

City Commission of Arkansas City Meeting Minutes

The Arkansas City Board of City Commissioners met in regular session at 5:30 p.m. Tuesday, March 15, 2016, in the Commission Room at City Hall, 118 W. Central Ave., in Arkansas City.

Vice Mayor Duane Oestmann called the meeting to order. Those present at roll call were Vice Mayor Oestmann, Commissioner Dan Jurkovich and Commissioner Jay Warren. Commissioner Brandon Every arrived shortly after the approval of the agenda. Mayor Chad Giles was absent due to vacation.

Also present at roll call were City Manager Nick Hernandez, City Attorney Tamara Niles, Public Information Officer Andrew Lawson, Finance Director Kathy Cornwell, Public Works Director Eric Broce, Assistant Public Works Director Mike Crandall, Neighborhood Services Superintendent Richard Brown, City Planner Josh White, Fire Chief Bobby Wolfe, ACFD Lt. Paul Hunter, Police Chief Dan Ward, and newly promoted Master Police Officers Troy Cochran, Jeremy Samson and Jason Sanderholm.

Citizens in attendance included Albert Brown, Cindy Current, Michelle Dykes, Kanyon Gingher, Mell Kuhn and Traveler reporter Jeni McGee.

Commissioner Warren offered the opening prayer. Vice Mayor Oestmann led the pledge of allegiance.

Agenda Additions/Deletions and Approval

Commissioner Jurkovich moved to approve the agenda as presented. Commissioner Warren seconded the motion. A voice vote was unanimous in favor. Vice Mayor Oestmann declared the agenda approved.

Recognition of Visitors

Chief Ward introduced to the commissioners the three new Master Police Officers who were promoted on March 5. MPO Cochran has been with ACPD for six years, while MPO Sanderholm and MPO Samson each have served for five years. Ward said all three men passed several tests and interviews during the past few months.

Consent Agenda

Commissioner Warren made a motion to approve the consent agenda as presented, including the following:

1. Approving the March 1, 2016, regular meeting, recessed to March 8, 2016, minutes as written.

Vice Mayor Oestmann seconded the motion. A voice vote was unanimous in favor of the motion. Vice Mayor Oestmann declared the consent agenda approved.

New Business

Mayor's Board Appointments

City Manager Hernandez presented for discussion several vacancies on City advisory boards, including the South Central Kansas Medical Center Board of Trustees. He recommended tabling the item until Mayor Giles returned.

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Commissioner Jurkovich asked if City employees could be on that board. Hernandez said no. Commissioner Every asked why. Hernandez said it would be a potential conflict of interest. City Attorney Niles added that if their service was part of their duties, they would have to be paid and could not function as volunteer members.

Hernandez said he would have to give approval before any employee could even be eligible for the board. Niles said municipal code specifically lists the employee who is an ex officio member of the board — the city manager, or his or her designated representative. She also said an employee serving on the board would get overtime pay.

Commissioner Every made a motion to table any appointments until March 22. Commissioner Jurkovich seconded the motion. A voice vote resulted in three aye votes and one nay vote, with Commissioner Warren dissenting. He said he wanted to table it until April. Vice Mayor Oestmann declared the action item tabled.

Firefighters Relief Association **Charter Ordinance**

Public Information Officer Lawson presented for discussion a first reading of a charter ordinance exempting the City from the provisions of K.S.A. 40-1707, relating to the permissible use of funds by the Arkansas City Firefighters Relief Association, and providing substitute and additional provisions relating thereto.

City Attorney Niles said the association provides life and long-term disability insurance to its members, who all are full-time firefighters employed by the City. She said state statutes had many provisions for such associations based on the class of city and, as a result, the City could make modifications to the policies.

A recent incident involving a Fire-EMS Department employee who could not be insured conventionally highlighted the need to make such a modification, Niles said. Some volunteer departments can provide annuities to their members in lieu of insurance, and the charter ordinance would allow the same in Ark City.

Niles said she and Lt. Hunter wanted to expand the availability of annuities to all employees in order to potentially save on costs for employees. She said she did not intend for the ordinance to be passed that night.

Vice Mayor Oestmann asked about how nonpaid volunteers would be handled, but Niles said there were no ACFD volunteers. Lt. Hunter later corrected her and said there were at least seven volunteer members. As a combination department in a city of the second class, Hunter said, there are no specific statutes for ACFD.

Hunter said all firefighters are required by state statutes to be treated favorably and equitably, regardless of whether they are paid or volunteers. He said there had been some inconsistencies with that in the past.

Commissioner Every asked why someone hadn't met the insurance requirements. Hunter said one was for a health reason and the other for legal reasons. Commissioner Every asked if the City was required by the state to provide insurance. Hunter said the relief associations are different. Their funding comes from a premium paid on homeowners insurance policies, and the funds are redistributed across departments for these purposes.

City Manager Hernandez and Hunters said there are additional outlets for life insurance, as well.

Commissioner Jurkovich made a motion to table the charter ordinance until April 5. Commissioner Warren seconded the motion. A voice vote was unanimous in favor of the motion. Vice Mayor Oestmann declared the charter ordinance tabled.

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Historic Preservation Fund Grant for Downtown Survey

Public Information Officer Lawson presented for discussion a resolution to authorize the City to file an application for a Historic Preservation Fund grant for a survey of the downtown Arkansas City commercial district, pledging matching funds and/or in-kind services for said grant.

City Planner White said the City was eligible as a Certified Local Government for grant funds from the National Park Service to re-survey the downtown and see if additional properties could be added to the National Register of Historic Places. The original survey was done in 1983 and has not been updated since.

During that period, there have been several demolitions and several buildings could be added because they were not eligible in 1983, but now may be at least 50 years old.

White said the Historic Preservation Board has been interested in a new survey for quite some time. He said the survey would not add or delete any regulations, nor add any buildings to the Register. Those things would require separate actions at a later time. The survey would be by a consultant after a competitive bid process.

He said he did not anticipate the expenditure of any actual funds, since the matching "funds" would be provided by his salary and time, as well as in-kind contributions in the form of volunteer labor by board members. The funds that are allocated for the grant come from fees paid by offshore oil drilling rigs, not taxes, White said.

The final application was due at the end of that week, White said, and he was asking for commission support.

Commissioner Jurkovich asked how difficult it would be to eliminate the historic district. White said it was possible. Commissioner Jurkovich asked if the grant could be applied to that, but White said it could not.

Commissioner Jurkovich said he has seen the district only cause problems and result in a hodgepodge look.

Commissioner Every cited some prior cases involving windows as evidence of the district being overbearing.

White admitted there were some negatives to being listed on the Register, but there also are tax credits that have benefitted downtown entities such as the Burford Theatre, Osage Apartments and Union State Bank.

Vice Mayor Oestmann asked about the historic guidelines. White said that unless funding is involved, they are just guidelines and they can be appealed at the local level through the Historic Preservation Board. And even that entity's decisions can be appealed to and overturned by the City Commission.

Commissioner Every asked City Manager Hernandez about his experiences with the district. Hernandez said some cities such as Council Grove and Wamego truly embrace their downtowns and benefit from it. Having a CLG designation allows for more flexibility, he said, but only if owners want to embrace that historic character.

Vice Mayor Oestmann made a motion to approve the resolution. Commissioner Warren seconded the motion, saying the Burford had benefitted greatly from the historic tax credits.

A voice vote resulted in two aye votes and two nay votes, with Commissioner Every and Commissioner Jurkovich dissenting. Vice Mayor Oestmann declared the resolution failed.

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First Amendment to KDHE Loan **Resolution No. 2016-03-3025**

Public Information Officer Lawson presented for discussion a resolution to approve the First Amendment to the Loan Agreement between the City and the Kansas Department of Health and Environment, regarding the Kansas Public Water Supply Loan Fund Project No. 2813.

City Manager Hernandez said this amendment would extend the first repayment on the loan for the new Water Treatment Facility until February 2018. No funds have been drawn yet.

Commissioner Jurkovich made a motion to approve the resolution. Commissioner Warren seconded the motion.

Commissioner Every asked how much of the \$22 million has been expended to date on the project. Hernandez said about \$3.6 million had been spent so far and would need to be reimbursed out of the loan funds.

Those funds have paid for the new clearwell and engineering on the new plant, as well as a pair of plant studies.

Commissioner Jurkovich asked about remaining cash in the water fund. Hernandez said there still was about \$2.4 million, plus more than \$3 million in the wastewater fund and \$880,000 in the sanitation fund.

Commissioner Every asked what would happen if the resolution was not approved. Hernandez said the agreement would stay with the original payback agreement starting in 2017. Passing on the state funds at 2.7 percent would require going to the private market and facing interest rates of more than 6 percent, he indicated.

A voice vote resulted in three aye votes and one nay vote, with Commissioner Every dissenting. Vice Mayor Oestmann declared the resolution adopted and given Resolution No. 2016-03-3025.

ACI Voluntary Annexation Agreement

Public Information Officer Lawson presented for discussion a resolution authorizing the City to enter into a voluntary annexation agreement with Arkansas City Industries, Inc. for property located at 101 and 102 Goff Industrial Park Road. The annexation is needed in order to bring the reconstructed 61st Road into the City limits.

City Attorney Niles said that in light of the ongoing recent street improvement project on 61st and Skyline roads, the City proposed voluntary annexation to ACI instead of the previously contemplated involuntary annexation.

Niles said the agreement eases the property into full City taxation over the course of 10 years. The properties pay 21.79 mills to rural entities that instead would be paid to the City, with a declining rebate for the rest.

Commissioner Every asked what had changed since Jim Sybrant's presentation. Niles and Commissioner Warren said Sybrant was speaking only for himself, not the ACI board of directors, of which he is not a member.

Commissioner Every asked what was holding back the other properties from coming into the City. Niles said 601 Goff Industrial Park Road was not approved by the ACI board, but these two were and it at least was a start.

She and Commissioner Warren said they hope this agreement can serve as a precedent for other island parcels.

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Commissioner Every said he had talked to an ACI member who told him Niles regularly attended ACI meetings.

He asked what the nature of her affiliation with ACI was and if she had any conflict of interest in fairly representing the City in this negotiation.

Niles said she had been retained to represent ACI for a specific issue that was an unrelated legal matter. She said City Manager Hernandez and ACI both were aware of and approved of her involvement in negotiations.

Commissioner Every asked Hernandez for confirmation. He said the item Niles worked on for ACI had no relation to any business between ACI and the City. The agreement itself was developed by Hernandez and drafted by Niles to present to the ACI board, but the initial offer had started with him, Hernandez confirmed.

Commissioner Every made a motion to table the resolution until March 22. Commissioner Jurkovich seconded the motion. A voice vote was unanimous in favor. Vice Mayor Oestmann declared the resolution tabled.

Code Enforcement Discussion and Charter Ordinance

City Manager Hernandez presented for discussion a charter ordinance exempting the City from the provisions of K.S.A. 12-4207, regarding public officials with the authority to sign and serve a notice to appear in Arkansas City Municipal Court.

Commissioner Every said he had heard complaints from citizens who had their water shut off for nonpayment of bills, followed by a notice on their door that they needed to turn their water on in 72 hours or leave the home.

Hernandez passed out copies of the utility calendar and asked Finance Director Cornwell to talk more about the process, especially as it concerns people who do not communicate with the Utility Billing Office.

Commissioner Every said his problem was not with the billing process. Commissioner Jurkovich asked if the code enforcement officer was empowered to write a notice that looks like a ticket and orders an eviction.

Neighborhood Services Superintendent Brown said the International Plumbing Code does not allow people to occupy a residence that does not have water, electricity or gas because it is a severe health issue.

He said the notice was not for eviction, but to notify residents that they are living in unsanitary conditions and they need to find someone to live with until they can rectify the issue.

Brown said all but one person had turned their water back on and the remaining person was working with him.

Commissioner Every asked if the City had the legal authority to evict someone in 72 hours. City Attorney Niles said it was not an eviction, but an enforcement of the provision that such a residence is not legal to inhabit.

Eviction implies an ownership interest, but in these cases, the City is not seeking to take over the property at all.

Commissioner Warren said he also did not like the idea of the 72-hour notice. Hernandez asked how many days actually pass after water is turned off and before the notice is posted.

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Cornwell said the Finance Department gives residents 25 days to pay their utility bill, then another 10 days before shutoff, then another week until verification of turnoff and locking up the meter box. It is several days after that last marker that Brown delivers the notifications, for a total of about 45 days in all to pay the bill.

Residences that are notified by Brown often have not had water for 10 to 14 days by the time the 72-hour warning would expire, Cornwell explained. Commissioner Jurkovich said he thought that process was fine.

But he and Vice Mayor Oestmann said they would prefer an approach that is oriented more toward helping residents to understand the code requirements and less threatening their removal from their homes.

Cornwell said that on many occasions, they don't even know if anyone is living at the residence. If, at any time, someone contacts the Utility Billing Office to make some kind of payment arrangement, the process is stopped.

Hernandez and Cornwell agreed they could revise the wording and presentation of the notification process.

Vice Mayor Oestmann and Kanyon Gingher had a discussion about what could be done when people don't respond. He said they needed to be helped and she said many people are living in fear of the City.

Brown said he only checks houses on a complaint-driven basis to see if they are healthy and sanitary. He said most of his difficulties are due to communication problems, when he doesn't know if someone is living there.

Cindy Current asked how the process varies if Kansas Gas Service or Westar Energy is involved. Brown said he's had notices from KGS to check residences in cases where the heat is shut off. Hernandez said Westar has, too.

Commissioner Jurkovich asked how often this has happened. Brown said that since he came here, four landlords wouldn't make the necessary corrections and those houses are still empty, but two are working on it.

Hernandez said a list of contacts, requested by Gingher, for agencies that can assist people with paying their bill can be provided to residents at the time the meter is locked up, after shutoff has occurred.

Albert Brown said there is a sense that people are afraid to come in and pay their bill because they will be charged a disconnect fee. He asked why they couldn't waive that fee, reinstate service and add a small fee.

Hernandez said when he first arrived, the City did not work with people at all and followed policy to the letter.

He said that approach has changed dramatically since Cornwell arrived, and now they will work with anyone.

Public Works Director Broce talked about the better customer service the City can offer due to the new meters.

Commissioner Jurkovich suggested that roleplaying could be incorporated into future customer service training.

Hernandez praised the City's customer service specialists, saying they are very courteous, effective and helpful.

Albert Brown suggested that people could pay a voluntary additional amount on their utility bills that would go into a pool to help those who cannot pay. Hernandez said there have been discussions about doing something like that, or even giving \$15,000 to \$20,000, and managing it all through a reputable nonprofit organization. It would be specific to City utilities, he said, but it is dependent on eliminating the bigger leaks and leak credits.

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Commissioner Every also cited a case brought to him of a resident who said the City had threatened to tear his house down within 10 days for a cracked foundation. Brown said that was not at all how the exchange went.

Brown said the property owner is working with him now on a demolition permit, but for safety and health reasons, he has to do this job. He said there are many houses that need to be eradicated throughout town.

Commissioner Every asked again about the City's legal authority and how the process works. Niles said if the City finds a property unsafe for human habitation, enforcement comes through a notice to appear in municipal court for anyone who returns to the property or seeking an administrative search warrant through district court.

Brown said he stops short of moving people out, preferring instead to work with Niles to seek a court order to inspect the property for health and safety. Niles said only one time in 10 years has the court actually been needed to evict someone, and it was for a mental health issue. Brown said people work with him at that point.

Niles said selective enforcement is risky, and it is better to enforce all codes as they are written and adopted.

Gingher asked about Brown's authority to pull electric meters and have gas shut off. He said he never has shut off power to any occupied structure, only to condemnable or hazardous structures. Broce said he was talking about doing that only after a court had evicted occupants, and only to prevent anyone else from occupying it.

Hernandez asked Chief Ward to talk about changing how enforcement is handled and allowing other City personnel to issue notices to appear in municipal court so as to lessen the work burden on overtaxed officers.

Ward said before he came, animal control and code enforcement officers were writing citations, but did not have authority to do so under state statutes. All of those duties were placed under the police umbrella in the form of police service officers. Ward was uncomfortable with also giving powers of arrest to people who are not fully trained as police officers. It also does not dovetail with CALEA accreditation standards.

This transition to public service officers has reduced the turnover rate in those positions, but has added to the duties of uniformed officers who have to come to a scene to write a citation on a PSO's behalf. The same is true for code enforcement officials and fire officials.

The officers merely are filling out a piece of paper on the staff member's behalf, Ward said, and have nothing else to do with the process. They do not appear in court to defend citations or know anything about the codes.

He wants to free them up for their more important policing duties by conferring the power to write notices to appear in municipal court to other City personnel for their respective areas, which requires a charter ordinance.

The practice modeled in the charter ordinance is a standard practice that Ward, Chief Wolfe and Brown said they are all familiar with from their previous cities of employment. Only the people writing NTAs would change.

Ward said he still is down two police officers, according to the 2016 budget, or three, based on sworn strength.

Commissioner Every asked about the PSO's duties. Ward said one of them manages evidence storage and is a former sworn police officer. The other handles court duties, code enforcement and animal control. He said his hope is that she could handle more animal control if code enforcement moves back to Neighborhood Services.

Commissioner Jurkovich asked if any officers had objected to the citations. Ward said that's never happened.

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Commissioner Every asked about the training officers receive. Ward said it is 14 weeks at the academy and 14 or more weeks in field training, but all of that training is for the purpose of preparing an officer for the solemn duty of depriving citizens of their liberty (or lives) and taking them into physical custody, not writing citations.

Commissioner Every asked Brown how many times he has had to call an officer to issue a citation. He said he tries not to do that, but he hasn't been in Arkansas City during the growing season yet.

Ward said that during the growing season, writing property maintenance citations is a full-time job. Brown said he rarely needs a citation written for building or code violations, but anticipates them for nuisance abatement.

Ward said he thought community relations in this venue could be improved by using a citizen instead of a uniformed officer with a firearm to serve the notices to appear. Commissioner Every said he disagreed.

Commissioner Every also said he didn't feel Brown had the authority or the training to issue notices to appear.

Commissioner Jurkovich asked how other accredited departments handled code enforcement. Ward said this was normal. In Lawrence, the fire department handled violations of the fire code. Ward supervised citizens who handled animal control, parking control and crossing guards, with no specialized police training at all.

Ward said that during growing season, one PSO does nothing by grass complaints and he usually hires part-time help, as well.

Hernandez said the item was just for discussion and staff was not seeking action on the ordinance at this time.

Other Business

Public Works Director Broce gave a presentation on the new Water Treatment Facility in preparation for the special meeting on March 22 to discuss potentially awarding a contract for the new plant's construction.

It included a historical cost estimate analysis for the different studies for the project, adjusted for inflation; an overview of cost-saving measures that reduced the project price tag from \$27 million to less than \$22 million; an outline of the four construction phases, the third of which would be the plant; updated construction costs, estimates and schedules; tabulations for the four general contractors who submitted bids;

The apparent lowest responsible bidder was Manhattan-based Walters-Morgan Construction at \$16.874 million.

Broce also mentioned that the sodium fluoride equipment was pulled out of the base bid and included in an alternate package, priced around \$58,000, so a fluoride debate wouldn't necessarily hold up awarding the plant.

Commissioner Every asked how long the bids were good. Broce said 30 days from bid opening, or April 9, with pricing good for another 30 days from that.

Broce said that water still is the cheapest thing money can buy, based on electricity, chemical, media and membrane replacement, cartridge, and personnel costs, while also accounting for replacement and rehabilitation, amortization, operations and maintenance, and daily demand. All of those variables produce a total estimated cost of \$2.89 to produce 1,000 gallons of finished, treated water.

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Broce said that recapturing that cost in the long run will require adjusting rates upward for the higher-end users, such as Creekstone Farms Premium Beef. Commissioner Every asked if there had been any more conversations with Creekstone. Broce said the company still is considering a standing offer that includes reuse credits.

City Manager Hernandez said Creekstone has done two studies and is pursuing its due diligence. Commissioner Every said he was asking commissioners to approve the plant in two weeks without Creekstone's concurrence.

Hernandez said the City could pay for the plant with just Creekstone's scheduled 2-percent-per-year increase, but it would require doing fewer improvements to the water distribution system. Commissioner Every said the funding stream for infrastructure needed desperate help. Broce said there was a goal to have no pipelines that are more than 75 years old by 2030, but it will require spending more than \$2.7 million per year on water lines.

Commissioner Jurkovich asked what it would cost that day to fix everything that needed to be fixed. Broce said \$46 million would be required to replace all of the aging water lines and make other needed improvements.

Broce cautioned that missing this construction season and beginning the project in the winter would push the plant's completion date back into 2018, with it possibly not coming online until the first loan payment is due.

Since the CDM Smith study beginning in 2012, \$3,634,750 has been spent on the project and \$2,486,421 remains in reserve, with an estimated \$19.7 million in remaining expenditures.

Commissioner Warren mentioned the possibility of having a third meeting each month to discuss the hospital.

Adjournment

Commissioner Every moved to adjourn the meeting. Commissioner Jurkovich seconded the motion. A voice vote was unanimous in favor of the motion. Vice Mayor Oestmann declared the meeting adjourned at 8:10 p.m.

THE ARKANSAS CITY
BOARD OF CITY COMMISSIONERS

Duane L. Oestmann, Vice Mayor

ATTEST:

Lesley Shook, City Clerk

Prepared by:

Andrew Lawson, Public Information Officer