

***MINUTES***  
***SPECIAL CITY COMMISSION MEETING***  
***TUESDAY, AUGUST 24, 2010***  
***5:00 P.M.***

The Special Meeting of the City Commission was held at 5:00 p.m. in the City Commission Room. Mayor Bruce Snead and Commissioners James E. Sherow, Loren J. Pepperd, Jayme Morris-Hardeman, and Bob Strawn 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, 9 staff, and approximately 75 interested citizens.

**PLEDGE OF ALLEGIANCE**

Mayor Snead led the Commission in the Pledge of Allegiance.

**SPECIAL MEETING**

**ORDINANCE NO. 6835 – ADOPT – 2011 BUDGET; RESOLUTION NO. 082410-A – ADOPT – 2011-2016 CAPITAL IMPROVEMENT PROGRAM (CIP)**

Mayor Snead introduced the item.

Ron Fehr, City Manager, provided highlights from the 2011 City Manager’s Budget Message and items in the Capital Improvements Program.

Bernie Hayen, Director of Finance, presented an overview of the budget process, budget presentations to the City Commission, and provided an overview on the 2011 City Budget and Capital Improvement Program.

Commissioner Pepperd voiced concern about the increased budget and increase in property taxes. He stated that he could not support a budget with this much of an increase and was disappointed that a flat property tax wasn’t achieved.

After discussion, Commissioner Sherow moved to approve Ordinance No. 6835 adopting the 2011 City Budget and Resolution No. 082410-A adopting the 2011-2016 Capital Improvement Program. Commissioner Morris-Hardeman seconded the motion.

**SPECIAL MEETING (CONTINUED)**

**ORDINANCE NO. 6835 – ADOPT – 2011 BUDGET; RESOLUTION NO. 082410-A  
– ADOPT – 2011-2016 CAPITAL IMPROVEMENT PROGRAM (CIP)  
(CONTINUED)**

Commissioner Sherow provided additional comments about the 2011 Budget and Capital Improvement Program. He stated that with the growth and needs for the City of Manhattan, he would support the City's Budget. He asked that a long-range view be taken on all future projects being considered and bonded, and the potential impact those projects will have on the Bond and Interest Fund.

Commissioner Morris-Hardeman stated that she would support the 2011 Budget. She provided information on the Riley County Police Department's budget and safety projects that have been completed and that have an impact on the Bond and Interest Fund. She voiced concern in the decreased levels in the Capital Improvements Program and with deferred maintenance issues. She stated that the Commission is not doing anything tonight on the contracts with Sunflower CASA and will not be abstaining on those contracts at this time; however, she said that when the Sunflower CASA contracts are presented to the Commission later this year, that she would be abstaining from those contracts at that time.

Mayor Snead stated that this has been a long budget process and that no one likes to raise taxes, but it is the Commission's obligation to ensure that City services are sustained and provided. He said that Manhattan is fortunate to have the opportunities that we have and it is those opportunities and obligations that lead to the budget. He thanked the City Commission and City Staff for their work and noted the cuts that have already been made this year to deal with revenue shortfalls and the prospects for next year.

After additional discussion, on a roll call vote, motion carried 3-2, with Commissioners Pepperd and Strawn voting against the motion.

**ORDINANCE NO. 6836 – INCREASE – SANITARY SEWER RATES; CHARTER  
ORDINANCE NO. 48 – INCREASE – STORM WATER RATES**

Ron Fehr, City Manager, presented an overview on the item and proposed rate increases.

After discussion, Commissioner Morris-Hardeman moved to approve Ordinance No. 6836 increasing wastewater rates effective January 1, 2011, and Charter Ordinance No. 48 increasing storm water rates effective January 1, 2011. Commissioner Sherow seconded the motion. After additional discussion, on a roll call vote, motion carried 5-0.

## WORK SESSION

### DISCRIMINATION ORDINANCE

Jason Hilgers, Assistant City Manager, presented background information on the item and proposed draft ordinance amending Chapter 10 of the Manhattan Code of Ordinances to add sexual orientation and gender identity to the protected class list.

Jason Hilgers, Assistant City Manager; Bill Frost, City Attorney; and Katharine Jackson, Assistant City Attorney, responded to questions from the Commission regarding the City of Lawrence and the City of Salina's discrimination ordinance, process, enforcement, discrimination cases, staffing, and state statutes.

Larry Hackney, Human Resources Specialist, City of Manhattan, provided additional information on the City of Lawrence's discrimination ordinance and stated that they added a sexual orientation class in 1995 and didn't experience an appreciable increase in cases.

Jason Hilgers, Assistant City Manager, presented the existing ordinance, proposed ordinance, and a process flowchart that the City of Lawrence uses for complaints received. He stated that the proposed ordinance would create a local process to enforce the protection of the sexual orientation and gender identity classes. He informed the Commission that the responsibilities of the Human Rights and Services Board (HRSB) would be expanded to become an investigative and quasi-judicial body that would have the power to issue subpoenas and impose fines and penalties. He also stated that additional staff may be necessary to undertake the changes.

Bill Frost, City Attorney, provided clarification on the administrative process and the City of Lawrence ordinance. He then responded to questions from the Commission on the administrative process through the Human Rights and Services Board and on the legal process through district court, if conciliation is not reached.

Jason Hilgers, Assistant City Manager, presented the definition of sexual orientation in the proposed ordinance and information on gender identity. He provided an overview of the Boulder, Colorado, ordinance and the definitions for gender identity, gender variance, transitioning transsexual, and transitioned transsexual. He then asked for feedback from the Commission if they wanted to move forward with a possible change in the Discrimination Ordinance, thus creating a local quasi-judicial body; feedback on additional staff/fiscal note; if the Commission wanted to include both sexual orientation and gender identity; and asked for direction for the Human Rights and Services Board.

Bill Frost, City Attorney, responded to questions from the Commission regarding religious beliefs and exceptions for religious organizations.

Larry Hackney, Human Resources Specialist, City of Manhattan, provided examples of exemptions from discrimination under the Fair Housing Act for a landlord.

## WORK SESSION (*CONTINUED*)

### DISCRIMINATION ORDINANCE (*CONTINUED*)

Bill Frost, City Attorney, and Katharine Jackson, Assistant City Attorney, responded to questions from the Commission regarding exemptions for employment, housing, and religious organizations. They stated that many complexities can arise and that they would need to look at case law, which is part of the reason that the City of Lawrence has shifted the responsibilities from their Human Resources Department to their Legal Department.

Mayor Snead reiterated the actions by the City Commission at its July 6, 2010, meeting was to authorize City Administration to develop an ordinance adding sexual orientation and gender identity as a protected class in Manhattan, including enforcement provisions and exceptions; and, have the Human Rights and Services Board review and provide feedback on the proposed ordinance.

Paul Barkey, 2514 Nutmeg, voiced opposition to the proposed ordinance. He read highlights from a prepared memorandum provided to the City Commission from Daniel Blomberg, Litigation Staff Counsel, Alliance Defense Fund. He stated that the proposed nondiscriminatory ordinance is highly problematic and fails to protect the cherished religious freedoms of Manhattan residents, business owners, and religious organizations. He stated several reasons why he was opposed to the proposed ordinance and asked the City Commission to not enact the ordinance.

Kevin Ingram, 9061 Tonya Terrace, President, Manhattan Christian College, informed the Commission that he disagreed with the ordinance as proposed. He voiced concerns with the proposed ordinance and stated that this ordinance would potentially expose local businesses, churches, religious associations, and organizations to potential discrimination themselves for exercising their religious beliefs in the operation of their organization.

Jonathon Mertz, Chair, Flint Hills Human Rights Project, 34107 Highway K-18, had questions on the proposed ordinance and exceptions for private clubs and religious organizations. He asked the Commission to ensure and protect the religious and civil rights for all citizens, so that we can all be able to live free from discrimination and fear.

Bill Frost, City Attorney, and Larry Hackney, Human Resources Specialist, City of Manhattan, responded to questions regarding possible exemptions and provided clarification on the proposed ordinance.

Josh McGinn, 724 Poyntz Avenue, informed the Commission that the proposed ordinance would encourage businesses to stay here and help attract new businesses to the area because of the growing trends against discrimination in the workplace. He encouraged the Commission to look at other states and municipalities that have adopted similar ordinances and expressed thanks for the continued research and consideration.

## WORK SESSION (*CONTINUED*)

### DISCRIMINATION ORDINANCE (*CONTINUED*)

Samuel Brinton, 331 North 17<sup>th</sup> Street, K-State student, informed the Commission about his background and asked for discrimination protection in employment and housing. He stated that two K-State students have left because of situations with housing arrangements and asked that people be able to live and work in this city as a lesbian, gay, bisexual, and transgender (LGBT) Christian.

Richard Miller, 4300 Cedar Ridge Drive, asked how this item is being handled versus other safety or engineering projects and informed the Commission that he hasn't heard anyone establish a significant need for this project. He requested that the Commission let the Human Rights and Services Board do the additional research and when they establish a valid need for such an ordinance, then consider the item.

Stephanie Mott, 119 Southeast 14<sup>th</sup> Street, Topeka, Kansas, Director, Kansas Statewide Transgender Education Project, provided examples of transgender assumptions and incidents of gender identity. She encouraged the Commission to stay the course and provide the same protections for all. She then responded to questions from the Commission regarding bathroom facilities and the need for education on transgender.

Michael Lambert, 800 Ratone Street, informed the Commission that transsexuals live in Manhattan and that you probably know them. He stated that he expected the City to keep up with the progress of the world for protection from discrimination to include sexual orientation and gender identity.

Mark Weddle, 5500 Anderson Avenue, encouraged the Commission to consider the unintended consequences to the proposed ordinance and interpretations. He encouraged the Commission to take time to uncover all the issues and provide answers to the questions raised, specifically, employment in religious organizations.

Beniah Wilson, 2488 Woodside Lane, spoke against the ordinance proposal and voiced his concern in its vagueness and definition of gender identity.

Elizabeth Carlson, 48 Marlatt Hall, informed the Commission that if a transgender person goes into a restroom and molests a child, that person will be under the same law regardless of being transgender or not.

Reverend Michael Nelson, Minister, Unitarian-Universalist Fellowship of Manhattan, asked the Commission to address the larger issue and to look at the value of human life and help prevent suicides to our gay youth and young adults. He asked when Manhattan is going to realize that this ordinance will pass and encouraged the Commission to look at the value of human life.

## WORK SESSION (*CONTINUED*)

### DISCRIMINATION ORDINANCE (*CONTINUED*)

Nathan Wilson, 2448 Woodside Lane, Pastor, Christ the Redeemer Church, stated that the disagreement that we have on this illustrates that we are looking at a difference in ethical systems. He said those two systems are one of people and one of God and who decides what is right and wrong. He asked the Commission to look at the big picture of sexual orientation and gender identity, and is it right or is it wrong. He stated that God is the one who decides what's right and wrong.

Jay Risner, 612 Vattier Street, stated that this is not an issue about civil rights, but more of an issue of government control. He urged the Commission to step back and recognize that constitutional liberties are being pushed aside in the name of modern day social justices.

Barbara Murphy, 3123 College Avenue, voiced concerns with the proposed ordinance and stated that every person is of great value and this is not about negating any one person, but wanted to ensure protection for her religious faith and spiritual convictions.

At 7:30 p.m., the Commission took a brief recess.

Melodie Pooler, 130 Longview Drive, stated that she is a Christian and that individuals should not be afraid and fearful while walking along the streets. She voiced support for the proposed ordinance and informed the Commission that she and her family have experienced discrimination.

Diana Nickel, 610 South Scenic Drive, voiced concern that the proposed ordinance would interfere in her ability to hire a person best suited for her home-based business and stated that she did not want additional government interference.

Maria Snyder, 1413 Pierre Street, informed the Commission that she and her daughter have experienced discrimination and asked for protection to help protect her and those we care for.

Josh Wilson, 2488 Woodside Lane, K-State student, voiced opposition to the proposed ordinance and asked the Commission to consider the implications. He asked the Commission to not pass the ordinance and for government to not get involved.

Bill Frost, City Attorney, provided clarification on the item and definitions that need to be included in the ordinance.

## WORK SESSION (*CONTINUED*)

### DISCRIMINATION ORDINANCE (*CONTINUED*)

Commissioner Strawn stated that he did not favor moving forward with this ordinance and believed the charge should be for the Human Rights and Services Board to establish whether or not discrimination exists against gays and lesbians. He voiced concern for the free exercise of religion issues, fiscal impacts, and that there is only one other precedent in the state. He asked that if the ordinance is going forward to the Human Rights and Services Board, that gender identity be removed from the proposed ordinance and that the Board receive public comment.

Commissioner Morris-Hardeman requested that additional information be obtained from other cities that have passed a similar ordinance, find out what training is provided to the boards in Lawrence and Salina, what issues have they encountered with religious organizations, and if this function should stay in the Human Resources Department or move to the Legal Department. She then voiced support for an ordinance and suggested that the item be further researched and that a draft ordinance model and additional information be provided to the Human Rights and Services Board for their input and feedback.

Commissioner Pepperd stated that he could not support the proposed ordinance going forward and did not know if this issue was enough of a problem or not. He voiced concern with the Human Rights and Services Board being a quasi-judicial board and the unknown potential fiscal costs for the program.

Commissioner Sherow provided a historical perspective on the item and voiced support in moving the proposal forward to the Human Rights and Services Board. He requested that additional research be conducted with the cities that have established an ordinance and determine what issues they encountered, the structure and process of the board, constitutional issues, and definition of gender identity. He wanted to ensure that the ordinance is enforceable and would focus on discrimination in the categories of housing, public accommodations, and employment.

Bill Frost, City Attorney, and Katharine Jackson, Assistant City Attorney, provided additional clarification on the item and on the City of Lawrence's discrimination ordinance and process. They then responded to questions from the Commission on employment provisions and examples of housing discrimination.

Larry Hackney, Human Resources Specialist, City of Manhattan, responded to questions from the Commission regarding the additional time and training that would be required by the Human Rights and Services Board.

## WORK SESSION (*CONTINUED*)

### DISCRIMINATION ORDINANCE (*CONTINUED*)

Ron Fehr, City Manager, informed the Commission that staff can contact those cities that have adopted a similar ordinance and process, find out the required training requirements, and determine how much time is involved for board members and staff.

Commissioner Strawn said another option would be to open up the Human Rights and Services Board with problems related to sexual orientation or gender identity for resolution. He voiced concern that there is not a precedent in the State of Kansas, other than Lawrence.

Bill Frost, City Attorney, provided additional information on the proposed ordinance and stated the difficulty in making something unlawful without having a remedy to correct it.

Mayor Snead stated this is a civil rights issue and that discrimination exists. He said that the State law is inadequate and an enforcement mechanism is needed. He provided an overview of issues needing additional information on from staff and feedback being requested from the Human Rights and Services Board.

Commissioner Morris-Hardeman asked City staff to look at questions raised about language for gender identity and research other model ordinances. She asked that a draft ordinance be provided to the Human Rights and Services Board for their feedback and input on the other items mentioned tonight.

Commissioner Sherow agreed with Commissioner Morris-Hardeman and asked City staff to do additional research and present that information and model ordinance to the Human Rights and Services Board. He asked that City staff find out what has been the experience of the other 91 cities, in general; what, if any, constitutional issues other communities have experienced; what enforcement issues they have encountered, if any; and how other cities and states have dealt with this type of discrimination ordinance.

Jason Hilgers, Assistant City Manager, informed the Commission that they will seek additional information from other communities and contact the City of Lawrence regarding their experience. He stated the item would go back to the Human Rights and Services Board for their input and feedback on an ordinance and will also provide examples of gender identity for their consideration.

Larry Hackney, Human Resources Specialist, City of Manhattan, informed the Commission that the next Human Rights and Services Board is scheduled for September 16, 2010, and that the Board is willing to meet, as needed.

## WORK SESSION (CONTINUED)

### DISCRIMINATION ORDINANCE (CONTINUED)

Jason Hilgers, Assistant City Manager, informed the Commission that based on the amount of information and research requested, they may not be able to meet their September 16, 2010, meeting date.

After additional discussion of the Commission, Mayor Snead summarized the desires of the Commission for additional information that has been requested to be provided to the Human Rights and Services Board for their input.

Ron Fehr, City Manager, provided clarification on the charge of the Commission and informed the Commission that City staff will be researching the information requested. He stated that the Human Rights and Services Board will provide public notice when they will be meeting, in the event additional time is required to gather the information.

Mayor Snead thanked those for speaking on the item and informed the community that the item will come back to the City Commission after additional information has been provided to the Human Rights and Services Board for its feedback on items discussed and input on a preferred ordinance.

### ADJOURNMENT

At 9:08 p.m., the Commission adjourned.



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Gary S. Fees, MMC, City Clerk