September 25, 2017

The Common Council of the City of Glasgow, KY met in regular session on Monday, the 25th day of September, 2017 at 7:00 p.m. in the Council Chambers with the following persons present:

HONORABLE MAYOR: Dick Doty

COUNCIL MEMBERS: Jake Dickinson
Patrick Gaunce
Brad Groce
Stacy Hammer
Greg Harris
Wendell Honeycutt
Marna Kirkpatrick
Chasity Lowery
James Neal
Freddie Norris
Gary Oliver
Marlin Witcher

There being a quorum present, the Mayor declared the meeting open for business.

Pledge of Allegiance

Council Member Brad Groce opened the meeting with a prayer.

MINUTES OF COUNCIL MEETING ON 09-11-17

MOTION was made by Council Member Norris for the approval and adoption of the 09-11-17 Council Meeting minutes
SECOND was by Council Member Witcher
VOTE unanimous approval of the Council

CONSIDERATION OF JOINT LETTER BETWEEN EPB AND DANNY BASIL

Mayor Doty stated all Council Members should have received that letter. Mr. Basil was in attendance to speak about this and to answer any questions anyone might have.

Basil stated after he was authorized to proceed on August 14th or 15th, there was a meeting with the Electric Plant Board council and Billy Ray. The issues were discussed that were set out in his letter and possible alternatives; how to satisfy the discomfort that those issues have caused. Everything from open meetings to model procurement to electric service rates, particularly the alternate rate that had been offered. Basil said he recorded that and wrote it up as he understood what they were willing to do. Basil said out of fear that he might not have understood completely, he submitted it back to them for their editorial work before he brought it back to the Council because he didn’t want there to be any confusion in the way he had reported it. Basil said as it was, there was a little confusion and he invited Mr. Ray to write it the way he recalled. Basil said his concern for the rate payers in Glasgow was for the alternate rate to have a reduced customer charge by at least $5. Mr. Basil said he left the meeting thinking we were going to get that in some form or fashion. At the time, there was a question whether we could do the alternate rate and reduce it $5 without reducing Infotricity customer service charge at the same rate. Basil said when they are trying to reconcile that $5 reduction with the three level fee they had talked to the Advisory Group about and then in communicating with TVA about how to set
that rate up, it may not show up as a straight $5 reduction. Basil stated he has been assured that it will amount to that in effect for people who pick the alternate rate and are the low income rate payers. Basil said that is where his concern was for the people are having trouble meeting their electric bill. The alternate rate should put them in a position where their electric bill now is no more than about $10 or so higher than what it was three to four years ago. Mr. Basil said he has been assured that this letter is consistent with that, as it has to go back to TVA. Mr. Basil said he is comfortable with that although it doesn’t say exactly the same thing.

Basil said the reason he was ok with the Electric Plant Board presenting this letter to the Council is through the months of doing this, Basil has advised that we have no authority to micromanage the Glasgow Electric Plant Board. We have authority to remove them if we are not happy that they are meeting their requirements. If they have agreed to make these changes coming from them in their letter instead of us dictating to them the specific terms under which they have to operate. Basil said that in his mind, there is an advantage to accepting what they are offering here. Basil said this is good to go forward.

Mr. Basil stated he wanted to address a couple of things two weeks ago, but it didn’t seem like the opportune time. Mr. Basil said one of the initial strongpoints he felt we had in trying to remove the board was failure to follow the Model Procurement Code. Basil said he discussed this with the Attorney General’s office and it appeared there had not been any bidding process. Basil said he has studied the Model Procurement Code to try to determine what is appropriate, what is not and what fits. Mr. Basil said he needs to advise that it is fairly complicated. There are provisions where you are under the Model Procurement Code where you can do transactions with non-competitive negotiations and still be within the Model Procurement Code. There are provisions within the code where you can negotiate with bidders and change the purchase after you have received sealed bids. There are provisions where you can do dealings with outside people with competitive negotiation. There are sealed bids which we assumed was the dominant method of transacting business. It may be but there are other options available. There is the option of doing small purchases by simply going out making the purchase by state government bodies. Basil said this is if you have adopted the Model Procurement Code. According to the Electric Plant Board, they have never adopted that code. Mr. Basil said he has not seen where it has to be adopted, but he has implications in Attorney General’s opinions on a number of other places where they talk about certain organizations having adopted the Model Procurement Code. Basil said those implications he has read is that there has to be an adoption of that code for it to apply. Basil said he needs to take you further in KRS 45.a343 for organizations that have adopted the Model Procurement Code. A public agency, such as the Electric Plant Board, can adopt out of it under and follow the rules in KRS 45.a345 on up through 45.a460. One of those statutes, 45.a380, subsection 3, has a provision in it that “A local public agency may contract or purchase through non-competitive negotiation only when there is a written determination that competition is not feasible”. Mr. Basil stated that gives them the option of hiring lawyers, CPA’s and electricians and a number of other like painters, musicians, plumbers, carpenters, mechanics without going through competitive bidding or sealed bid processes. Basil said it is possible that transactions can be done many ways and be in compliance with the Model Procurement Code and it not be a violation. Basil said there is a good explanation in the letter and the problem for us is the Glasgow Electric Plant Board of Directors has a legal opinion that says they do not have to comply with the Model Procurement Code. Basil said they do comply with it on many of their purchases. Mr. Basil stated if we are trying to remove them and use that as a legal basis, then that is much weaker than we had thought. Mr. Basil said he felt it was his obligation to come back and tell the Council that. Mr. Basil stated if the Council wants to go forward with the removal, then he is here to do that, but he needed to let the Council know that things sometimes are not what they appear. Basil said some of the other basis we had, such as the Open Meetings and saying there was a violation there. Basil said they never agreed there was a violation. Basil said they agreed to do what we asked, what Mr. Basil asked which he thought was the best they could get and that was a publication of all that information before the meeting so the public could have it and the press could have it before the board met. Mr. Basil stated things are a little different.

Basil stated he has basically approved the letter they have sent. If you have questions about that, he will be happy to address those. Basil said he wants you to think because if we leave tonight, without the intention of
removing the board, this may be his last opportunity to appear before you. Basil stated he has been the Council’s lawyer and tried to serve the true interest of the Glasgow City Council. Basil said if in any time, in his pursuit of that, you are his clients, as a group and as individuals. Basil said if there has been anytime during this period you feel he has not pursued the Council’s interest as he should have, he wishes to be told tonight because he will address concerns and try to answer those concerns. Basil said he is interested in input from the Council.

Mr. Basil said he would answer any questions anyone has about the Model Procurement Code or anything he has done for the Council. Council Member Gaunce asked Mr. Basil when he was talking about the $5 charge for lower income, if it was actually for lower kilowatt usage. Basil said that is really what he meant. Council Member Gaunce asked Mr. Basil if he feels like this is as good as both sides can come to in his opinion. Basil stated this is his opinion. It does not change his commitment to this group if they want to remove the board. Basil said when you look at the concessions that are here. Mr. Basil said he learned a lot and he could not see demanding more.

Council Member Kirkpatrick said just being transparent, she has a question for him. Council Member Kirkpatrick asked Basil if he has any current financial dealings with any Council Member present. Basil answered yes. Council Member Kirkpatrick asked Basil if he does, does he care to explain. Basil said he does not mind at all. Basil stated he set up a corporation for Council Member Jake Dickinson three or four months ago. Basil said he has done legal work for a lot of people in the room at different times. Basil said he used to be a lawyer for Council Member Gaunce but he has not done any legal work for him in 10 to 15 years. Council Member Gaunce said at least that long. Basil said Council Member Gaunce has a farm that has some oil wells on it and Basil’s business has oil wells all around this farm. Basil said he was pumping the oil wells for the man that owned the farm before Council Member Gaunce bought it. Basil said the man’s name was Jim Myers. Basil said if he recalls, Council Member Gaunce bought the land 5 or 6 years ago. Basil said sometime in that time, Basil got the oil lease that joined the property when Council Member Gaunce purchased it. Basil stated when Council Member Gaunce bought the land, he made a deal with the seller that the seller could keep the oil wells for two years. Mr. Basil said Basil paid the man for two years. Basil said that after the two years, Council Member Gaunce was not going to do a new lease so Basil has been pumping the oil wells since then. Basil stated he gets the normal pumper’s share and Council Member Gaunce gets the normal land owner’s share. Basil said this may be $700 or $800 per month from this.

Council Member Kirkpatrick asked Mr. Basil if he feels the business situation with he and Council Member Gaunce has any effect on his advice to the Council in that letter. Mr. Basil answered no, none whatsoever and Basil feels Council Member Gaunce would tell the same thing. Council Member Gaunce said there is not a straighter person that Danny and he would run from it. Council Member Gaunce said he didn’t think Council Member Kirkpatrick meant it as it came out, but Basil is an honorable a man as there is. Council Member Kirkpatrick said she appreciates everything Basil has done for the Council.

Council Member Dickinson stated he has a question he would like to ask of another Council Person but first he would like to read from the minutes of the past meeting. Council Member Dickinson quoted, “Council Member Honeycutt said we are close enough to have a majority changeover and once the rate reduction and the customer charge takes effect, a $35,000 to $40,000 savings every month would occur.” Council Member Dickinson asked Council Member Honeycutt if he still agrees with this. Council Member Honeycutt said he does not. Council Member Honeycutt said this agreement from the EPB is a little bit different from the original letter from Mr. Basil and it does not include that anymore. Council Member Dickinson asked Council Member Honeycutt if he would say they are back stepping on the $5 charge. Council Member Honeycutt said he does not know if they are back stepping. Council Member Honeycutt stated they say they are going to move it to some other rate base so it is not a true savings like he thought it was going to be. Council Member Dickinson read from Mr. Basil’s letter of August 22, 2017. Council Member Dickinson read, “The Glasgow Electric Plant Board has adopted practically all the recommendations of the recent Advisory Group that studied the Glasgow rate and usage. They have also agreed to the $5 reduction in customer charge rolling it back into the $17
range”. Council Member Dickinson then read from the letter from Billy Ray received today, “The simple reduction of all customer charges by $5 a month would remove nearly $480,000 a year revenue from the EPB’s coffers. Such a move is not mathematically possible nor would it be fiscally prudent”. Council Member Dickinson said he thinks Basil has addressed this and knows Basil has put in long hours on this and thanked him. Council Member Dickinson said he doesn’t think this letter requires a motion or a vote and Mr. Basil agreed.

Basil said he would take that as a commitment that you would look to them to honor. Mr. Basil stated he thinks they will and you have a basis to remind them if they don’t. Basil said he understands from the discussions with them on the $5. Even though it was set in the letter contradicts what he is about to tell. Basil said when he submitted his letter with the $5 and it came back with that still in it, he takes that as an approval and why he brought it back to the Council. Basil said when he goes back to them to talk about this, he is understanding that people of low kilowatt usage are going to have a savings equivalent to that 3-tier program. Whatever program they work out for their customer charge. Basil said he would be happy to discuss that if we don’t get that. Basil said he has talked to them about how long that takes to get into effect through the TVA and it will take a few months because a rate change takes a while. Basil said he feels like we need to follow-up on that because the people that take the alternate rate are having a rate they can live with because that takes out that fear of the peak demand charge for people who don’t want to turn their air conditioner off in the hot summer because of health reasons or whatever. Basil said this gives them a reasonable rate and a way to avoid wrecking their budget.

Council Member Harris asked Basil if the Attorney General recommendations are not binding and what the legality is. Basil said the Attorney General opinion is just that and it is an opinion and it is some weight if you go to court saying you have an Attorney General’s opinion, but it is not a precedent from another court that has to be followed. Quite frequently, the Attorney General’s opinion may be addressing an issue in the context of the question that is being asked and it might not be the same answer if the context of the question were a little different. Basil said that is why sometimes an Attorney General’s opinion may seem like it is exactly on point, when in fact, there may be other considerations that change it.

Council Member Honeycutt said to Mr. Basil that this has drug on for a couple of years and while it has gone on, we now have an empty board seat on the Plant Board and a new board member in Council Member Norris. Council Member Honeycutt said in January there will be another one which, will really be a new majority, then one more each of the next two years until everyone is gone if not voted to be reappointed. Council Member Honeycutt said the Mayor reappoints them and the Council confirms that. Council Member Honeycutt asked Mr. Basil which would be quicker if the Council wants to change the board out. Council Member Honeycutt asked Mr. Basil if they vote to have a hearing and if there is something there, they would vote to remove them. Council Member Honeycutt said if that is done, they have indicated they would appeal. Council Member Honeycutt asked Mr. Basil what would be quicker if they wanted to effect a change in the board right now. Basil said before he answers this and he will answer this, he wants to mention the time table they have been involved with. Basil said he was hired in March and he started investigating and working with our Attorney General’s office. Basil said then the Advisory Council was appointed in April that was to give recommendations. Basil stated when that happened, he talked to various members of the Council and it was decided informally to wait until that advisory group had met to see what they came up with and to see how the Plant Board responded to the advisory group before proceeding to have the vote for the removal and that effected a couple or three months delay. Basil said when August came there was some scheduling conflicts so now we are in September. Basil stated the removal process being contemplated was going to take some time without the exact time for the removal never agreed on because one of the elements that has to be complied with is called Procedural Due Process which means you give them all of the claims against them and give them time to put their defenses together so they can adequately defend those claims. Basil said he would have assumed two or three months would have been reasonable. Basil said he does not know if they would agree on that and he could have been ready in a couple with no problem but he had already done research on the case and they were only notified in August what those claims were. Basil then said if they hearing happens and they are removed, they have a right to file a case in the Circuit Court and have Judge Alexander, unless he recuses, rule
on whether or not they could be removed and that would have taken several months. Basil said there could have been an appeal from that. Basil stated the other issue that could have come up, as in the case with Russellville, is there was a federal lawsuit filed for damaged and that got quite complicated and that lasted for quite a while and was quite expensive. Basil stated he is of the opinion that by working together and appointing new board members that you will have a new board quicker and while there may be some differences of opinion on who should be nominated and who should be approved, those are issues this kind of group has to work out.

Council Member Kirkpatrick commented saying she feels with everything being said tonight that the Council as a whole is setting in a good place right now. Council Member Kirkpatrick said if they call and ask the right questions, we will get a good board and she has faith in that while they have to do the work.

Mayor Doty asked for other comments. Mayor Doty asked if there is any action that the group would like to take on this joint consideration. No other comments were made.

ORDINANCE NO. 2017-2903

ORDINANCE ---- 2ND READING ---- AN ORDINANCE ESTABLISHING THE 2017 TAX RATE FOR THE CITY OF GLASGOW

A proposed ordinance was presented for the second time and caused to be read for the second time.

MOTION was made by Council Member Neal for the second reading approval and adoption of the Ordinance
SECOND was by Council Member Groce
VOTE Yes – 12 No – 0 AB – 0

Dickinson – yes Kirkpatrick – yes
Gaunce – yes Lowery – yes
Groce – yes Neal – yes
Hammer – yes Norris – yes
Harris – yes Oliver – yes
Honeycutt – yes Witcher – yes

RESOLUTION NO. 2017-2360

RESOLUTION FOR THE CITY OF GLASGOW TO MAKE APPLICATION FOR A GRANT ADMINISTERED BY THE TRANSPORTATION ALTERNATIVES PROGRAM

A proposed resolution was presented and caused to be read

MOTION was made by Council Member Norris for the approval and adoption of the Resolution
SECOND was by Council Member Kirkpatrick
VOTE unanimous approval of the Council

Prior to the vote, Mayor Doty stated this will be applied for now but awarded next fiscal year.
ANNOUNCEMENTS:

THE BUDWEISER CLYDESDALES WILL BE AT BEAVER TRAIL PARK ON THURSDAY, SEPTEMBER 28, 2017 FROM 4:00 P.M. TO 8:00 P.M. THERE WILL BE OUTDOOR CONCERTS, FOOD VENDORS, GAMES AND PONY RIDES FOR CHILDREN.

CRUISE INTO FALL CAR SHOW WILL BE HELD ON THE PUBLIC SQUARE ON SATURDAY, OCTOBER 7, 2017 FROM 8:00 A.M. TO 5:00 P.M. FOR MORE INFORMATION,

BLUEGRASS ROYALTY DEL MCCOURY AND DAVID GRISMAN WILL BE PERFORMING AT THE PLAZA THEATRE ON SATURDAY, OCTOBER 7, 2017 AT 8:00 P.M. TICKETS ARE $38 IN ADVANCE AND $42 AT THE DOOR. FOR MORE INFORMATION AND TICKETS, CONTACT THEIR BOX OFFICE AT 270-361-2101 OR ONLINE AT WWW.HISTORICPLAZA.COM.

THE KENTUCKY HEADHUNTERS HALLOWEEN BASH WITH KISS KISS BANG SUPPORTING THE CENTER FOR COURAGEOUS KIDS WILL BE SATURDAY, OCTOBER 28 AT 8:00 P.M. TICKETS ARE $20 IN ADVANCE AND $25 AT THE DOOR. FOR MORE INFORMATION AND TICKETS, CONTACT THEIR BOX OFFICE AT 270-361-2101 OR ONLINE AT WWW.HISTORICPLAZA.COM.

MAYOR DOTY INTRODUCED CHRIS FREEMAN. FREEMAN IS THE NEW DIRECTOR OF THE 911 CENTER.

There being no further business to come before Council, Council Member Oliver made a motion for adjournment, Council Member Neal seconded. Motion carried.

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DICK DOTY, MAYOR

ATTEST:

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JAMIE MCFARLIN
CITY CLERK