in the meeting to strike the following: Section 1, Paragraph K, M; Section 3, Paragraph C; Section 4, A1, A2, A3, A4, A5, A7, A8, A9, A11; Section 5, Paragraph A, B, C, E; Section 6, include an exemption No. 6 for bowling alleys.

Vote: Ayes: Wayne Billinger  
Sunell Koerner  
Henry Schwaller

No: Kent Steward  
Troy Hickman

Commissioner Schwaller said when discussion began on this smoking issue; it was about smoking in restaurants. The issue has changed to an issue about employee rights, which is fine. When he ran for reelection, he said he would be in favor of adopting the Salina ordinance with modifications. What he has found in visiting with citizens is that 50% to 70% of them would favor an ordinance if it allowed them a chance to have a meal without inhaling smoke. He realizes there are other issues to consider that are just as important, but he did not make any promises on those issues. The items that he asked to be taken out have nothing to do with restaurants. The divider and the common ground here is

that people want a certain freedom both as owners of property and as patrons of restaurants. Commissioner Schwaller said he does not want to punish small business owners that may not employ anyone. He feels the ordinance should be tested in restaurants first and consider the employee issue in the future.

Commissioner Koerner said she is willing to compromise and support Commissioner Schwaller's proposed amendments as a start.

Commissioner Billinger said this ordinance has been discussed for several work sessions. The basic fact was agreed upon and that being secondhand smoke is harmful to your health. The draft was sent back to Counsel for revision. The areas of disagreement kept being narrowed down. He would like further discussion to see just how different the two sides are, and what it would take to come to an agreement.

Commissioner Hickman believes that no one can dispute the medical evidence regarding secondhand smoke. The issue has been looked at from many different angles, smoker's rights versus nonsmoker's rights, etc. From his perspective, it is a social justice issue. One method of tackling a social justice issue is changing behaviors; the other one is changing attitudes. Typically, you change behaviors by having laws, and attitudes are changed through education. Attitudes cannot be changed over night. He would like to focus more on education. Forcing people to change their behavior is not going to change their attitudes toward smoking.

Commissioner Steward said he has never disputed the health issue regarding secondhand smoke. He respects the people who have brought this issue forward on that basis. Compromise is a good way to govern. The young lady who spoke so eloquently made his point; she stopped going to restaurants that allow smoking. If there were no smoke free restaurants in Hays, he may be in favor of a smoking ban, but the whole movement is going the other way. This ordinance ought to be called the Hays City Commission Ordinance to micromanage about a dozen businesses in Hays. He said this is the most highhanded legislation that he has ever seen and he is absolutely opposed to it.

Chairperson Hickman asked the City Attorney how to proceed under “Roberts Rules of Order”. The City Attorney said Commissioner Schwaller moved to amend Commissioner Billinger’s motion to adopt the ordinance; it failed. The Chairman of this meeting with his advice, allowed the Commission to vote on reconsidering Commissioner Schwaller’s motion. There is no pending motion on the floor.

Henry Schwaller moved, Sunell Koerner seconded, that an ordinance providing for restriction and prohibition of smoking following the template as provided, but striking the following: Striking Section 1, Paragraph K, M; Section 3, Paragraph C; Section 4, A1, A2, A3, A4, A5, A7, A8, A9, A11; Section 5, Paragraph A, B, C, E; Section 6, include an exemption No. 6 for bowling alleys, and Section 8, a start date of July 1, 2004, be approved.

Commissioner Billinger said he will be voting no, he is in support of a more stringent ban.

Jon Hauxwell said in regard to attitudes and behaviors, the two can be addressed concurrently. We need to regulate harmful behaviors because they are harming people. At the same time, we need to address attitudes. We need to protect the public, but that does not obviate the need for educational campaigns.

Commissioner Billinger noted that the motion on the floor would forbid smoking in restaurants, but would allow smoking in many other areas. He said he is in favor of a ban on smoking, but he would like to see a better one.

Vote: Ayes: Sunell Koerner

Henry Schwaller IV

No: Troy Hickman

Kent Steward

Wayne Billinger

Chairperson noted that the motion failed.

Commissioner Koerner stated that if there are people who still feel that a smoking ban is a good thing for this community, she suggested that they get a legal petition produced for the next election, and let the voters decide.

**11. REPORT OF THE CITY MANAGER:** The City Manager had no comments.

**12. COMMISSION INQUIRIES AND COMMENTS:** Commissioner Schwaller stated that the January 19, 2004 Planning Commission minutes contain discussion of the impact of development. It was stated in the minutes on page 8 the he supported a storm water utility. He said he has always been against user fees, and has never supported a storm water utility; the minutes are incorrect.

Commissioner Schwaller asked City staff to work on re-striping Vine Street, north of I-70.

Commissioner Schwaller said he would like to discuss in a work session the possibility of providing rebates to people who purchase water efficient washing machines. He said he would like to discuss the status of the Cable TV Franchise and the possibility of offering a cable alternative.

Commissioner Billinger noted that in the January 26, 2004 minutes of the Ellis County Coalition meeting, an executive session was held without stating what was to be discussed in the executive session. City Attorney Bird said he would look into it.

Commissioner Billinger asked the status of the Downtown Revitalization Grant for construction of 8<sup>th</sup> Street. The City Manager said he would provide that information.

Commissioner Koerner expressed her disappointment in the decision of the Board in regards to the proposed no smoking ordinance. Members of the community made their wishes known. The same thing happened with the decision over what to do about the 32<sup>nd</sup>/33<sup>rd</sup> Street intersection; nothing was done instead of doing what most of the community thought was the right decision, and that is what has happened again.

Chairperson Hickman said he is looking forward to meeting with the County Commissioners.

Thereupon the Governing Body adjourned.

Submitted by: \_\_\_\_\_

Clerk of the Board

