

**CITY OF FORT SCOTT
CITY COMMISSION MEETING**

Minutes of April 21, 2020

Regular Meeting #8

The regular meeting of the Fort Scott City Commission was held April 21st, 2020 at 6:00 p.m. in the City Commission Room, 123 S. Main, Fort Scott, Kansas.

ROLL CALL:

Commissioners K. Allen, P. Allen, R. Nichols, and L. Watts were present with Mayor J. Mitchell presiding.

INVOCATION: There was no invocation given.

AUDIENCE IN ATTENDANCE: There was no audience in attendance other than a very few City staff.

PROCLAMATIONS/RECOGNITIONS:

National Public Safety Telecommunicators Week – April 12-18, 2020 – Mayor Mitchell read this proclamation and thanked all of our dispatchers for their hard work and dedication to their positions.

APPROVAL OF MINUTES AND APPROPRIATIONS/CONSENT AGENDA:

- A. Approval of minutes of the regular meeting of April 7th, 2020.
- B. Approval of Appropriation Ordinance 1261-A totaling \$495,579.32.
- C. Resolution No. 10-2020 – Notice of Hearing with Reference to Alleged Unsafe and Dangerous Structure located at 10 N. National Street – Public Hearing Date – June 2nd, 2020 – 6:15 p.m.
- D. Request to Pay #8 – Crossland Heavy Contractors - \$297,929.28 – River Intake Project
- E. Change Request Proposal #11 – Crossland Heavy Contractors - \$37,859.00 – River Intake Project – Pump #3 Rebuild
- F. Approval of 3RK – Certificate of Pay Request #4 – MIH Housing Grant - \$11,557.87.
- G. March financials

Nichols moved to approve the Consent Agenda. Watts seconded. P. Allen, R. Nichols, L. Watts, and J. Mitchell voted aye. K. Allen voted no. Motion carried 4-1.

APPROVED CONSENT AGENDA.

APPEARANCE/COMMENTS/PUBLIC HEARING:

A. APPEARANCE: None

B. CITIZEN COMMENTS (Concerning Items Not on Agenda – 5 minute limit per citizen) - Comments will not be taken during this meeting. If you have a topic to discuss not listed on the agenda, please contact a City Commissioner or send a written request to dclay@fscity.org.

C. PUBLIC HEARINGS: 6:00 p.m. De-annexation of property located at 1121 207th Street – Approval of Ordinance No. 3560

Mitchell moved to open the Public Hearing at 6:13 p.m. Nichols seconded. All voted aye.

OPENED PUBLIC HEARING AT 6:13 P.M.

Diane Clay, City Clerk, informed the Commission that Darin Boss resides at 1121 207th Street. He recently discovered his house is annexed into the City limits and is the only house in that area that is annexed. Cindy Bartelsmeyer, former City Commissioner, lived in that house and annexed the property so she could run for City Commission. He has requested that it be de-annexed from the City limits. Diane asked for approval of Ordinance No. 3560 which would de-annex this property from the City limits. There are no City services at this location.

K. Allen asked if it was common practice to annex your property if you wanted to run for City Commission. This is setting precedence that states you can annex your property and live anywhere.

Jeff Deane, City Attorney, said that property can be annexed into the City limits. There are no services out there. He has no legal objection to this. It is a voluntary request. Legal requirements by State Statute have to be met and qualified in order to be annexed or de-annexed. This meets those requirements by State.

The Mayor said that anyone who runs for office can annex their property into the City limits and she did the correct thing.

Nichols moved to approve Ordinance No. 3560 de-annexing the property at 1121 207th Street from the City limits. Mitchell seconded. K. Allen, R. Nichols, L. Watts, and J. Mitchell voted aye. P. Allen voted no. Motion carried 4-1.

APPROVED ORDINANCE NO. 3560 DE-ANNEXING CERTAIN PROPERTY FROM THE CITY LIMITS OF FORT SCOTT, KANSAS – 1121 207TH STREET.

Mitchell moved to close the Public Hearing at 6:22 p.m. Watts seconded. All voted aye.

CLOSED PUBLIC HEARING AT 6:22 P.M.

CONSIDERATION:

1. Consideration to Hire a City Engineer – Dave Martin, City Manager, informed the Commission that we have had a couple of meetings with Commissioner Pete Allen this last week regarding engineering. Pete feels strongly we need a City engineer. This would allow that person to be on site and make sure that all specifications are followed. There is money in the budget for this position, but due to the pandemic, it is affecting our finances. He feels like we are in a good position to go month to month and Susan Bancroft will explain it to the Commission. A job description was developed for this position also.

Pete Allen said it is hard to put a value on a City engineer position with the work the City is looking at in the near future.

Susan Bancroft, Director of Finance, informed the Commission she wished to first address the budget. This will help set the direction for your decision. She has met with all the department heads on holding the line steady. The City is very uncertain about revenues due to COVID-19. She reminded the Commission of the City's Mission Statement and Vision Statement. Cuts were made throughout the entire budget. She explained the cuts to the general fund as well as all the other various funds of the City. She explained projects that have been cut or put on hold to reevaluate in the middle of the summer and see where our revenues are. There is a meeting next week with the pool association to see what will be happening with COVID-19 and budget restraints on the opening of the aquatic center.

After looking at all the cuts, it looks like there is about \$2,000,000 for 2020 for projects. This is taking \$750,000 from the Water Utility fund, \$450,000 from the Wastewater Utility fund, and \$800,000 from Stormwater Utility fund. The water meter replacement program needs to move forward in 2020. This is for meter change outs. The Wastewater Plant roof needs replaced this year also. Discussion needs to be held how to use these dollars. Short term notes could be issued to proceed with projects also. Grants will be looked at. That many times includes shovel ready projects which would involve engineering.

Susan urged them to review the Vision/Mission Statement; review the City of Fort Scott Comprehensive Plan; develop Street Program with the Street Advisory Board; and develop a Utility Infrastructure Program. She shared pros and cons of hiring an engineering firm versus hiring a City engineer as an employee.

Discussion was held regarding hiring a City engineer as an employee versus hiring an engineering firm through RFQ's and the pros and cons.

K. Allen asked that Susan give them a list of the cuts each department has made.

K. Allen moved to hire a City engineer. Pete Allen seconded. K. Allen, P. Allen, and R. Nichols voted aye. L. Watts and J. Mitchell voted no. Motion carried 3-2.

APPROVED TO HIRE A CITY ENGINEER.

2. Consideration of Request to send out Request for Qualifications for City Engineer – (Discussed above)
3. Consideration of Approval of Salary Ordinance Number 3561 – Susan Bancroft, Director of Finance, informed the Commission since the hiring of a City engineer was approved, the Salary Ordinance needs approved. This allows for the position of City Engineer. Susan said the base salary is not to exceed \$95,000.

L. Watts said that the area cities are in line with this.

Deb Needleman said that this is straight salary before benefits.

City Manager said that a committee will be formed to interview qualified candidates.

K. Allen moved to approve the Salary Ordinance allowing for the City Engineer position. R. Nichols seconded. K. Allen, P. Allen, R. Nichols, and L. Watts voted aye. J. Mitchell abstained. Motion carried 4-1.

APPROVED ORDINANCE NO. 3561 OF THE APPOINTIVE OFFICERS AND EMPLOYEES OF THE CITY OF FORT SCOTT, KANSAS AND REPLACING ORDINANCE NO. 3544. – ADDED CITY ENGINEER POSITION.

4. Consideration to repeal Ordinance No. 3556 and approve Ordinance No. 3562 establishing a Street Advisory Board – Susan Bancroft, Director of Finance, informed the Commission that a new ordinance created by Pete Allen is in your packet for consideration. Pete's ordinance has 7 people with 1 person in the 3 mile radius.

L. Watts said that she also prepared a new ordinance. She said that her version reflects 7 City residents. The original ordinance states that the Community Development Director, City Manager, and a City Commissioner would sit on this board along with four other citizens. Pete's reflect no City staff. She believes that a City staff person should attend these meetings.

City Manager said that Pete has no problem with having a City staff person present.

Pete said that City staff should be available for any meeting, but not a member of the committee.

Discussion was held regarding other City boards and if City staff attend those meetings. City Clerk told the Commission a City staff person is always there and acts as a liaison between the board and the City. A member outside the three-mile zone was also questioned and discussed.

J. Mitchell moved to change the Street Ordinance to include six (6) City residents and one (1) member in the three-mile limit of the City of Fort Scott. The terms will be staggered and set at the first meeting. The City Manager will appoint a City employee who will serve as an ex-officio. As an ex-officio, the staff member will act as a liaison between the Commission and the board. L. Watts seconded. All voted aye. Motion carried.

APPROVED TO CHANGE THE STREET ORDINANCE NO. 3562 TO INCLUDE SIX (6) CITY RESIDENTS AND ONE (1) MEMBER IN THE THREE-MILE LIMIT OF THE CITY OF FORT SCOTT. THE TERMS WILL BE STAGGERED AND SET AT THE FIRST MEETING. THE CITY MANAGER WILL APPOINT A CITY EMPLOYEE WHO WILL SERVE AS AN EX-OFFICIO. AS EX-OFFICIO, THE STAFF MEMBER WILL ACT AS A LIAISON BETWEEN THE COMMISSION AND THE BOARD.

5. Consideration of appointments to Street Advisory Board (Seven (7) City residents) – Dave Martin, City Manager, informed the Commission of letters/emails of interest that had been submitted.

Lindsey asked since this ordinance has now been amended, if letters of interest should be accepted again.

Jeff Deane, City Attorney, recommended leaving the appointments open due to the new ordinance.

Lindsey asked since so many people have shown interest, if they can request some biographical information on the people that have submitted letters of interest and from people who will be. She thinks there was only one which gave any background which could bring assistance to the board.

Pete Allen said that we didn't ask for resumes. If there are people on that list that you don't want, don't vote for them. Whoever receives the most votes, gets to be on the board.

Kevin Allen asked if it had been advertised.

City Attorney said not with this new ordinance.

Lindsey said that she didn't want to vote with only one candidate outside the three-mile limit. Also, she would still like more information on the individuals who have expressed interest.

Mitchell moved to give people more time to get letters/emails of interest in along with more information on the individuals who have expressed interest. She asked for an additional week to be given to submit these letters/emails of interest. Nichols seconded. All voted aye.

APPROVED TO GIVE PEOPLE MORE TIME TO GET LETTERS/EMAILS OF INTEREST ALONG WITH MORE INFORMATION ON THE INDIVIDUALS WHO HAVE EXPRESSED INTEREST. SHE ASKED FOR AN ADDITIONAL WEEK TO BE GIVEN TO SUBMIT THESE LETTERS/EMAILS OF INTEREST

6. Consideration to reject bids – Machine Shed – Airport – Dave Martin, City Manager, informed the Commission that we only received one bid for this project. This is one of the cuts that was determined to be made due to budget constraints.

K. Allen asked if the City received a grant for this project.

Susan said that per Rachel there has not been a grant received for this project.

Pete said that there are openings on the Airport Advisory Board and that the Commission should solicit people for boards and not advertise for people to submit letters of interest.

City Attorney will check into this issue.

Nichols moved to reject the bid for the machine shed at the Airport. Watts seconded. All voted aye. Motion carried.

APPROVED TO REJECT THE BID FOR THE MACHINE SHED AT THE AIRPORT.

7. Consideration to apply for 2020 CARES Act for Airport runway improvements funding – Dave Martin, City Manager, informed the Commission that he thought we had a deadline to meet to make repairs to the runway. A decision needed to be made due to the time frame. Because of the amount this would take, it would be about \$60,000 to \$70,000 over the grant amount. This is not in the budget.

Pete asked what the C.A.R.E.S. Act stood for.

Dave will find out. It is funding due to the COVID-19 pandemic.

8. Consideration of approval of charter ordinance to fill a vacancy on the City Commission – Jeff Deane, City Attorney, said that he has rewritten the original ordinance. He asked Kevin Allen if he had a chance to look it over.

Kevin said that he wanted to go with the original ordinance that he wrote.

Jeff Deane said that he still had a copy of it on his computer. This would allow everyone who ran for office to have the opportunity to serve. If no one wished to, then letters of interest were taken and the Commission would appoint someone. If a candidate could not be agreed upon, a special election would be held. In case of a tie at the election, the tie breaker would go before the Bourbon County Commission who would break the tie.

Mayor Michell said she is in favor of leaving it the way it is now and taking letters of interest. The people who lost the election could still submit a letter of interest and be considered.

Lindsey said that she has checked with the League of Kansas Municipalities on this issue. Our current State Statute gives the framework on filling a vacancy. She plans to compile some guidelines on filling a vacancy. She thinks there needs to be some structure to this current ordinance. She will be looking in the next two weeks how to change our current ordinance.

Kevin Allen asked the City Attorney how much time he has spent on this.

City Attorney said not a lot. He discussed the change in the State Statute 25-117 and if you change it, that would need to be a Charter Ordinance.

Discussion was held regarding if a charter ordinance or a regular ordinance would be needed.

(Batteries had to be changed on some of the microphones at this time).

City Attorney read the original Charter Ordinance to them. The position would be filled by: a) the candidate from the last general election that had the highest amount of votes but not elected; if that candidate is no longer eligible or declines in writing to serve, the vacancy will be offered to the next highest voter getter and so on until there are no remaining vote getting candidates. b) the Commission will accept letters of interest and appointed by an agreement of Commissioners; c) Should no majority of the City Commission be found after two votes, the appointment will be

made by a special election; d) should a tie occur in the special election, the vacancy will be decided by the Bourbon County Commission.

K. Allen moved to approve the original Charter Ordinance in filling a vacancy in the office of City Commission. P. Allen seconded. K. Allen and P. Allen voted yes. R. Nichols, L. Watts, and J. Mitchell voted no. Motion denied.

DENIED TO APPROVE THE CHARTER ORDINANCE IN FILLING A VACANCY IN THE OFFICE OF CITY COMMISSION.

COMMISSION/STAFF:

A. Director Updates:

Dave Bruner – Dave gave a COVID-19 update to the Commission. As of today and the Governor's briefing, there are 2,205 cases in Kansas. This is up 39 cases from yesterday. There are cases in 69 of the 105 counties in Kansas. There have been 107 deaths which is up from 7 from yesterday. President Trump has released his guidelines for opening up America. It is in three phases based on public health experts. These steps will help State and Local officials when opening their counties, getting people back to work while trying to protect American lives. He wanted to outline the chain of command that pandemics go through. First of all, there is the President in Washington, D.C., then the State Governor and K.D.H.E. Then it is released to the Public Health Officer and Emergency Management, and then the local government. The City works closely with the Public Health Officer and Emergency Management. President Trump said that he will be meeting with the State Governors and informing them of his guidelines for opening America up. At this time, the local level of the Public Health Office is waiting for those guidelines. There have been numerous conversations held to start those steps.

City Manager said that the current committee that is meeting in the mornings will turn into an Opening Up Committee. The opening has to come from the Public Health Officer.

Dave Bruner said that something that is challenging to us is to make sure our hospitals can meet this challenge.

Robert Uhler – Robert thanked Pete Allen for his information and tour on Street Building 101.

C.A.R.E.S. Act stands for Coronavirus Aid Relief Economic Security Act. He has been communicating daily with our elected officials. There is money for small cities which they consider 50,000 or less. They are lobbying that we need that money as much as the larger cities.

He said that the Lake Advisory Board would like to meet. He asked permission to meet with them and keep it under the amount of 10 people. There are seven on the board. He will take minutes. The Commission verbally gave their approval for the board to meet.

He said that his last issue is that the City has 109 pieces of property that they don't use. With the Coronavirus and our budget, he would like to move some of these properties. There are two that adjacent landowners are interested in. One property is 120 N National and the other is at the Lake at 195th Street. He will get more information to you.

Discussion was held regarding the process these properties would be sold.

Robert said that there are Kansas Statutes that have to be followed to sell City property. It will be advertised. He will get a broker's opinion first and then post in the newspaper.

Nichols moved to allow Robert to move forward with the sale of two properties. Watts seconded. All voted aye.

APPROVED TO MOVE FORWARD WITH THE SALE OF TWO PROPERTIES.

B. City Commission:

Kevin Allen – Kevin said that he was asked about the cart rental at the golf course. Will they have access to the carts again?

Robert Uhler said that he and Shannon O'Neil are working with the P.G.A of America. He will get back with him on that.

Kevin asked where we were on 5th & Andrick and if the water lines have been moved.

Dave said he checked with Chad today and he has ordered the larger pipe. We will rip the old pipe out and move forward.

Dave said that you asked about the signs on Liberty Bell Road and they have been put up. Also, they have talked with Bill Michaud.

Kevin asked if Travis has checked with the speed limit on Margrave.

Jason Pickert said that he has reached out to Joe Allen, Ted Hessong, and the principal at Christian Heights school. He doesn't know if he has received any feedback from them.

Kevin said that it is important that each department has cut 15% from their budget.

Randy Nichols – Nothing to report.

Pete Allen – Pete said that a few weeks ago that the Commission gave the okay for Kevin to meet with the Bourbon County Commission. He talked to Lynne Oharah. Lynne asked him to bring another Commissioner. Kevin brought Pete with him. Lynne asked that a joint meeting be held at City Hall in a month. Lynne has facts and figures and some proposals to present. The County has asked the City support their 1% sales tax issue that is coming up. He asked for approval to have a joint session with the County Commission.

Nichols asked if a specific agenda would be drawn up and turned over to our local City officials. He asked about Dave calling Lynne to get an agenda.

Kevin said that they want to have an open discussion between the two entities. He would also like to see meetings between the school district and the college boards.

Lindsey Watts proposed meeting on another date besides our regular City Commission meeting dates.

City Manager mentioned a Saturday morning at the Empress for a couple of hours. He will work with Lynne Oharah and Pete to set up a meeting. He said that Susan and he have a meeting with Josh Jones tomorrow as Josh is heading up the sales tax issue.

Pete showed a picture of Andrick Street. It was taken a week ago. The people up there are pretty upset that this project has taken so long. He suggested that since there are only six houses and five of them with tenants that the City offer them something as a gesture of good will. He suggested a free year of water and sewer abatement.

Lindsey asked financially what that would entail and if that was legal.

City Attorney said he did not know but he will check with Susan and find out if there is anything prohibiting this.

Lindsey said that you will be setting a precedent. It may be justifiable but need to take into consideration.

Lindsey Watts – Lindsey thanked Rachel and Ally for their help with the CDBG Revolving Loan program. Last week there was a packet on your table but it wasn't addressed. There was 30 total approved grants which totals 195 retained jobs as of April 21st. There were a total of 52 applications between April 1st and April 10th. There were 19 applications that were ineligible due to State requirements. Eight applications had a LMI below 51%. Nine applications were outside the City limits and two applications did not meet the full time equivalent State requirement. There has been \$233,750 in allocated funds as of April 14th out of the \$265,709 that was available. There is \$3,459 in remaining funds. A letter

was also received from the Kansas Secretary of Commerce, David Toland, congratulating the City on moving quickly through this process.

JoLynne Mitchell – The Mayor read a letter she received from David Toland, Kansas Secretary of Commerce. The letter read as follows: “Thank you for heeding the call to quickly issue working capital loans to small businesses in need from your CDBG Revolving Loan Fund. When others have been busy deciding what to do, Fort Scott has been getting it done. I understand Fort Scott has made 27 loans to date and has three loans in process. Please extend my special thanks to Rachel Pruitt, who has been extremely responsive and supportive throughout this process. Keep up the good work, and thank you for everything you’re doing to support businesses in Fort Scott”.

C. City Manager: Nothing to report.

EXECUTIVE SESSION:

Nichols moved to recess into Executive Session for 20 minutes to discuss personnel matters of non-elected personnel, and consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship. This Executive Session will include the City Attorney, Deb Needleman, Human Resource Director, and the City Commission. There may be action anticipated. Mitchell seconded. All voted aye.

RECESSED INTO EXECUTIVE SESSION AT 9:25 P.M.

Watts moved to recess into another Executive Session for 5 minutes to discuss personnel matters of non-elected personnel, and consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship. This Executive Session will include the City Attorney, Deb Needleman, Human Resource Director, and the City Commission. There may be action anticipated. Nichols seconded. All voted aye.

RECESSED INTO EXECUTIVE SESSION AT 9:48 P.M.

Mayor Mitchell asked for a motion to be made.

Nichols said that during the Executive Session it was brought to their attention that Commissioner Kevin Allen has created a hostile workplace and has not met the standards of an elected official and potentially put the City at a liability risk. He asked the City Attorney to read Resolution 11-2020 – Resolution Censuring Commissioner Kevin Allen.

This resolution states that Commissioner Kevin Allen, based on the investigation of the complaints lodged, it is more probable than not that Commissioner Kevin Allen has engaged in acts proscribed by the employment discrimination laws applicable to the City over a period of months as set out in Exhibit A; That Commissioner Kevin Allen is hereby

censured and admonished for his conduct also set forth in Exhibit A; That the Commission calls on Commissioner Allen to refrain from such behavior in the future, abide by the restrictions set out in Exhibit A, and to act in a manner that upholds the dignity of his office.

Exhibit A made following finds of fact and statements as it regards to Commissioner Kevin Allen. The following requirements were made:

Commissioner Kevin Allen should write a formal letter of apology with the text being approved by the City Attorney before signature to be delivered by the City to the employee.

Commissioner Allen shall have no one-on-one contact with the employee in an official or personal capacity. Any professional contact between the employee and Commissioner Allen must be arranged with the City Manager and someone else must attend.

Commissioner Allen shall refrain in the future from any and all conduct that could be construed as harassment, or as retaliation for this report, including, but not limited to comments of a derogatory nature regarding the employee to any person or organization whatsoever.

Commissioner Allen shall abstain from and not take part in any official act concerning the employee's employment including but not limited to debate, discussion, or vote of the Commission concerning the same.

Commissioner Allen will complete one full day or equivalent of Kansas elected official training, approved by the City. The training must include training on the issue of harassment in the workplace and the appropriate role of elected official in government. This training must be completed within six months of the date of this notice.

The City Attorney and Human Resource Director met with Commissioner Allen and he denied the allegations and after consulting with counsel of his choosing, refused to provide a written acknowledgement of the findings and remedial requirements. Through counsel, he did acknowledge that he had been informed of the allegations and bar against retaliation and agreed not to contact the employee directly.

Pete Allen said that everyone here knew about it but himself. It is a total surprise to him. Why wasn't he called about it?

City Attorney said that it was reported to the City Manager, the Mayor, and the President of the City Commission. He couldn't talk to any others at that time due to KORA restraints.

Pete said that you are asking him to judge him guilty.

Nichols moved to approve Resolution 11-2020 - Resolution Censuring Commissioner Kevin Allen. Mitchell seconded. K. Allen and P. Allen voted no. R. Nichols, L. Watts, and J. Mitchell voted aye. Motion carried 3-2.

**APPROVED RESOLUTION 11-2020 – RESOLUTION CENSURING
COMMISSIONER KEVIN ALLEN.**

ADJOURNMENT:

Watts moved to adjourn the meeting at 10:12 p.m. Nichols seconded. All voted aye.

ADJOURNED MEETING AT 10:12 P.M.

The next regularly scheduled meeting is to be held on May 5th, 2020 at 6:00 p.m.

RECORDED BY:

**DIANE K. CLAY
CITY CLERK**