



***MINUTES***  
***CITY COMMISSION MEETING***  
***TUESDAY, OCTOBER 20, 2009***  
***7:00 P.M.***

The Regular Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Bob Strawn and Commissioners Bruce Snead, James E. Sherow, Loren J. Pepperd, and Jayme Morris-Hardeman were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Jason Hilgers, Assistant City Manager Lauren Palmer, City Attorney Bill Frost, City Clerk Gary S. Fees, 7 staff, and approximately 45 interested citizens.

**PLEDGE OF ALLEGIANCE**

Mayor Strawn led the Commission in the Pledge of Allegiance.

**PROCLAMATION**

Mayor Strawn proclaimed October 22, 2009, ***Lights On After School***. Annie Pipes, Project Coordinator, and Leah Ost, Administrative Assistant, Boys & Girls Club of Manhattan, were present to receive the proclamation.

**COMMISSIONER COMMENTS**

Mayor Strawn encouraged the community to attend the Jon and Ruth Ann Wefald Pavilion dedication in City Park on Friday, October 23, 2009, immediately following the Homecoming Parade. He informed citizens that during the Discussion/Briefing Session, the Commission discussed how to handle potential proposals for the South End redevelopment for Lot 9; discussed a request from Commissioners Morris-Hardeman and Snead to revisit the regulation of registered daycare facilities with the Riley County Health Department and if changes warrant, the item would be revisited on a future City Commission agenda; and, stated the City's prior appointments of Gwyn Riffel and Kurstin Harris to the Chamber of Commerce Economic Development Committee and announced that Commissioner Pepperd would serve as an ex-officio member on the Economic Development Committee.

## CONSENT AGENDA

(\* denotes those items discussed)

### CLAIMS REGISTER NO. 2622

The Commission approved Claims Register No. 2622 authorizing and approving the payment of claims from October 7, 2009, to October 13, 2009, in the amount of \$2,877,214.94.

### LICENSE - TREE MAINTENANCE

The Commission approved a Tree Maintenance license for calendar year 2010 for Capital City Tree Care, Inc., 7920 NW 35<sup>th</sup> St., Silver Lake; Growing Concerns, Inc., 2880 Zeandale Rd., Manhattan; Hummel Tree Service, 601 Pottawatomie Ave., Manhattan; and Salina Tree, Inc., 2681 W State St. Road, Salina.

### FINAL PLAT – GRAND CHAMPIONS DEVELOPMENT ADDITION

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of Grand Champions Development Addition, generally located 630 feet south of the intersection of Grand Mere Parkway and Colbert Hills Drive along the east side of Grand Mere Parkway, based on conformance with the Manhattan Urban Area Subdivision Regulations.

\* **FINAL PLAT – STRASSER LANDING ADDITION, PLANNED UNIT DEVELOPMENT**

Commissioner Sherow commended Schultz Construction and McCullough Development on the future housing development and plans for the Strasser building.

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of Strasser Landing Addition, Planned Unit Development, generally located along the east side of North 4<sup>th</sup> Street, south of Moro Street, and north of Osage Street, based on conformance with the Manhattan Urban Area Subdivision Regulations.

### **ORDINANCE NO. 6787 – THIRD AMENDMENT – KDHE LOAN AGREEMENT**

The Commission approved Ordinance No. 6787 authorizing the execution of a third amendment to the loan agreement between the City of Manhattan, Kansas, and the State of Kansas, acting by and through the Kansas Department of Health and Environment for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Loan Fund for the purpose of increasing the loan amount to fully fund the engineering of the Wastewater Treatment Plant Expansion and Upgrade Project (SP0705, WW106P), the East Miller Ranch Interceptor (SS0810), and the engineering of the K-18 sanitary sewer relocation (SS0907).

## CONSENT AGENDA (CONTINUED)

### ORDINANCE NO. 6788 – AGGIEVILLE BUSINESS IMPROVEMENT DISTRICT – 2010 SERVICE FEES

The Commission approved Ordinance No. 6788 continuing the establishment of the Aggieville Business Improvement District and levying Business Improvement Service Fees, for the year 2010, on businesses located within the District.

### ORDINANCE NO. 6789 – DOWNTOWN BUSINESS IMPROVEMENT DISTRICT – 2010 SERVICE FEES

The Commission approved Ordinance No. 6789 continuing the establishment of the Downtown Business Improvement District and levying Business Improvement Service Fees, for the year 2010, on businesses located within the District.

### RESOLUTION NO. 102009-A/FIRST READING – ISSUE INDUSTRIAL REVENUE REFUNDING BONDS – MANKO WINDOW SYSTEMS, INC.

The Commission approved Resolution No. 102009-A and first reading of an ordinance authorizing the issuance of Industrial Revenue Refunding Bonds for Manko Window Systems, Inc., of Manhattan, Kansas, and authorized the Mayor and City Clerk to execute documents related to the bond sale.

### FIRST READING/PRIVATE PLACEMENT – ISSUE TRANSPORTATION DEVELOPMENT DISTRICT SALES TAX REVENUE BONDS – LIMEY POINT TRANSPORTATION DEVELOPMENT DISTRICT

The Commission approved first reading of an ordinance issuing \$505,000.00 in Transportation Development District Sales Tax Revenue Bonds (Series 2009) for the on-site sanitary sewer (SS0616), street (ST0623), and water (WA0610) improvements in Limey Pointe PUD; and approved private placement of the Transportation Development District Sales Tax Revenue Bonds (Series 2009) with Landmark National Bank.

### RESOLUTION NO. 102009-B – SET BOND SALE DATE – GENERAL OBLIGATION BONDS (SERIES 2009-C) AND GENERAL OBLIGATION REFUNDING BONDS (SERIES 2009-D)

The Commission approved Resolution No. 102009-B setting November 17, 2009, as the date to sell \$11,110,000.00 in general obligation bonds (Series 2009-C) and \$8,870,000.00 in general obligation refunding bonds (Series 2009-D) the following projects: *Lee Mill Village – Storm Drainage (SM0702); Gravity Sanitary Sewer (SS0704); Lift Station (SS0709); Street (ST0709); and Water (WA0705); Stone Pointe Addition, Unit Two – Storm Drainage (SM0606) and Street (ST0630); Carlson Street – Storm Drainage (SM0802); and Prairie Lakes Addition, Unit Three – Street (ST0619).*

## CONSENT AGENDA (CONTINUED)

### FIRST READING – ISSUE - GENERAL OBLIGATION BONDS (SERIES 2009-C) AND GENERAL OBLIGATION REFUNDING BONDS (SERIES 2009-D)

The Commission approved first reading of an ordinance issuing \$11,110,000.00 in general obligation bonds (Series 2009-C) and \$8,870,000.00 in general obligation refunding bonds (Series 2009-D) for the following projects: *Lee Mill Village – Storm Drainage (SM0702); Gravity Sanitary Sewer (SS0704); Lift Station (SS0709); Street (ST0709); and Water (WA0705); Stone Pointe Addition, Unit Two – Storm Drainage (SM0606) and Street (ST0630); Carlson Street – Storm Drainage (SM0802); and Prairie Lakes Addition, Unit Three – Street (ST0619).*

### \* RESOLUTION NO. 102009-C – SET FEES – CITY PARK POOL AND JON AND RUTH ANN WEFALD PAVILION

Curt Loupe, Director of Parks and Recreation, provided an overview on the item and presented the fees associated for use of the facility. He then responded to questions from the Commission regarding the bids received and savings realized, that will provide an opportunity to add a second slide, as well as the availability of scholarships.

The Commission approved Resolution No. 102009-C setting fees for the City Park Pool and for rental of the Jon and Ruth Ann Wefald Pavilion.

### CHANGE ORDER NO. 3-FINAL – 2008 NEW AND PARALLEL WATER LINES (WA0806)

The Commission approved Change Order No. 3-Final for the 2008 New and Parallel Water Line (WA0806), resulting in a net increase in the amount of \$25,871.51 (+11.09%) to the contract with Meadows Construction, of Tonganoxie, Kansas.

### SETTLEMENT AGREEMENT – 2006 NEW AND PARALLEL WATER LINES, PHASE 2 (WA0903)

The Commission authorized the Mayor and City Clerk to execute the negotiated settlement agreement in the amount of \$16,000.00 with BG Consultants, of Manhattan, Kansas, for services rendered in conjunction with the 2006 New and Parallel Water Lines Project, Phase 2 (WA0903).

## CONSENT AGENDA (CONTINUED)

### LAND ACQUISITION AGREEMENTS – US 24 AND MCCALL ROAD IMPROVEMENTS (ST0907)

The Commission approved the agreements with the McCall Pattern Company for the Permanent Pedestrian-Utility Easement, Permanent Easement, and Temporary Construction Easement; with Lynn S. Bates and Gyll C. Bates for the Permanent Easement; and with Mary K. Murdock Trust for the Permanent Easement and Temporary Easements; approved the submittal of the Request for Conditional Right-of-Way to KDOT; and authorized the Mayor and City Clerk to execute the agreements and request on behalf of the City.

### PURCHASE – FLATBED TRUCK – FORESTRY DIVISION

The Commission authorized the purchase of a 2010 Ford F-550 Flatbed Truck from Olathe Ford, of Olathe, Kansas, in the amount of \$46,775.00 for the Forestry Division (Unit #68).

After discussion, Commissioner Snead moved to approve the consent agenda, as presented. Commissioner Sherow seconded the motion. On a roll call vote, motion carried 5-0.

## GENERAL AGENDA

### FIRST READING – ADOPT - STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, EDITION OF 2009

Katharine Jackson, Assistant City Attorney, presented the proposed changes to the Standard Traffic Ordinance (STO). She then responded to questions from the Commission regarding the adoption of the STO and provided clarification on the definition of a work-site utility vehicle and whether golf carts should be allowed or not.

Dale Houdeshell, Director of Public Works, provided clarification regarding work-site utility vehicles.

Katharine Jackson, Assistant City Attorney, presented an overview of cell phone use by drivers regarding regulation and safety; an overview of cell phone laws, including, hand-held ban and texting bans in the United States; existing city ordinances; and, issues to consider. She then responded to questions from the Commission.

## GENERAL AGENDA (CONTINUED)

### FIRST READING – ADOPT - STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, EDITION OF 2009 (CONTINUED)

Kassie McEntire, City Prosecutor, responded to questions regarding the use of cell phones involved in wreckless driving or inattentive driving instances. She stated that Municipal Court has seen very few cases where anyone was cited for either an accident or traffic stop that could be related to cell phone use.

Myron Calhoun, 2001 Dunbar Road, HAM amateur radio operator, voiced concern that the proposed ordinance would prohibit two-way radio operators from performing important tasks, such as: public works department, police department, animal warden, housing inspector, code enforcement officer, taxi drivers, ATA bus drivers, school bus drivers, emergency management, HAM radio operators, radio weather spotters, emergency agencies, and visiting motorists will not be able to utilize radios for directions. He asked that the proposed ordinance be amended to not include operations mentioned or operators licensed by the Federal Communications Commission. He then responded to questions from the Commission regarding the need for emergency vehicles, storm spotters, survey reporters, and others that need the ability to drive and communicate at the same time.

Pat Collins, Emergency Management Director, Riley County, informed the Commission that many agencies and individuals licensed under federal regulations, such as FCC license holders, should be exempted from the proposed ordinance, and agreed with those mentioned by Mr. Calhoun. He then responded to questions from the Commission regarding the transition from two-way radio to greater use of cell phones as the technology and reliability improves. He stated that he does not encourage the use of cell phones during emergency responses.

Mayor Strawn stated the best way for us to change is to do things voluntarily and not have to implement laws because they take away rights; however, in some cases, technology moves quickly ahead and it is the responsibility of government to regulate for public safety. He said that earlier this year a death on K-18 involved a driver using a cell phone.

Ann Smith, Director, ATA Bus Service, informed the Commission that cell phone use is an issue nation-wide and stated that ATA uses radios in all of their vehicles. She also spoke in support of Mr. Collins and Mr. Calhoun's positions and encouraged the Commission to consider the exemptions identified.

Lee Modesitt, K-State Student Governmental Relations Committee member, informed the Commission that a public education program would be better than a ban on cell phone use. He stated that there is not a strong link of cases with cell phone use and inattentive or wreckless driving.

## GENERAL AGENDA (CONTINUED)

### FIRST READING – ADOPT - STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, EDITION OF 2009 (CONTINUED)

Collin Kirschner, K-State student, stated that the Commission was not representing him if they passed this ordinance, as proposed. He suggested that cell phone citations should be a secondary offense and supported making texting while driving illegal.

Curtis Bryan, K-State student, asked the Commission what the cost would be to put up signs for out-of-town drivers in order to alert them of the law, especially, for those coming to K-State football games. He then asked how the ordinance would be enforced and what the unintended consequences would be. He stated that the item would be more appropriate to be voted on at the ballot.

Gary Olds, 3308 Frontier Circle, asked for limited government and stated that many businesses and people use their cell phones as a tool. He asked the Commission to keep in mind the unintended consequences of the proposed ordinance and stated that this will negatively affect business people and productivity. He asked to leave the item alone until additional information would warrant such an ordinance. He then responded to questions from the Commission.

Lee Modesitt, K-State Student Governmental Relations Committee member, informed the Commission that another unintended consequence would be that if you were to pull to the side of the road to respond to your cell phone, that the streets in Manhattan are not wide enough to safely pull over, which could lead to other accidents.

Brian Carter, President, Manhattan Area HAM Operator Society, voiced concerns with the proposed ordinance and mentioned examples of inattentive driving by drivers reading or shaving, while driving their vehicles.

Commissioner Pepperd said there is a difference in use between a HAM operator and an individual using a cell phone. He said there needs to be a decision between hands-free versus hands-held devices and was okay with hand-free devices, and stated there needs to be exemptions for HAM operators and those that are FCC licensed. He said that he uses his cell phone as a tool and that his is hands-free.

Commissioner Morris-Hardeman agreed that there needs to be an exemption for FCC licensed operators. She voiced concern for texting and hand-held devices while driving, but was okay with hands-free devices.

## GENERAL AGENDA (CONTINUED)

### FIRST READING – ADOPT - STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, EDITION OF 2009 (CONTINUED)

Commissioner Snead voiced concern with the state versus local laws regarding the use of cell phones and stated that no other cities in Kansas have adopted this approach. He supported an exemption for FCC licensed individuals and said that hands-free mobile communication would be logical. He said that texting is just insane in terms of the safety hazard that creates for the driver and others.

Commissioner Pepperd stated that Fort Riley has a motorcycle helmet, seat belt, and no cell phone regulation use policy on Post while driving.

Commissioner Sherow stated that there is a distinction to be made between FCC radio operators, public service and emergency vehicles, and individuals using cell phones in their vehicles. He stated that texting is ridiculous while driving and that texting use may need to be a primary violation and cell phone use a secondary consideration. He expressed hands-free cell phone use as being acceptable and age limitation should not be a factor.

Mayor Strawn voiced concern that if cell phone use is a secondary violation that it will not have enough teeth and should be a primary violation, if not using hands-free device. He said there is a mental loss of not paying attention if there is something in your hand blocking your vision.

Commissioner Morris-Hardeman asked about signage and educational campaign that could be incorporated.

The Commission discussed and concurred with the removal of the addition in the STO that would allow the operation of golf carts and work-utility vehicles on city streets. However, the Commission asked for additional information on work-utility vehicles.

Dale Houdeshell, Director of Public Works, responded to questions from the Commission regarding utility vehicles and skid steer loader equipment.

Bill Frost, City Attorney, and Katie Jackson, Assistant City Attorney, responded to questions regarding the exemption of licensed radio operators and other licensed operators. They responded to questions from the Commission regarding the City employee policy on cell phone use, signage notification and education, and asked for additional time to craft language in the ordinance based on the Commissioners input and direction.

## GENERAL AGENDA (CONTINUED)

### FIRST READING – ADOPT - STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, EDITION OF 2009 (CONTINUED)

The Commission also discussed if cell phone use while driving should be a primary or secondary violation and requested additional time to hear from the Riley County Police Department and to further evaluate and solicit feedback. There was also discussion about where signage should be placed, what it should say, and what kind of educational effort should occur.

Ron Fehr, City Manager, informed the Commission that the item can be brought back to the Commission for consideration and appreciated the feedback and direction received.

After additional discussion, the City Commission took no action on the item.

The Commission took a brief recess.

### FIRST READING – ADOPT AND INCORPORATE - US-24 CORRIDOR MANAGEMENT PLAN INTO THE MANHATTAN URBAN AREA COMPREHENSIVE PLAN

Eric Cattell, Assistant Director for Planning, introduced the item.

Buck Driggs, HWS Consulting Group, presented an overview of the Corridor Plan Update, US 24 project limits, US 24 scope of services, shareholder interviews, decision-making process roles, advisory group, revised market analysis with NBAF, land use planning, existing and future land use, growth alternates, improvement concepts, conceptual options, infrastructure planning, storm drainage data collection, water and sanitary sewer infrastructure, and regulatory issues. He then responded to questions from the Commission regarding data provided on NBAF for the corridor study area and timeframe.

Dale Houdeshell, Director of Public Works, provided additional information and clarification on the study area.

Eric Cattell, Assistant Director for Planning, presented the recommended action and discussions that have occurred with Pottawatomie County planning staff.

Ron Fehr, City Manager, responded to questions from the Commission and stated that the goal is to add a Pottawatomie County representative to the Planning Board.

## GENERAL AGENDA (CONTINUED)

### FIRST READING – ADOPT AND INCORPORATE - US-24 CORRIDOR MANAGEMENT PLAN INTO THE MANHATTAN URBAN AREA COMPREHENSIVE PLAN (CONTINUED)

After discussion, Commissioner Sherow moved to approve first reading of an ordinance amending and re-establishing the Manhattan Urban Area Comprehensive Plan by adopting and incorporating the US-24 Corridor Management Plan, dated August 2009, by reference; and approve the necessary cross-references and modifications to Chapters 4 and 8 of the Comprehensive Plan, as proposed. Commissioner Snead seconded the motion. On a roll call vote, motion carried 5-0.

### EXECUTIVE SESSION

At 9:30 p.m., Commissioner Snead moved to recess into Executive Session until 10:30 p.m. for the purpose of discussions with the Attorneys for the City regarding pending legal matters that need to be confidential and that are deemed privileged in the attorney-client relationship. Commissioner Morris-Hardeman seconded the motion. On vote, motion carried 5-0.

At 10:30 p.m., the Commission reconvened with Mayor Strawn and Commissioners Snead, Sherow, Pepperd, and Morris-Hardeman in attendance. Commissioner Snead moved to recess into Executive Session until 10:50 p.m. for the purpose of discussions with the Attorneys for the City regarding pending legal matters that need to be confidential and that are deemed privileged in the attorney-client relationship. Commissioner Pepperd seconded the motion. On vote, motion carried 5-0.

At 10:50 p.m., the Commission reconvened with Mayor Strawn and Commissioners Snead, Sherow, Pepperd, and Morris-Hardeman in attendance. Commissioner Snead moved to come out of executive session and to adjourn the meeting. Commissioner Sherow seconded the motion. On vote, motion carried 5-0.

### ADJOURNMENT

At 10:50 p.m., the Commission adjourned.

  
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Gary S. Fees, MMC, City Clerk