

**CITY OF FORT SCOTT  
CITY COMMISSION MEETING**

**Minutes of November 2, 2021**

**Regular Meeting #21**

The regular meeting of the Fort Scott City Commission was held November 2<sup>nd</sup>, 2021 at 6:00 p.m. in the City Commission Meeting Room at City Hall, 123 S. Main Street, Fort Scott, Kansas.

**ROLL CALL:**

Commissioners P. Allen, R. Nichols, and L. Watts were present with Mayor J. Jones presiding. K. Allen arrived at 6:04 p.m.

**INVOCATION:** Bill Downey, Sergeant, Police Department, said a prayer asking God for guidance for the City, our Government and City officials.

**AUDIENCE IN ATTENDANCE:** Travis Shelton, Brad Matkin, Rachel Thompson, Michael Hoyt, Judy Warren, Bill Downey, Sarah Maike, Lindsay Madison, Jason Dickman, Gina Shelton, Connie Findley, Maci Shelton, John Shelton, Martha Shelton, Jackson Tough, Courtney Head, Tim Harper, Jerry Morgan, Doug Guns, Melissa Guns, Anne Dare, Amanda Gilmore Max Fanning, and Tammy Helm representing the Fort Scott Tribune.

**ADDITIONS TO AGENDA:** Mayor Jones asked that the Neighborhood Revitalization Program be removed from under Appearance.

**PROCLAMATIONS/RECOGNITIONS:**

**Service Award Recognitions:**

**5 years:** (Certificate and Gift)  
Todd Bond, Water Treatment Plant  
Jerry Morgan, Street Department  
Alek Shelden, Wastewater Treatment Plant

**10 years:** (Certificate and Gift Card)  
Stanley McKeen, Water Distribution

**15 years:** (Certificate and Gift Card)  
Tim Harper, Fort Scott Police Department

**25 years:** (Certificate and Gift Card)  
Travis Shelton, Fort Scott Police Department

**CONSENT AGENDA:**

A. Approval of minutes of the regular meeting of October 19<sup>th</sup>, 2021 and special meeting minutes of October 29<sup>th</sup>, 2021.

- B. Approval of Appropriation Ordinance 1299-A totaling \$279,119.72.
- C. Request to Pay – Nuss & Farmer - \$1,540.00
- D. Request to Pay – Allgeier, Martin & Associates, Inc. - \$501.04 – Clarifier Painting Project
- E. Request to Pay – Kansas Department of Commerce - \$2,300.00 – Overpayment of Grant Funds to the City of Fort Scott
- F. Request to Pay – Southeast Kansas Regional Planning Commission - \$1,650.00 – Close out of CDBG Grant charges
- G. Request to Pay – Earles Engineering (August 2021)
  - Building Inspection - \$2,962.00
  - City Engineer - \$4,000.00
  - Public Works Director - \$6,842.50
  - Wastewater Treatment Plant - \$3,648.00
  - Cooper Street Reconstruction - \$1,504.13
  - 3<sup>rd</sup> Street Sewer Project - \$62.00

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

**APPROVED CONSENT AGENDA.**

**Public Comment:**

(Sign up required. Comments on any topic not on the agenda and limited to 5 minutes per person, at Commission discretion)

Sarah Maike – Ms. Maike handed out a flyer on basic, psychological, and self-fulfillment needs to the Commission. She said she wanted to address the Public Nuisance Ordinance that the City passed at their October 19<sup>th</sup>, 2021 meeting. She read an excerpt from the Ordinance: Examples of a public nuisance include, but is not limited to:

- A. Depositing feces and or urine; be it human or animal.
- B. Being noticeably intoxicated due to excessive drug or alcohol use
- C. Making living accommodations or preparations to sleep, sleeping, erecting a tent, or storing belongings, among other activities.
- D. Yelling, shouting, or screaming in a manner that causes members of the public alarm or concern.
- E. Loud or disruptive noises
- F. Beg or solicit for money or food.

She stated that she has issues with C and F. Humans need food, water, warmth, and rest. The homeless lady needs to make a shelter for herself. She stated she is not hurting anyone asking for food. She referenced the downtown children’s Halloween

parade where the children asked for candy from the local store owners. She stated she is working on a plan for the City for the homeless.

Michael Hoyt – Mr. Hoyt said that he recently submitted a K.O.R.A. request asking for the ordinance or resolution in effect to establish purchasing authorization limits of the City Manager and Finance Director. He was charged \$8.50 for the copies and it included 16 pages of City Commission minutes. There was no resolution or ordinance included. He asked if anyone else was suspicious about this. He said that the minutes reflect that this is in effect until the Governor extends her Executive Order but doesn't mention what order. He again questioned the cost of his K.O.R.A. request.

City Clerk will look into it.

Susan asked if she could address this issue. The Mayor told her no.

Anne Dare – She declined to comment.

**Engineering Firm Update:** Peter Earles, Earles Engineering, Inc., had no update at this time.

**Public Hearings:** None

**Old Business:** None

**APPEARANCES:**

Toni Donahue – 1702 E. Wall – Discussion of building a tiny house on her property – She did not appear.

Melissa Guns – Christmas in the Park – Ms. Guns informed the Commission of an upcoming event on December 11<sup>th</sup> and December 18<sup>th</sup>. She said that Christmas in the Park event will be different this year than in years past. On December 11<sup>th</sup>, the F.S.C.C. welding department will put on a lighting display in the park. The Industrial Arts class at Fort Scott High School will have a display also. The jazz band, choir, and orchestra will also be presenting during this event. The Police, Fire and EMS will be serving chili. On following weekend, the Bourbon County Revival band will be playing. She asked for shelter houses 1-5 to be reserved for these two weekends as well as the camping area. She asked that traffic be closed to the public on the 11<sup>th</sup> and the 18<sup>th</sup> and people will be transported down into the park by the trolley and hay rack rides. She asked for increased patrol during the park during this event. She would like the gates closed to the park from December 6<sup>th</sup> to January 1<sup>st</sup>. so people can drive into the park and view the lights. She also asked that that park be closed at 9:00 p.m. every night.

L. Watts moved to approve the closures for December 11<sup>th</sup> and December 18<sup>th</sup>. R. Nichols seconded. All voted aye.

**APPROVED THE CLOSURE OF GUNN PARK ON DECEMBER 11<sup>TH</sup> AND DECEMBER 18<sup>TH</sup>, 2021 TO THE PUBLIC. THE PARK WILL BE CLOSED TO THE PUBLIC AT 9:00 P.M. FROM DECEMBER 6<sup>TH</sup> THROUGH JANUARY 1<sup>ST</sup> FOR CHRISTMAS IN THE PARK.**

Rob Harrington – Neighborhood Revitalization Program – This was removed from the agenda.

**New Business:**

- a. Consideration to accept T-Mobile Grant - \$50,000 - Susan Bancroft, Assistant City Manager, informed the Commission that this grant was presented to the City recently. She talked to the T-Mobile representative regarding this grant and if the scope of work can change. She said the scope of work can change as long as the downtown location remains the same at Skubitz Plaza. She recommended forming a committee with a representative from the Fort and Farmers Market to discuss the proposed location and project. She asked the Commission to accept the grant and she will look to Healthy Bourbon County Action Team for additional grant funding.

L. Watts moved to accept the grant and come back after the first of the year with a plan. R. Nichols seconded. All voted aye.

**APPROVED TO ACCEPT THE T-MOBILE GRANT IN THE AMOUNT OF \$50,000 FOR THE SKUBITZ PLAZA LOCATION.**

**Reports and Comments:**

**Interim City Manager Report and Comments:**

Don George – Kansas Department of Wildlife and Parks will be here tomorrow for the fish harvest at Lake Fort Scott. These catfish will go into Gunn Park, the F.S.C.C. pond, and Lake Fort Scott. They have done this program since 1987.

First Source Building – Mark said that this City building is listed through Lyons Realty Company at a price of \$399,000.

Ethics and Civility Class through the League of Kansas Municipalities – Mark announced that he would like to see all current Commissioners and incoming Commissioners take this class. It is on December 9<sup>th</sup> from 6:00 p.m. to 9:00 p.m. It is a virtual class and will be held by zoom. The cost is \$50.00 a member.

Highway 69 Traffic Signal Project – Mark said that contract has been signed by the City and K.D.O.T. They had a meeting recently with Wayne Gudmonson and Troy Howard of K.D.O.T. regarding Wall Street and our KLINK agreement. Mark showed them issues on Highway 54.

Staff Changes – Mark announced that the Public Works Director is no longer with the City. As of now, Tom Coffman is Public Works Manager, Jerry Morgan is Supervisor of

Public Works, and Bill Lemke is Supervisor of Water Distribution. Brad Matkin will also be assisting these departments. We are currently four (4) employees short in Public Works.

Sale of Lake Lot #6 – Mark said that a live public auction was held on October 29<sup>th</sup> and this lake lot brought \$121,000. He has signed the real estate contract for this lot.

City/County meeting – Mark said that a work session was held on October 26<sup>th</sup> between the County and City at the Empress Center. He recommended working off an agenda for future meetings. The next meeting is scheduled for November 30<sup>th</sup>, 2021 at 12:00 noon. He mentioned having quarterly meetings between the City Commission, County Commission, USD 234, and F.S.C.C.

**Finance Director/Assistant City Manager Report and Comments:** Nothing to report.

**Commissioner Reports and Comments:**

L. Watts – Nothing to report.

K. Allen – Kevin asked who was in charge of the 3<sup>rd</sup> Street restroom. He mentioned the post on facebook showing the terrible condition it was in. He said it was the second time that this has happened and doesn't want to see it happen again.

Mark said that Buck Run staff take care of this restroom. He said that Buck Run staff clean it once a week. Kevin said that he would like to see it cleaned at least twice a week.

Kevin discussed the City/County meeting last week. He said that they discussed the inmate program and the inmates have already been out to the Golf Course to pick up hedge balls. The City will take bricks to the detention facility and have the inmates clean the bricks and stack them on pallets.

Kevin asked about a contractor changing the lights at 3<sup>rd</sup> Street and Highway 69.

Mark said that he will check into this.

Kevin asked about the spending authority for the City Manager and Finance Director and if it needs changed back to what it was originally.

Susan gave them the current financial limits and authorities that were approved in May of 2020. Susan will bring them back the original purchasing authority at the next meeting.

Kevin asked that the timer not be set for the citizen comment time. He doesn't like the 5 minute indicator going off.

The Mayor said that he doesn't have a problem with the timer. Lindsey said she didn't either.

Kevin asked for a ten (10) minute executive session to discuss non-elected personnel.

P. Allen – Pete said he wanted to expand on the meeting with K.D.O.T. officials. It confirmed some of their research. We are responsible for the maintenance on Highway 54. There are programs that we have not applied for that will pay 90% of the work. It is the City's responsibility to apply for those grants. Every March, K.D.O.T. does a call for projects and we missed that this year. They have already committed funds for 2022 and 2023. They did discuss some emergency funds which could be a possibility. We get paid \$5,000 a year for every lane mile. In 2019 the City milled and overlaid Wall Street and we paid the full bill. We could have applied for a grant through them.

R. Nichols – Randy stated that he would like a ten (10) minute executive session also. He said that action is expected to be taken.

J. Jones – Nothing to report.

**City Attorney Report and Comments:** None

**Executive Session:**

J. Jones moved that the City Commission recess into Executive Session for the purpose of discussing non-elected personnel in K.S.A. 75-4319(b)(1). The open meeting will resume in the Commission meeting room at City Hall at 7:17 p.m. L. Watts seconded. All voted aye. This included the City Commission, Finance Director, City Attorney, and City Manager.

J. Jones moved that the City Commission come out of Executive Session at 7:17 p.m. L. Watts seconded. All voted aye.

**Executive Session:**

R. Nichols moved that the City Commission recess into Executive Session for the purpose of discussing attorney/client privilege in K.S.A. 75-4319(b)(2). The open meeting will resume in the Commission meeting room at City Hall at 7:28 p.m. L. Watts seconded. All voted aye. This included the City Commission, Human Resource Director, City Attorney, and City Manager. There is action anticipated.

J. Jones moved that the City Commission come out of Executive Session at 7:28 p.m. R. Nichols seconded. All voted aye.

Randy read a statement to the Commission and the public. He stated that Pete Allen has violated our code of ethics. Our code of ethics states: "It is understood that information permitted by Statute to be discussed in closed executive recess must remain confidential. Sharing of such information with unauthorized persons at any time is unacceptable." This is not to be taken lightly because violating it weakens the trust of our fellow commissioners. It undermines the confidence of employees and potential business partners to bring us confidential information and it significantly

risks increasing the City's liability in potential or ongoing litigation. Commissioner Pete Allen has violated our ethics code of confidentiality.

An email was recently forwarded to him by a concerned citizen. The email they had received was sent to them by a close associate of Commissioner Pete Allen. These emails contained a letter that could only have originated from Commissioner Allen. The original letter had been presented to us in executive session, but the letter also referenced information from a previous executive session. It potentially voids the attorney-client privilege. It undermines our City employees expectation of confidential, protected communication. Furthermore, it exposes the City to greater risk in any litigation resulting from the issues discussed in the letters. It's reasonable to believe if this was an employee they would be fired. However, unless Commissioner Pete Allen chooses to resign, the Commission's only course of remediation is public censure. If you choose not to censure Commissioner Peter Allen, then realize you are sanctioning this behavior, sending a message to all future commissioners that executive sessions really have no privilege and you are failing to protect our citizens if the issue in these letters leads to litigation.

Commissioner Nichols read the following proposed resolution:

A Resolution Censuring Commissioner Pete Allen

Whereas, the City of Fort Scott is required to provide a work environment free from employment discrimination by various State and Federal laws including the Kansas Act Against Discrimination, K.S.A. 44-1001 et. seq., Title VII, of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and/or the Americans with Disabilities Act of 1990 as amended.

Whereas, excellence in performance by elected officials, City of Fort Scott employees and other appointed officials is the best way to achieve our common goal of ensuring effective governance and quality of life in the City of Fort Scott. A special obligation of the City Commissioners is to set a leadership example. The public expects the best possible behavior from its representatives and employees. Commission members must strive for high standards of behavior and performance to benefit all Fort Scott residents, and;

Whereas, in performance of their duties, Commissioners are expected to adhere to the provision of law, and to adhere to the Code of Ethics set out as the policy of the City of Fort Scott in Ordinance No. 3563, which specifically prohibits publicly criticizing individual City employees or officers. Public criticism can be construed in many ways and help to create a hostile work environment; and

Whereas, it has come to the attention of the Commission that a member or members of City Staff have alleged conduct on the part of Commissioner Pete Allen as it regards his interactions, in public and private, with City Staff that may subject the Commission and City to possible violations; and

Whereas, such conduct or pattern thereof is inappropriate, and

Whereas, under the Statute cited and above Code of Ethics set out as the policy of the City of Fort Scott in Ordinance No. 3563, the City has certain obligations triggered by allegations made by as a result of the conduct of its officials and/or employees; and

Whereas, the Commission wishes to express its condemnation of conduct and make clear that all City officials are bound by the applicable laws regarding the conduct of City operations.

Now, therefore be it resolved by the Governing Body of the City of Fort Scott:

Section 1: The Commission finds that based upon the investigation of the complaints lodged in its records, it is more probable than not that Commissioner Pete Allen has engaged in acts prescribed by the employment discrimination laws applicable to the City. These matters have been brought to the attention of Commissioner Pete Allen who continues to travel down the path of creating a hostile work environment by violations of the Code of Ethics set out as the policy of the City of Fort Scott in Ordinance No. 3563, and the State and Federal employment laws.

Section 2. Commission does not condone such activity and wishes to be very clear that the actions being taken by Commissioner Pete Allen are his actions and do not represent the Fort Scott City Commission.

Section 3. That Commissioner Pete Allen is hereby censured and admonished for his conduct as set out herein.

Section 4. That the Commission calls on Commissioner Pete Allen to refrain from such behavior in the future, abide by the restrictions that are imposed upon him in the Code of Ethics set out as the policy of the City of Fort Scott in Ordinance No. 3563, and the State and Federal employment laws, and to act in a manner which upholds the dignity of his office.

End of Resolution.

Josh said that Randy has been sitting on this for two weeks and not brought it up to any of them. He said that you stated this is holding the City liable and he has no authority to say that. He said that he asked the City Attorney for some items and has not received them.

Josh asked the City Attorney if he had done an investigation.

City Attorney said he has seen all of the material presented to him.

Josh asked again if he had investigated it? He asked him if he was saying he had not? He asked if he would stake his reputation on this.

Bob said that he reviewed all the paperwork presented to him.

He said he voted no based on these items.

Randy said that he said the City could be liable for actions.

Kevin asked for a point of order for the meeting and the vote to be taken.

Lindsey said that we have had at least two executive sessions and a letter from a citizen so this has been addressed before.

Kevin said that Randy didn't make copies of his documentation for them and how can he be expected to vote.

Lindsey asked the City Attorney to get them information on this issue and email it to them. He said he would do that.

R. Nichols made a motion to approve the above Resolution censuring Commissioner Pete Allen. L. Watts seconded. R. Nichols and L. Watts voted aye. K. Allen, P. Allen and J. Jones voted no. Motion denied.

**DENIED RESOLUTION TO CENSURE COMMISSIONER PETE ALLEN.**

City Clerk said that she went and looked at the Open Records Request from Mr. Hoyt. He was overcharged by \$1.70 which she refunded to him this evening. He was not charged for the time in filling this request.

**Adjournment:**

J. Jones moved to adjourn the meeting at 7:42 p.m. P. Allen seconded. All voted aye.

**ADJOURNED MEETING AT 7:42 P.M.**

Respectfully submitted,

Diane K. Clay, M.M.C.  
City Clerk