

Members of the Governing Body will participate by video call-in only due to the COVID-19 pandemic. The public will be able to view the meeting at:

<https://www.facebook.com/CityofPrairieVillage>

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Tuesday, July 6, 2021
6:00 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **APPROVAL OF THE AGENDA**
- V. **PRESENTATIONS**
- VI. **PUBLIC PARTICIPATION**

If you would like to speak live during the public participation portion of the meeting, please notify City Clerk Adam Geffert at cityclerk@pvkansas.com, and provide your name, address, and email address prior to 3 p.m. on July 6. The City will provide you with a link to join the meeting and will call on those who signed up to speak for up to 3 minutes once public participation begins.

To submit written comment to Council, please email cityclerk@pvkansas.com prior to 3 p.m. on July 6 to be shared with Councilmembers prior to the meeting.

VII. **CONSENT AGENDA**

All items listed below are considered to be routine by the Governing Body and will be enacted by one motion (Roll Call Vote). There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the regular agenda.

By Staff

- 1. Approval of regular City Council meeting minutes - June 21, 2021
- 2. Consider appointment to the Arts Council
- 3. Consider school crossing guard contract renewal with All City Management Services, Inc.
- 4. Consider the school resource officer agreement with the Shawnee Mission School District
- 5. Consider approval of short-term special use permit for the KU Kickoff event at Corinth Square

VIII. **COMMITTEE REPORTS**

IX. **MAYOR'S REPORT**

X. STAFF REPORTS

XI. OLD BUSINESS

XII. NEW BUSINESS

COU2021-53 Consider Resolution 2021-12 of the City's intent to exceed the revenue neutral rate and establishing the date and time of a public hearing
Nickie Lee

XIII. COUNCIL COMMITTEE OF THE WHOLE (Council President presiding)

Discussion of diversion agreements and legal review of marijuana enforcement
Tim Schwartzkopf / David Waters

Consider new and revised employee handbook policies to include paid parental leave, military leave, and designation of Juneteenth and Christmas Eve as City holidays
Cindy Volanti

XIV. ANNOUNCEMENTS

XV. ADJOURNMENT

If any individual requires special accommodations - for example, qualified interpreter, large print, reader, etc., please notify the City Clerk at 913-385-4616, no later than 48 hours prior to the beginning of the meeting. If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@pvkansas.com.



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
JUNE 21, 2021**

The City Council of Prairie Village, Kansas, met in regular session on Monday, June 21, 2021, at 6:00 p.m. Due to the COVID-19 pandemic, Councilmembers attended a virtual meeting via the Zoom software platform. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the City Clerk with the following Councilmembers in attendance remotely via Zoom: Chad Herring, Inga Selders, Ron Nelson, Tucker Poling, Bonnie Limbird, Piper Reimer, Courtney McFadden, Ian Graves and Terrence Gallagher. Staff present via Zoom: Byron Roberson, Chief of Police; Keith Bredehoeft, Public Works Director; Cliff Speegle, Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Meghan Buum, Assistant City Administrator; Nickie Lee, Finance Director; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Ms. Reimer made a motion to approve the agenda for June 21, 2021. Mr. Gallagher seconded the motion, which passed unanimously.

PRESENTATIONS

- Stacy Hammond and Emily Sheldon of Berberich, Trahan and Co., P.A., gave a presentation on the 2020 City audit. The firm issued an unmodified audit opinion, the best result that can be achieved.

PUBLIC PARTICIPATION

No requests to address the Council were received.

CONSENT AGENDA

Mayor Mikkelson asked if there were any items to remove from the consent agenda for discussion:

1. Approval of regular City Council meeting minutes - June 7, 2021



2. Approval of expenditure ordinance #3003
3. Consider approval of a contract with Great Plains SPCA for animal shelter services

Mrs. McFadden made a motion to approve the consent agenda as presented. A roll call vote was taken with the following votes cast: “aye”: Herring, Selders, R. Nelson, Poling, Limbird, Reimer, McFadden, Graves, Gallagher. The motion passed 9-0.

COMMITTEE REPORTS

- Ms. Selders gave a report on the Juneteenth Celebration that took place at Franklin Park on June 19. She added that the Diversity Committee recently met with members of the Prairie Village Homes Association to continue discussion on the creation of a memorial plaque providing information about historical racial restrictions enforced by the J.C. Nichols Company. She added that City staff were working on identifying diversity training and providing demographic information of traffic-stop arrests made by the Police Department.
- Ms. Limbird thanked those who attended the first annual Art Walk on June 18, and provided information about upcoming Arts Council events.

MAYOR'S REPORT

- The Mayor provided an update on the COVID-19 pandemic, noting that 47.6% of Johnson County residents 12 and older were fully vaccinated; in Prairie Village, the total was over 50%.
- The Mayor spoke about Climate Action KC's "building energy exchange" program, noting that it was similar to the City's sustainability grant program, which provided funds to residents making energy improvements to their homes. Climate Action KC planned to give a presentation about the program at a future Council meeting.
- The Mayor noted that the Taco Republic restaurant had opened in the Corinth shopping center, and that a children's clothing store called The Little House would be relocating from Fairway to the Village Shops in the near future.
- The Mayor stated that Public Works crews were able to repair the leak at the pool complex that forced the closing of the adult and lap pools, and that both had reopened.
- The Mayor attended the annual Public Works breakfast the prior week.
- The Mayor attended a United Community Services (UCS) annual summit on June 16, at which a "housing toolkit" to address housing attainability and affordability was reviewed.
- The Mayor and several Councilmembers attended a recent Northeast Johnson County Chamber of Commerce breakfast at the Merriam community center.
- The Mayor shared that he had attended a retirement ceremony for Penny Mann, a longtime employee of the City.
- The Mayor noted that VillageFest-to-Go event would be held the morning of July 4 at City Hall.



STAFF REPORTS

- Mr. Jordan provided information about items that would be discussed at upcoming Council meetings, including the climate action plan, the legal review of marijuana enforcement and the UCS housing study and toolkit.
- Mr. Bredehoeft shared additional information about pool repairs, noting that leaks were found in two different locations under the lap pool. Further discussion about long-term pool repairs will be needed in the fall.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

COU2021-50

Consider approval of revisions to Chapter III of the Municipal Code of the City of Prairie Village, entitled “Beverages”

Mr. Waters stated that the Kansas Legislature had passed House Bill 2137 in 2021, which amended the liquor control act, club and drinking establishment act, cereal malt beverage act and the liquor enforcement act. Changes included license suspension and revocation, expanded Sunday sales, and to-go alcoholic beverages.

Updates were made to the Municipal Code to ensure compliance with state law. Certain changes, such as earlier Sunday sales, would go into effect after a 60-day protest period following publication in the Legal Record.

Mr. Poling made a motion to approve Ordinance 2451, amending Chapter III of the Municipal Code of Prairie Village as presented. Mr. Nelson seconded the motion. A roll call vote was taken with the following votes cast: “aye”: Herring, Selders, R. Nelson, Poling, Limbird, Reimer, McFadden, Graves, Gallagher. The motion passed 9-0.

COU2021-51

Establishment of a separate non-budgeted federal grant fund for funds received through the American Rescue Plan Act

Ms. Lee said that as a result of the COVID-19 pandemic, Congress passed the American Rescue Plan Act (ARPA), which would provide \$1.9 trillion in economic stimulus to assist in long-term recovery from economic and public health impacts. ARPA established a Local Fiscal Recovery Fund (LFRF) to provide funds to local governments to assist in response to the pandemic.

Based on the U.S. Department of the Treasury’s allocation formula, the City of Prairie Village allocation would total \$3,382,298.77. Fifty percent of the funds, or \$1,691,149.39,



would be received in July 2021, and the remaining fifty percent in 2022. Cities would have until 2024 to obligate the funds, which could be used in the following ways: support for public health response, replacement of public sector revenue loss, water and sewer infrastructure, addressing negative economic impacts, premium pay for workers, and broadband infrastructure.

In consultation with the City's auditors, financial advisors, and legal advisors, establishing a segregated fund was determined to be the best way to ensure compliance with funding regulations.

Mr. Gallagher asked if Council authorization would still be required prior to funds being expended. Ms. Lee said any expenditure of ARPA funds would still need to go through normal purchasing and procurement steps and that staff would present any proposed expenditures to Council first.

Mr. Herring made a motion to approve Ordinance 2452 establishing a non-budgeted federal grant fund to account for funds received through the American Rescue Plan Act. Mrs. McFadden seconded the motion. A roll call vote was taken with the following votes cast: "aye": Herring, Selders, R. Nelson, Poling, Limbird, Reimer, McFadden, Graves, Gallagher. The motion passed 9-0.

COU2021-52 Consider design agreement with GBA, Inc. for the design of the 2021 drainage program

Mr. Speegle stated that the proposed agreement included four drainage improvement locations and a drainage study. Construction was anticipated to begin in the fall of 2021 at the following locations:

1. 7430 Village Drive - Replacement of deteriorated storm pipe. This location had received Johnson County Storm Management funds that will fund 50% of the construction.
2. 8015 Canterbury Street - Replacement of deteriorated storm pipe. This location had also received Johnson County Storm Management funds that will fund 50% of the construction.
3. 8142 Outlook Lane - Replacement of deteriorated storm pipe along the rear property line.
4. 5424 West 86th Street - Replacement of deteriorated storm pipe. The pipe location will be rerouted to be further from the residential structure.
5. Canterbury drainage study - The study will determine possible solutions to poor drainage along the properties at Canterbury Drive between 79th Street and 77th street.

Mrs. McFadden made a motion to approve the design agreement with GBA, Inc. for the design of the 2021 Drainage Program in the amount of \$85,251.00. Mr. Herring seconded



the motion, which passed 9-0.

Discussion on Bird Scooters

Mr. Bredehoeft introduced Mike Butler, Senior Account Executive with Bird Scooters. Mr. Butler provided information about the company and how it functioned in other comparably sized cities. He suggested that a 9 - 12 month pilot program be enacted to test scooters in Prairie Village.

Several Councilmembers felt further public input was needed before beginning a pilot program. Many shared their concern with scooters causing “clutter” by being left lying around the City, as well as underage riders and general rider safety.

After further discussion, Mr. Poling made a motion to direct staff to develop a pilot program to bring to Council for final approval. Mrs. McFadden seconded the motion. A roll call vote was taken with the following votes cast: “aye”: Herring, Selders, R. Nelson, Poling, Limbird, Reimer, McFadden, Graves, Gallagher. The motion passed 9-0.

COUNCIL COMMITTEE OF THE WHOLE

There was no business to come before the Council Committee of the Whole.

EXECUTIVE SESSION

At 7:36, Mrs. McFadden made a motion for the City Council to recess into executive session for a period of 20 minutes for the purpose of discussing, with legal counsel representing the City, a legal claim, pursuant to the exception for consultation with an attorney which would be deemed privileged in the attorney-client relationship, K.S.A. 75-4319(b)(2). The Governing Body, City Administrator, Chief of Police, Deputy City Administrator, Assistant City Administrator, outside legal counsel, and City Attorney would be present, either in-person or via video conference. The motion was seconded by Mr. Herring and passed 9-0.

The open meeting resumed at 7:56 p.m.

ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

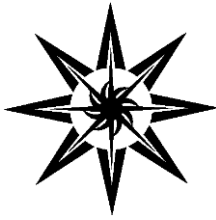
ADJOURNMENT

Mr. Herring made a motion to adjourn the meeting. Mr. Gallagher seconded the motion, which passed 9-0.



Mayor Mikkelson declared the meeting adjourned at 7:57 p.m.

Adam Geffert
City Clerk



MAYOR

**Council Meeting Date: July 6, 2021
CONSENT AGENDA**

Consider Appointment to the Arts Council

RECOMMENDATION

Mayor Mikkelson requests Council ratification of the appointment of Trudy Williams to the Arts Council, for a two-year term ending in 2023.

BACKGROUND

Trudy Williams is a long-time Prairie Village resident with ties to the community through her professional work in the non-profit sector helping youth, her church, her work with Stand Up for Black Lives +PV, and her role as mom to a recent SME graduate. Trudy has a layperson's passion for art, especially graphic design, and is excited to bring her organizational, collaborative, event planning, and leadership skills to the Prairie Village Arts Council.

ATTACHMENTS

Volunteer Application

PREPARED BY

Adam Geffert
City Clerk

Date: June 29, 2021

* Full Name
Mrs. Trudy Williams

* Full Address
7801 Colonial Drive
Prairie Village Kansas 66208

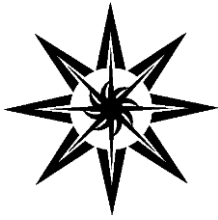
* **Email**
trudyart@gmail.com

* Phone
(913) 530-7224

* Select your City Ward
Ward 4

* **Please select your FIRST committee choice**
Arts Council

* **Please tell us about yourself, listing any special skills or experiences you have.**
a good listener



POLICE DEPARTMENT

Council Meeting Date: July 6, 2021

CONSENT AGENDA: Consider the school crossing guard contract renewal with All City Management Services (ACMS) INC.

RECOMMENDATION

Staff recommends approval of the contract with ACMS Inc. for the 2021-2022 and 2022-2023 school years.

COUNCIL ACTION REQUESTED ON: July 6, 2021

BACKGROUND

The Police Department has utilized a private company to provide school crossing guard services since 2014. The City has contracted with ACMS since the 2017-2018 school year. The proposed contract includes coverage for both the 2021-2022 and 2022-2023 school years. ACMS did implement an increase in the hourly cost of approximately 5.5% a year over the two-year contract. The hourly rate for the 2020-2021 school year was \$22.39/hr. The proposed agreement includes an increase to \$23.95/hr for the 2021-2022 school year and \$24.86/hr for the 2022-2023 school year. ACMS advised that the hourly increase would provide a wage increase to the crossing guards and the supervisor for our area. The City was aware of the projected increase and budgeted for the increase in the proposed 2022 budget.

The contract states that the City will pay the per hour rate for each crossing guard shift, not to exceed 2 hours per guard per day. This is within the budgeted amount. The City Attorney has reviewed and approved the contract

FUNDING SOURCE:

01-03-23-6009-000

ATTACHMENTS

Proposed contract with All City Management Services, Inc.

PREPARED BY

Captain Eric McCullough
Patrol Division Commander
June 22, 2021



AGREEMENT FOR CROSSING GUARD SERVICES

This AGREEMENT FOR CROSSING GUARD SERVICES (the "Agreement") is dated June __, 2021 and is between the CITY OF PRAIRIE VILLAGE (hereinafter called the "City"), and ALL CITY MANAGEMENT SERVICES, INC., a California corporation (hereinafter called the "Contractor").

WITNESSETH

The parties hereto have mutually covenanted and agreed as follows:

1. This Agreement is for a term which commences on or about July 1, 2021 and ends on June 30, 2023 and for such term thereafter as the parties may agree upon.
2. The Contractor will provide personnel equipped and trained in appropriate procedures for crossing pedestrians in marked crosswalks. Such personnel shall be herein referred to as a "Crossing Guard". Contractor will perform criminal background checks and confirm employment eligibility through E-Verify on all prospective personnel. The Contractor is an independent contractor and the Crossing Guards to be furnished by it shall at all times be its employees and not those of the City.
3. The City's representative in dealing with the Contractor shall be designated by the City of Prairie Village.
4. The City shall determine the locations where Crossing Guards shall be furnished by the Contractor. The Contractor shall provide at each designated location personnel properly trained as herein specified for the performance of duties as a Crossing Guard. The Contractor shall provide supervisory personnel to see that Crossing Guard activities are taking place at the required places and times, and in accordance with the terms of this Agreement.
5. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report for work at the assigned time and location and agrees to provide immediate replacement.
6. In the performance of its duties the Contractor and all employees of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and all applicable laws of the state in which the Services are to be performed.
7. Persons provided by the Contractor as Crossing Guards shall be trained in all applicable laws of the state in which the Services are to be performed pertaining to general pedestrian safety in school crossing areas.
8. Crossing Guard Services (the "Services") shall be provided by the Contractor at the designated locations on all days in which school is in session in the area under City's jurisdiction. The

Contractor also agrees to maintain communication with the designated schools to maintain proper scheduling.

9. The Contractor shall provide all Crossing Guards with apparel by which they are readily visible and easily recognized as Crossing Guards. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. This apparel must be appropriate for weather conditions. The Contractor shall also provide all Crossing Guards with hand-held Stop signs and any other safety equipment which may be necessary.
10. The Contractor shall at all times provide workers' compensation insurance covering its employees and shall provide and maintain liability insurance for Crossing Guard activities. The Contractor will provide to the City a Certificate of Insurance naming the City and its officials, officers and employees as additional insureds. Such insurance shall include commercial general liability with a combined single limit of not less than \$1,000,000.00 per occurrence and in aggregate for property damage and bodily injury. Such insurance shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance contributions. Such insurance shall be endorsed for contractual liability and personal injury and shall include the City, its officers, agents and interest of the City. Such insurance shall not be canceled, reduced in coverage or limits or non-renewed except after thirty (30) days written notice has been given to the City.
11. Contractor agrees to defend, indemnify and hold harmless the City, its officers, employees, agents and representatives, from and against any and all actions, claims for damages to persons or property, penalties, obligations or liabilities (each a "Claim" and collectively, the "Claims") that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the sole negligent acts or omissions, or willful misconduct, of Contractor, its agents, employees, subcontractors, representatives or invitees.
 - a) Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses including attorney's fees incurred in connection herewith.
 - b) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the sole negligence of Contractor hereunder, Contractor agrees to pay City, its officers, agents, or employees, any and all costs and expenses incurred by the City, its officers agents or employees in such action or proceeding, including, but not limited to, reasonable attorney's fees.
 - c) In the event that a court determines that liability for any Claim was caused or contributed to by the negligent act or omission or the willful misconduct of City, liability will be apportioned between Contractor and City based upon the parties' respective degrees of culpability, as determined by the court, and Contractor's duty to indemnify City will be limited accordingly.
 - d) Notwithstanding anything to the contrary contained herein, Contractor's indemnification obligation to City for Claims under this Agreement will be limited to the maximum combined aggregate of Contractor's general liability and umbrella insurance policies in the amount of \$5,000,000 (Five Million Dollars).

12. Either party shall have the right to terminate this Agreement by giving sixty (60) days written notice to the other party.
13. The Contractor shall not have the right to assign this Agreement to any other person or entity except with the prior written consent of the City.
14. The City agrees to pay the Contractor for the Services rendered pursuant to this Agreement the sum of Twenty-three Dollars and Ninety-five Cents (**\$23.95**) per hour, per Crossing Guard during the term. Based on a minimum of eight (8) sites the Contractor shall bill a minimum of 2.0 hours per day, per Crossing Guard, unless Contractor fails to perform service. Based upon a projected (2,880) hours of service the cost shall not exceed Sixty-eight Thousand, Nine Hundred and Seventy-six Dollars (\$68,976.00) for the 2021/2022 school year.

The City agrees to pay the Contractor for the Services rendered pursuant to this Agreement the sum of Twenty-four Dollars and Eighty-six Cents (**\$24.86**) per hour, per Crossing Guard during the term. Based on a minimum of eight (8) sites the Contractor shall bill a minimum of 2.0 hours per day, per Crossing Guard, unless Contractor fails to perform service. Based upon a projected (2,880) hours of service the cost shall not exceed Seventy-one Thousand, Five Hundred and Ninety-seven Dollars (\$71,597.00) for the 2022/2023 school year

15. Payment is due within thirty (30) days of receipt of Contractor's properly prepared invoice.
16. Contractor may request a price increase during the term as a result of any legally-mandated increases in wages or benefits imposed in the state or municipality in which the Services are to be performed and to which Contractor's employees would be subject. Contractor shall provide City with 60 days-notice of its request to increase pricing. City agrees to review and respond to said notice within 30 days of receipt.
17. The City shall have an option to renew this Agreement. In the event this Agreement is extended beyond the end of the term set forth above, the compensation and terms for the Services shall be established by mutual consent of both parties.
18. The Consultant agrees that it shall abide by the Prairie Village Non-Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry. If the City determines that the Consultant has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part.
19. This Agreement constitutes the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof and supersedes all prior written or oral statements among the parties, including any prior statements, warranties, or representations. This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors, and assigns. Each party hereto agrees that this Agreement will be governed by the law of the state in which the Services are to be performed, without regard to its conflicts of law provisions. Any amendments, modifications, or alterations to this Agreement must be in writing and

signed by all parties. There will be no presumption against any party on the ground that such party was responsible for preparing this Agreement or any part of it. Each provision of this Agreement is severable from the other provisions. If any provision of this Agreement is declared invalid or contrary to existing law, the inoperability of that provision will have no effect on the remaining provisions of the Agreement which will continue in full force and effect.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written below.

CITY

CONTRACTOR

City of Prairie Village

All City Management Services, Inc.

By _____
Signature

By 
D. Farwell, Corporate Secretary

Print Name and Title

Date _____

Date 6/23/21

Client#: 475947

ALLCITYMAN

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency LLC Marsh & McLennan Ins. Agency LLC 350 S Grand Ave, Ste 3410 Los Angeles, CA 90071	CONTACT NAME: Nick Newell PHONE (A/C, No, Ext): 949 425 7312 FAX (A/C, No): E-MAIL ADDRESS: nick.newell@marshmma.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Landmark American Insurance Company</td> <td>33138</td> </tr> <tr> <td>INSURER B : Mercer Insurance Company</td> <td>14478</td> </tr> <tr> <td>INSURER C : Berkshire Hathaway Homestate Ins Co</td> <td>20044</td> </tr> <tr> <td>INSURER D : Lexington Insurance Company</td> <td>19437</td> </tr> <tr> <td>INSURER E : Everest National Insurance Company</td> <td>10120</td> </tr> <tr> <td>INSURER F : James River Insurance Company</td> <td>12203</td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Landmark American Insurance Company	33138	INSURER B : Mercer Insurance Company	14478	INSURER C : Berkshire Hathaway Homestate Ins Co	20044	INSURER D : Lexington Insurance Company	19437	INSURER E : Everest National Insurance Company	10120	INSURER F : James River Insurance Company
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INSURED All City Management Services, Inc. 10440 Pioneer Blvd., Suite 5 Santa Fe Springs, CA 90670														

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		LHA141150	08/01/2020	08/01/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
E	AUTOMOBILE LIABILITY		CF8CA00199201	08/01/2020	08/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
F	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/>		CA43601328	08/01/2020	08/01/2021	BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		27307647	08/01/2020	08/01/2021	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	ALWC238792	01/01/2021	01/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Excess Layer		080877908	08/01/2020	08/01/2021	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Coverage

CERTIFICATE HOLDER

CANCELLATION

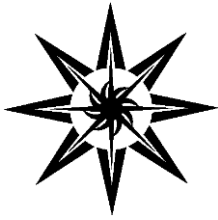
The City of Prairie Village
 7700 Mission Rd.
 Prairie Village, KS 66208-0000

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Nick Newell

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POLICE DEPARTMENT

Council Meeting Date: July 6, 2021

CONSENT AGENDA: Consider the School Resource Officer Agreement with the Shawnee Mission School District.

RECOMMENDATION

Staff recommends the approval of the contract with the Shawnee Mission School District for payment of School Resource Officer services.

COUNCIL ACTION REQUESTED ON: July 6, 2021

BACKGROUND

The Police Department currently assigns School Resource Officers (SROs) to Shawnee Mission East High School and Indian Hills Middle School. Since the inception of the SRO Program, the City and the District have entered into a contract regarding the relationship of the parties, costs, and responsibilities.

The proposed contract includes coverage from July 1, 2021 through the last scheduled day of school in May of 2022. The District agrees to pay the City for each hour the SRO works at the District. This year the payment rate has increased from \$26.83 to \$29.00 per hour.

The City Attorney has reviewed and approved the contract.

ATTACHMENTS

Proposed contract with the Shawnee Mission School District

PREPARED BY

Captain Brady Sullivan
Investigations Division Commander
June 30, 2021

SCHOOL RESOURCE OFFICER AGREEMENT

This Agreement is entered into this _____ day of June, 2021, by and between the **City of Prairie Village, Kansas**, located at 7700 Mission Road, Prairie Village KS, 66208, a municipal corporation, hereinafter referred to as “**City**”, and the **Shawnee Mission Unified School District No. 512**, located at 8200 W. 71st Street, Shawnee Mission, Kansas 66204, a political subdivision of the State of Kansas, hereinafter referred to as “**District**”.

For and in consideration of the mutual promises, terms, covenants, and conditions set forth herein, the parties agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is for the City to assign uniformed law enforcement officers (hereinafter referred to as “SROs”), vehicles, radios and all necessary equipment for the School Resource Officer Program. SROs will work with school personnel in providing alcohol and drug education, maintaining a safe campus environment, serving as a law enforcement problem-solving resource, and providing the appropriate response during on-campus or school related criminal activity.
2. **Term.** The term of this Agreement shall be from July 1, 2021 through the last day of school in May 2022, as designated by the District’s academic calendar, provided that the term may be extended by the District as it deems necessary to satisfy attendance requirements that may have been affected by weather or other factors, and provided that this Agreement is subject to review in April 2022. During days that schools are not in session, SROs shall perform regular police duties at a duty station as determined by the City’s Chief of Police.
3. **Termination.** This Agreement may be terminated without cause by either party upon 30 days prior written notice.
4. **Relationship of Parties.** The City and SROs shall have the status of an independent contractor of the District for purposes of this Agreement. All SROs assigned to the District shall be considered employees of the City, subject to the City’s control and supervision. Assigned SROs will be subject to current procedures in effect for City police officers, including attendance at all mandated training and testing to maintain state law enforcement officer certification. The District agrees to cooperate with the City in any administrative investigation regarding violations of such procedures by SROs assigned to the District. This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between the parties, and the rights and obligations of the parties shall be only those expressly set forth in this Agreement. The parties agree that no person supplied by the District to accomplish the goals of this Agreement is a City employee and that no rights under City civil service, retirement, or personnel rules accrue to such person.

- 4.1 The City will continue to maintain all records concerning the performance of services here listed, including SRO employment records and any reports required by the City's Standards of Conduct or Standard Operating Procedure.
5. **Consideration.** In consideration of the assignment of SROs to District schools as provided herein, the District agrees to pay the City for each hour each SRO works at a District school at the rate of \$29.00 per hour. The District will not be responsible for payment of overtime, unless it is requested by the District. SROs' weekly District schedule will be mutually agreed upon in consultation with the Superintendent or his/her designee. SROs may be asked to attend afternoon or evening events in lieu of regular day duty. Each party will maintain a budget for expenditures under this Agreement. Payment from the District to the City will be made monthly or quarterly, at the discretion of the City.
6. **SRO Responsibilities.** SROs assigned to the District shall:
- 6.1 Provide a program of law and education-related issues to the school community, including parents, on such topics as: tobacco, alcohol and drug issues, violence diffusion, violence prevention, and other safety issues in the school community.
 - 6.2 Act as a communication liaison with law enforcement agencies, providing basic information concerning students on campuses served by the SRO. SROs also will share information with an administrator or a District police officer about persons and conditions that pertain to campus safety concerns.
 - 6.3 Provide informational in-services and be a general resource for District staff on issues related to alcohol, drugs, violence prevention, gangs, safety, and security.
 - 6.4 Gather information regarding potential emerging issues such as criminal activity, gang activity and student unrest, as well as attempt to identify particular individuals who may be a disruptive influence to the school and/or students.
 - 6.5 Take the appropriate steps consistent with a Kansas law enforcement officer's duties when a crime occurs.
 - 6.6 Present educational programs to students and school staff on topics agreed upon by both parties.
 - 6.7 Refer students and/or their families to the appropriate agencies for assistance when a need is determined.
 - 6.8 Notify the building principal as soon as practicable of any significant enforcement event or public safety threat, including advising the building principal prior to taking legal action, subject to the SRO's duties under the law (unless, in the SRO's professional opinion, circumstances prevent prior notice).

- 6.9** Refer violations of the District’s discipline code to District administration. SROs shall not act as school disciplinarians, nor make recommendations regarding school discipline. District administrators are solely responsible for school discipline and will not request the SROs assistance in such matters. SROs shall not be involved with the enforcement of school rules or disciplinary infractions that are not violations of law.

SROs are not to be used for regularly assigned lunchroom duties, as a regular hall monitor, bus duties or other monitoring duties. If there is an unusual/temporary problem in one of these areas, SROs may assist District employees until the problem is solved.

Provided further that nothing required herein is intended to nor will it constitute a relationship or duty for the assigned SROs or the City beyond the general duties that exist for law enforcement officers within the State.

- 6.10** Maintain the confidentiality of student records, as outlined in paragraph 11 below.

- 7. Reports.** SROs also will be responsible for the preparation and submission of police department reports and documents, which will be maintained and disseminated by the police department Records Unit.

- 8. Time and Place of Performance.** The City will make all reasonable efforts to have an SRO available for duty at his or her assigned school each day that school is in session during the regular school year. The City is not required to furnish a substitute SRO on days when the regular SRO is absent due to illness or police department requirements. SROs shall be and remain full-time uniformed law enforcement officers of and for the City, shall remain duly licensed and qualified to carry/use firearms and operate patrol cars, and shall otherwise be able to meet the physical demands of the services described herein. Notwithstanding anything herein to the contrary, in the event an officer should, for any reason, fail to remain so qualified, the City shall provide a substitute SRO to perform the services until such time as the unqualified SRO is able to resume his or her regular duties. SROs’ activities will be restricted to their assigned school grounds except for:

- 8.1** Follow-up home visits when needed as a result of school related student problems.

- 8.2** School related off-campus activities when SRO participation is requested by the principal and approved by the City.

- 8.3** Responding to off-campus, but school related, criminal activity.

- 8.4** Responding to emergency police activities.

- 9. District Responsibilities.**

- 9.1 The District will provide each SRO an on-site office and such supplies and equipment as are necessary at his or her assigned school. This equipment shall include a telephone, filing space capable of being secured, and access to a computer.
- 9.2 The District will report crimes to law enforcement in accordance with the District's board policy JDDDB. The City will be the primary investigative agency of such crimes that are reported to them by the District.

10. Search and Seizure; Interrogations.

- 10.1 Any searches of students and any searches and/or seizures of property conducted by SROs for law enforcement purposes shall be limited to and performed in accordance the District's school board policies JCABB and JCAB.
- 10.2 Any interviews of students conducted by SROs for law enforcement purposes shall be limited to and performed in accordance with the District's school board policy JCAC.

11. Student Records. The release of student records is governed by Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA"). For purposes of access to student records, SROs are considered a "school official" and may be provided students' personally identifiable information ("PII") on an as-needed basis to carry out SRO duties for legitimate educational purposes. In addition, SROs may only use PII for the purpose for which the disclosure was made and to promote school safety and the physical security of students.

SROs, acting as school officials, may request student records from a District administrator for legitimate educational purposes. SROs may not disclose PII obtained from student records, without prior written consent, to others, including other officers who are not acting in the capacity as school officials, unless the disclosure fits within one of the exceptions to consent in FERPA.

12. Indemnity. Indemnification for both parties will be governed by the Kansas Tort Claims Act.

13. Miscellaneous.

- 13.1 This Agreement is subject to the terms of Form DA146a (Rev. 07/19), which is attached to and made part of this Agreement as though fully set forth in this Agreement.
- 13.2 Neither the City nor the District may assign this Agreement without the prior written approval of both parties.

- 13.3 Nothing in this Agreement shall be construed as a limitation on the powers, rights, authority, duty and responsibilities conferred upon either Party under Kansas law.
- 13.4 In the event any provision of this Agreement is held by a court to be illegal, void, or otherwise unenforceable, all other provisions of this Agreement shall continue in full force and effect to the maximum extent permitted by law.
- 13.5 The failure of either party to enforce one or more provisions of this Agreement with respect to any particular breach shall not be deemed or construed to constitute a waiver of any other breach of this Agreement.
- 13.6 This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter contained herein and supersedes all prior agreements concerning the same subject matter, whether written or oral. This Agreement may be modified only by a writing signed by both parties.
- 13.7 The parties may execute this Agreement in counterparts. The parties represent and warrant that each respective signatory is fully authorized to enter into and to execute this Agreement on behalf of the named party.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

SHAWNEE MISSION UNIFIED SCHOOL DISTRICT NO. 512

By: _____
President, Board of Education

Attested by: _____
Terry Wintering, Clerk, Board of Education

Approved as to Form: _____
Rachel England, General Counsel

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Eric Mikkelson, Mayor

Attested by: _____
Adam Geffert, City Clerk

Approved as to Form: _____
David Waters, City Attorney

CONTRACTUAL PROVISIONS ATTACHMENT Shawnee Mission School District

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in Johnson County, Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, Shawnee Mission School District (SMSD) may terminate this agreement at the end of its current fiscal year. SMSD agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided SMSD under the contract. SMSD will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by SMSD, title to any such equipment shall revert to contractor at the end of SMSD's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to SMSD or the contractor.
4. **Disclaimer of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or SMSD to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas and SMSD is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the

provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by SMSD or the Kansas Department of Administration.

6. **Acceptance of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given, including, but not limited to the signature of an authorized representative of SMSD, as defined in SMSD policy.
7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or SMSD have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and SMSD do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or SMSD at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes**: The State of Kansas and SMSD shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance**: The State of Kansas and SMSD shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require it to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information**: No provision of this contract shall be construed as limiting the State of Kansas Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 *et seq.*
12. **The Eleventh Amendment**: The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State and SMSD to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment.
13. **Campaign Contributions / Lobbying**: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of SMSD or any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.
14. **Privacy of Student Records**: The contractor understands that SMSD is subject to the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) (FERPA) and agrees to handle any student education records it receives pursuant to the contract in a manner that enables SMSD to be compliant with FERPA and its regulations. The contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the parent's/guardian's written consent, except to other SMSD officials who seek the information within the context of their professionally assigned responsibilities and used within the context of official SMSD business. Contractor shall promptly report to SMSD any request for or improper disclosure of SMSD's student educational records.
15. **Confidentiality**: As a state agency, SMSD contracts are generally public records. Accordingly, no provision of this contract shall restrict SMSD's ability to produce this contract and/or any corresponding documents in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 *et seq.*).

Attachment A: Definitions

JDDB

Whenever a student engages in conduct which constitutes the commission of any misdemeanor or felony, at school, on school property, or at a school supervised activity and/or has been found:

- in possession of a weapon,
- in possession of controlled substance or illegal drug; or
- to have engaged in behavior at school which has resulted in, or was substantially likely to have resulted in,
 - serious bodily injury to others, the principal shall report such act to the appropriate law enforcement agency if any of the behaviors noted above occur.

JCABB

Principals are authorized to search students if there is reasonable suspicion that district policies, rules or directives are being violated. Strip searches shall not be conducted by school authorities. All searches by the principal shall be carried out in the presence of another adult witness.

The student shall be told why a search is being conducted. The student shall be requested to empty items such as, but not limited to, pockets, purses, shoulder bags, book bags and briefcases. The principal shall attempt to call the student's parent/s and may call law enforcement. Items which the principal believes may be connected with illegal activity shall remain in the custody of the principal unless the items are turned over to law enforcement officials. If the student refuses to cooperate, the principal may take disciplinary action and/or seek assistance from law enforcement.

If law enforcement assistance is present, further search of the student shall be with cooperation and assistance of law enforcement officials. The principal shall remain with the student and be present during any search of the student made by law enforcement officials on school property. The principal shall receive and file a receipt for items turned over to law enforcement officials.

If the principal believes a student is in possession of an object which can jeopardize the health, welfare or safety of the student or others, the student shall be removed to a safe location. This determination may be based on any information received by the principal or any member of the faculty or staff.

JCAB

Principals, school resource officer and/or district resource officers are authorized to search property if there is reasonable suspicion that district policies, rules or directives are being

violated. In addition all lockers shall be subject to random searches without prior notice or reasonable suspicion. All searches shall be carried out in the presence of another adult witness.

Search of Lockers

Lockers in the district schools are district property. Students shall have no expectation of privacy in any school locker.

The combinations and/or keys to all locker locks shall be in the possession of the principal and stored in a place designed to guard against unauthorized access or use. The principal may search any locker at any time without notice. Students shall not place locks, other than those approved by the school, on any locker.

Searches of Property

Any person other than the principal who wishes to search a student's locker or property shall report to the principal before proceeding. In no event shall any person be permitted to search a student's locker or property without the principal's consent unless the person has a valid search warrant authorizing a search.

If a law enforcement officer desiring to search a student's locker or property has a search warrant, the principal shall permit the search which shall be made in the presence of the principal.

Prohibited items found during the search shall remain in the custody of either the building principal or the law enforcement officer. If any items are turned over to law enforcement officials the principal shall receive a receipt for the items.

JCAC

Building administrators, school district resource officers, and others designated by the superintendent may conduct investigations and question students about infractions of school rules or the student conduct code.

If there is reason to believe a violation of a criminal law has been committed, the principal or school district resource officer (no prior permission from the principal is required and is addressed in state law) shall notify the appropriate law enforcement agency as necessary and may request further investigation of the alleged violation.

Coordination with Law Enforcement

School administrators and/or district resource officers may meet periodically with local law enforcement officials to discuss the district's policies and rules regarding law enforcement contacts with the district.

Investigations Conducted by Law Enforcement Officers

When law enforcement officers question a student on a topic unrelated to a report of child abuse during school hours or school district resource officers question a student concerning an alleged violation of criminal law, the building principal shall make a reasonable attempt to contact a parent, guardian or representative of the student(s) prior to questioning. Notification or attempted

notification of parents, guardian or representative shall be documented by the administrator involved. If a student's parents, guardian or representative is not present during such questioning of a student, the principal may be present.

Child Abuse Investigations Conducted by Law Enforcement Officers

The administration shall cooperate with law enforcement officers who are conducting investigations of suspected child abuse. For any investigations concerning known or suspected child abuse, school staff shall follow the procedures outlined in board policy GAAD instead of the requirements of this policy.

Law Enforcement Initiated Investigations at School

In cases not involving the investigation of known or suspected child abuse, law enforcement officers shall not be permitted to initiate and conduct investigations involving the questioning of students during school hours unless the student's parent or guardian has given the school permission to allow the questioning, a valid warrant has been presented to the principal for such purpose, or in demonstrated emergency situations. If a demonstrated emergency is found, the principal shall require identification of law enforcement officials and reasons for the interrogation or investigation of a student. If the principal is not satisfied with either the identification or the reason, the request shall not be granted. The principal shall attempt to notify the associate superintendent and the officer's superiors of the reasons for the refusal.

Violations of Criminal Law

Information on criminal conduct shall be turned over to law enforcement officials.

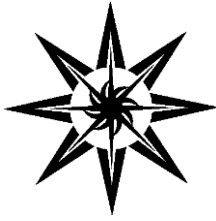
Taking Students Into Custody

Students shall not be voluntarily released by school officials to law enforcement authorities unless the student has been placed under arrest or taken into custody by law enforcement or Department for Children and Families ("DCF") authorities pursuant to a child abuse investigation. Except as otherwise specified in this policy, reasonable effort shall be made to notify the student's parents, guardian or representative when students are removed from school for any reason. Parents shall not be notified by school officials when their child is taken into custody by DCF and/or law enforcement as a result of allegations of abuse or neglect. If a student is taken into custody by a school district resource officer, school administrators shall also make a good-faith effort to contact parents. Notification efforts shall be documented.

When a student has been taken into custody or arrested on school premises without prior notification to the building principal, the school staff present shall ask the law enforcement officer to notify the principal of the circumstances as quickly as possible and shall themselves contact the principal with any information they have regarding the child being taken into custody.

Disturbance of School Environment

Law enforcement officers may be requested to assist in controlling disturbances at school and, if necessary, to take students or other persons into custody.



ADMINISTRATION

**City Council Date: July 6, 2021
CONSENT AGENDA**

Consider approval of short-term special use permit for the KU Kickoff Event at Corinth Square

BACKGROUND

The Corinth Square Shopping Center hosts the KU Kickoff event annually to celebrate the start of the University of Kansas football season. Alcohol will be served in a barricaded area during the event. Per the Kansas Alcoholic Beverage Control Division, a City ordinance is not required for the extension because the event will be held entirely on private property. Tenants that wish to serve alcohol outside of their normal facilities will still be required to get a temporary premise extension from the State. The Prairie Village Police Department and Public Works Department are aware of the event and will coordinate with the shopping center as needed.

RECOMMENDED MOTION

Staff recommends that the City Council approve a short-term special use permit approving the KU Kickoff Event at Corinth Square.

ATTACHMENTS:

Short-Term Special Use Permit application
Site Map

PREPARED BY:

Adam Geffert
City Clerk
July 1, 2021



**SHORT-TERM SPECIAL USE PERMIT
APPLICATION
City of Prairie Village, Kansas**

Application Date: 6/25/21

\$25 Application fee

Name LAURIE MORRISSEY

Email address LAURIE@LMCONNELTKC.COM (circle one) Mail copy OR Email copy to me

Organization CORINTH SQUARE Phone 913 484 5076

Address 83rd, POE City / State / Zip PV KS 66207

Is the organization (check all that apply):

Non-profit Civic Incorporated

Authorized to do business in the State of Kansas

USE: Sale / activity Trade show Street Fair
 Exposition Promotional venture / entertainment

Please give a complete description of proposed use: KU KUROFF EVENT

Location: CORINTH SQUARE

Attach any descriptive materials such as plans, maps or size dimensions, etc. to better illustrate the proposed use.

Please indicate what types of signs, flags or other devices will be used to attract attention:

BLOW UP JAYHAWKS ON CORNER OF 83RD & MISSOURI

Date(s) of Event FRIDAY AUGUST 13

Hours of Operation: 5 - 9 PM

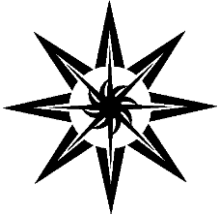
Estimated accumulation of automobiles 300 and persons 300

Other characteristics and effects on neighborhood: STAGE AND MUSIC EVENT
APPROX. 10-8PM

Submitted by: [Signature]
(Signature of applicant)

See reverse for conditions of approval





ADMINISTRATION

Council Meeting Date: July 6, 2021

COU2021-53

Consider Resolution 2021-12 of the City's Intent to Exceed the Revenue Neutral Rate and Establishing the Date and Time of a Public Hearing

SUGGESTED MOTION

Move to approve a Resolution of the City's intent to exceed its "Revenue Neutral Rate," establishing the date and time of a public hearing on such matter, and providing for the giving of notice of such public hearing.

BACKGROUND

Over the last several months the Council and staff have worked to develop the 2022 budget. The Governing Body approved the preliminary budget on May 17. The budget maintains the same level of services as the 2021 Budget and adds in certain decision package items. Funding the budget with existing services and approved decision packages does not require an increase to the mill levy rate, but it does exceed the revenue neutral rate due to increased revenue that will be received from increased property valuations. The 2022 proposed budget has a total mill rate of 19.321, flat with the 2021 rate.

Per Senate Bill 13, the proposed budget will require a Revenue Neutral Rate hearing to exceed the revenue neutral rate provided by the County Clerk. During the 2021 legislative session, the tax lid was removed and the legislature enacted SB13 and HB2104, establishing new notice and public hearing requirements if the proposed budget will exceed the property tax levy's revenue neutral rate.

The revenue neutral rate is the tax rate in mills that will generate the same property tax in dollars as the previous tax year using the current tax year's total assessed valuation. In Prairie Village, the revenue neutral rate would be 18.386 mills. Since the proposed budget requires 19.321 mills, a public hearing is required. Notice of intent to exceed the revenue neutral rate must be provided to the County Clerk before July 20th. The hearing must occur between August 20th and September 20th.

The public hearing is proposed for the City Council's regular meeting on Tuesday, September 7, 2021. The budget public hearing and adoption of the 2022 budget will follow the revenue neutral rate hearing.

PUBLIC NOTICE

The Intent to Exceed Revenue Neutral Rate will be published in The Legal Record on Tuesday, July 13, 2021.

ATTACHMENTS:

- Johnson County's "Intent to Exceed Revenue Neutral Rate (RNR)" form
- Johnson County Clerk Budget Information Sheet
- Resolution 2021-12
- Updated 2022 Budget Calendar

Prepared By:
Nicole Lee
Finance Director

**Intent to Exceed Revenue Neutral Rate (RNR) Due on or before
July 20th**

Return to: RTA-TaxAdmin@jocogov.org

Entity name: City of Prairie Village

Proposed Tax Rate: 19.321

Date for public RNR hearing: September 7, 2021

Time of public hearing: 6:00 p.m.

Place/address of public hearing: City of Prairie Village City Hall
7700 Mission Road
Prairie Village, KS 66208

County Clerk's Budget Information for the 2022 Budget

PRAIRIE VILLAGE CITY

1. Valuation Information as of June 1, 2021:

	Estimated Assessed Valuation	Territory Added	Property with changed use
Real Estate	486,426,962	_____	<u>1,600,642</u>
Personal Property excludes penalties	930,859	_____	
State Assessed	5,722,958	_____	
Total	493,080,779	_____	
New Improvements	5,585,236	_____	

2. Personal Property excluding oil, gas, mobile homes & penalties 930,859

3. **Revenue Neutral Rate** 18.386

4. Actual Tax Rates Levied for the 2021 Budget:

Fund	Rate
General	19.321
_____	_____
_____	_____
_____	_____
_____	_____
Total	<u>19.321</u>

5. Final Assessed Valuation from the November 1, 2020 abstract 469,256,976

6. Personal Property excluding oil, gas, mobile homes & penalties for 2020 1,246,333

7. Gross Earning (Intangible) Tax Estimate 0

8. Neighborhood Revitalization District:
Valuation Subject to Rebates 0

June 15, 2020
Date

Provided by: Somir Hassan, Interim Clerk

Name of County: Johnson

RESOLUTION NO. 2021-12

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, OF THE CITY'S INTENT TO EXCEED ITS "REVENUE NEUTRAL RATE", ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING ON SUCH MATTER, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH PUBLIC HEARING.

WHEREAS, pursuant to 2021 Kansas Senate Bill No. 13, as amended by 2021 Kansas House Bill 2104, as the same may be codified (the "Act"), the Clerk of Johnson County, Kansas, has calculated and notified the City of Prairie Village, Kansas (the "City") that, for the City's 2022 budget year, the City's "revenue neutral rate" (as such term is defined by the Act) is 18.386 mills (for informational purposes only, one mill is equal to 1/1000th of a Dollar of assessed value);

WHEREAS, the Act further provides that no tax rate in excess of the revenue neutral rate shall be levied by the Governing Body of the City except in accordance with procedures established under the Act; and

WHEREAS, it is the intent of the Governing Body to exceed the revenue neutral rate, and the City desires to call and conduct a public hearing under the provisions of the Act and to provide notice of the City's proposed tax rate.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1. Intent to Exceed Revenue Neutral Rate; Proposed Tax Rate. Pursuant to New Section 1(b) of the Act, the City, by and through its Governing Body, hereby declares its intent to exceed the revenue neutral rate. The City's proposed tax/mill levy rate for the 2022 budget year is 19.321 mills.

Section 2. Public Hearing. Notice is hereby given that a public hearing will be held by the Governing Body to consider exceeding the revenue neutral rate on September 7, 2021, at Prairie Village City Hall, 7700 Mission Road, Prairie Village, Kansas, 66208, the public hearing to commence at 6:00 p.m. or as soon thereafter as the Governing Body can hear the matter; provided, that if, as a result of the COVID-19 pandemic, such public hearing may not be held in person but rather via remote meeting, or via a "hybrid" model, such remote meeting shall be held at the same date and time, and access instructions for remote participation shall be available at the City's website, www.pvkansas.com, and included with the published agenda for such meeting. At the public hearing, the Governing Body shall provide interested taxpayers desiring to be heard an opportunity to present oral testimony within reasonable time limits and without unreasonable restriction on the number of individuals allowed to make public comment.

Section 3. Notice of Public Hearing—County. The City Clerk is hereby authorized and directed to notify the Johnson County Clerk, on or before July 20, 2021, of the City's proposed intent to exceed the revenue neutral rate and to provide the date, time, and location of the public hearing. The Johnson County Clerk shall transmit such notice in accordance with the procedures set forth in the Act.

Section 4. Notice of Public Hearing—City. The City Clerk is further hereby authorized and directed to publish notice of the City's proposed intent to exceed the revenue neutral rate by publishing notice at least ten (10) days in advance of the public hearing:

- (A) on the website of the City; and
- (B) in a weekly or daily newspaper of Johnson County, Kansas, having a general circulation therein.

Such notice published by the City Clerk shall include, but not be limited to, the City's proposed tax rate (as set forth in this Resolution), its revenue neutral rate, and the date, time, and location of the public hearing.

Section 5. Further Action. The Mayor, City Administrator, Finance Director, City Clerk and other officials and employees of the City, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution.

Section 6. Effective Date. This resolution shall be effective upon its adoption by the Governing Body of the City of Prairie Village, Kansas.

ADOPTED this ____ day of _____, 2021.

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

**City of Prairie Village
2022 Budget Calendar**

Updated 6-21-2021 to reflect Senate Bill 13 (SB13)

Month	Date	Action Item
February	2/16	Council Meeting - Handout 2022 Budget Calendar Outline
	2/26	Finalize 2020 Actuals (auditors onsite 3/22 - 3/26)
	2/26	Meet with Johnson County Appraiser - Beau Boisvert
March	3/1	Council Meeting - (1) 2022 Budget Goals and Objectives (2) Mill Rate Handout (3) Decision Packages (send to Nickie by 4/5/2021)
	3/15	Council Meeting - 4th Quarter 2020 Financial Report
April	4/5	Department budget requests due
	4/5	Council Meeting - (1) Worker's Compensation and Insurance Cost Assumptions (2) Committee 2022 Budget and Funding requests (Village Fest, Arts Council, Environmental, Diversity and Jazz Fest) (3) Decision Package Discussion
	4/5 - 4/9	Budget review process with individual departments
	4/19	Council Meeting - Decision Package Discussion (if needed); Preliminary Revenue Estimate
	4/22	Finance Committee Meeting - First Draft of 2022 Budget and Decision Packages
May	5/3	Council Meeting - (1) CIP Discussion and Annual Road Condition Report
	5/4	Finance Committee Meeting - Preliminary 2022 Budget Established and Decision Packages
	5/17	Council Meeting - 2022 Budget Discussion and Approval of Preliminary Budget
	5/31	HOLIDAY
June	6/7	Council Meeting
	6/15	SB 13: County Clerk will calculate and notify taxing entities of revenue neutral rate
	6/21	Council Meeting
July	7/5	HOLIDAY
	7/6	Council Meeting - SB 13 Resolution Stating Intent to Exceed Revenue Neutral Rate and Set the Public Hearing Date
	7/19	Council Meeting - Request Permission to Publish 2022 Budget & Set Budget Adoption Public Hearing Date
	7/20	SB 13: Governing Bodies notify County Clerk of intent to exceed revenue neutral rate w/ date, time and location of hearing
August	8/2	Council Meeting
	8/10	Notification sent to taxpayers, if exceeding revenue neutral rate (<i>Starting in 2022 for 2023</i>)
	8/16	Council Meeting
	8/24	Latest date for notice to be published in the Legal Record for RNR and Budget hearing
	8/25	Submit budget forms to County Clerk (due August 25th) <i>If not exceeding revenue neutral rate</i>
September	9/7	Council Meeting - SB 13 Public Hearing (Must be no later than September 20) and Budget Hearing/Adoption
October	10/1	Submit budget forms to County Clerk if Exceeding Revenue Neutral Rate (due October 1st)
	10/1-10/31	Finalize Budget Book; Submit to GFOA Award Program

Municipal Court

Memo

To: Tim Schwartzkopf
From: Deana Scott
cc:
Date: 06.02.2021
Re: JOCO Municipal Court Possession of Marijuana Diversion Study

As requested, I reached out to the neighboring JOCO Municipal Courts to see what their City Prosecutor's process is regarding diversion for Possession of Marijuana. I received response from six Municipal Courts. All six require full supervision. Full supervision means, the defendant must report to a monitor; therefore, pay monitor fees and perform random UAs. Out of the six, five require twelve months full supervision. Merriam diversions are either six or twelve months. Overland Park is looking into unsupervised for certain instances; however, that is not their current process. Prairie Village currently only requires full supervision when the prosecutor believes there is a significant safety need.

Monitoring fees are typically \$420 a year and additional fees for random UAs during the year of diversion. I have included the Total potential cost (Diversion fee plus monitoring fees) for defendants; however, remember UAs are in addition to this total in each city except Prairie Village.

	Diversion Fee	2nd or Subsequent	Total w/Monitoring fees	
Lenexa	300		720	
Merriam	300	500	520 to 720	\$300 diversion for one charge or \$500 for two charges
Olathe	665		1,085	
OP	200		620	
PV	350		350	Non Reporting 6 mo Diversion
Roeland Park	500 to 750		920 or 500	Prosecutor does not usually do diversion for Marijuana. He typically amends for up to \$500.
Shawnee	400	50 each	820	\$400 diversion and \$50 for each additional charge



ATTORNEY-CLIENT PRIVILEGED AND ATTORNEY WORK PRODUCT

TO Mr. Wes Jordan
City of Prairie Village, Kansas

FROM David E. Waters
City Attorney; Lathrop GPM LLP

DATE June 7, 2021

SUBJECT Powers and Limitations of the City as to Regulation of Marijuana

I. INTRODUCTION.

The City of Prairie Village (the "City"), through its Council Committee of the Whole, has asked that we provide the City with legal advice regarding the ability of the City to "decriminalize" marijuana¹ or to otherwise reduce penalties associated with the possession and use of marijuana. As marijuana is illegal under both state and Federal law, our law firm requires that we provide the following disclaimer, with the understanding that any legal advice provided to the City is subject thereto:

Our firm's practice with respect to marijuana-related activities is subject to and may be limited by the applicable Rules of Professional Conduct and federal, state and local laws. Marijuana-related practices or activities, including without limitation, the manufacture, importation, possession, use or distribution of cannabis/marijuana are illegal under federal law. Accordingly, the firm's services are strictly limited to the confines of relevant state and local laws and regulations relating to medical marijuana, retail marijuana, and adult use marijuana. The firm's services are not intended to assist in any way with violation of any applicable law. Please also note that the firm also does not provide advice or representation regarding the federal, state or local tax consequences of engaging in any business in this industry.

The following memorandum addresses the City's powers—and the limitations thereon—under Kansas "home rule", discusses ordinances adopted by other municipalities, and analyzes the same (and proposals made by city councilmembers) in light of current Kansas law.

II. HOME RULE IN KANSAS.

Before addressing marijuana laws in particular, it is important for the City to understand the relationships between state statutes and city ordinances. Today, municipalities in Kansas

¹ This memorandum generally discusses the "possession" of "marijuana". There may be several other laws addressing other uses (or production) of marijuana, and also substances or derivatives that may be related to, but not necessarily match the exact definitions of "marijuana". We have not investigated all such related laws or substances, for purposes of providing an understandable (and non-scientific) memorandum that addresses "marijuana" as it is more commonly known and understood.

operate under the concept of "home rule". Prior to "home rule", municipalities were much more limited in their ability to self-govern, and cities could generally only exercise powers that were specifically granted to them by the Kansas Legislature. That changed in 1961, with the effectiveness of the "home rule" amendment to the Kansas Constitution, at Article 12, Sec. 5 (subsection (b) of which provides as follows, in relevant part):

Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: ... Cities shall exercise such determination by ordinance passed by the governing body ..., subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities ...

Accordingly, a city (such as Prairie Village) may adopt ordinary ordinances for their own self-governance when:

- (1) No state law exists on the subject; or
- (2) When a uniform law applicable to all cities exists on the subject, but:
 - (a) the Legislature has not expressed a clear intent to "preempt the field"; or
 - (b) there is no conflict between the state and the local law.²

See, e.g., *Dwagfys Manufacturing, Inc. v. City of Topeka*, 309 Kan. 1336, 1340 (2019). See also *State v. Jenkins*, 295 Kan. 431, 441-42 (2012) which held, among other things:

Cities can adopt an ordinance or resolution relating to a local police power, even though there is a state law on the subject uniformly applicable to all municipalities, as long as the ordinance or resolution does not conflict with the state statute.

The *Dwagfys* case provides the Kansas Supreme Court's latest substantial review of a city's powers and limitations thereon under home rule. The City may recall that this case considered the City of Topeka's adoption (and, accordingly, the similar adoption by other cities, including Prairie Village) of the "Tobacco 21" initiative. The City of Topeka passed an ordinance stating, in relevant part, that it shall be unlawful for any person to "[s]ell, furnish or distribute cigarettes, electronic cigarettes, tobacco products or liquid nicotine to any person under 21 years of age." This ordinance was challenged as being in conflict (and, therefore, beyond the city's home rule powers) with K.S.A. 79-3321(l) which provided (and still does) that it shall be unlawful for any person to "sell, furnish or distribute cigarettes, electronic cigarettes or tobacco products to any person under 18 years of age."

In upholding the City of Topeka's ordinance, the Kansas Supreme Court framed a review of home rule as follows:

² Conversely, this may be read as saying that a city **cannot** adopt an ordinary ordinance where there is a uniform law, but the Legislature **has** expressed a clear intent to preempt the field, **or** there **is** a conflict between the state law and the local law.

Thus, to determine whether an ordinary ordinance is a valid exercise of home rule power courts must ask: (1) Is there a state law that governs the subject? (2) If there is a state law, is it uniformly applicable to all cities? (3) If there is a uniform state law, does it preempt further action by cities? and (4) If there is a uniform state law but there has been no preemption, does the local regulation conflict with the uniform state law?

Dwagfys, 309 Kan. at 1340 (citing Heim, *Home Rule Power for the Cities and Counties in Kansas*, 66 J.K.B.A. 26, 32 1997)).

At the risk of setting aside factors (1) through (3) at this time, for purposes of this home rule summary, the Kansas Supreme Court further established (again) the following test as to factor (4), for determining what constitutes a conflict:

[W]hether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes; if so, there is conflict, but where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, **and the city does not attempt to authorize by ordinance that which the legislature has forbidden**, or forbid that which the legislature has expressly authorized, there is no conflict.

Dwagfys, 309 Kan. at 1344 (emphasis supplied) (citing *City of Junction City v. Lee*, 216 Kan. 495, 501 (1975)). See also Kan. Atty. Gen. Op. No. 2015-4 (a copy of which was provided in the City Council Agenda Packet on May 3, 2021). As the City of Topeka had not authorized that which was prohibited under state law (e.g., the city did not authorize the sale to 17-year-olds), the Kansas Supreme Court found the Tobacco 21 initiative to be valid.

This body of law, as applied to marijuana-related ordinances in the City of Wichita and the City of Lawrence, Kansas, and as to proposed actions by the Prairie Village City Council, are discussed below in this memorandum.

III. POSSESSION OF MARIJUANA UNDER KANSAS STATE LAW AND UNIFORM PUBLIC OFFENSE CODE.

The possession of marijuana is regulated at the state level under K.S.A. 21-5706(b)(3), which provides that, "(b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof: ... (3) any hallucinogenic drug designated in K.S.A. 65-4105(d), 65-4017(g) or 65-4019(g), and amendments thereto; ...". Marijuana is included, accordingly, under the referenced K.S.A. 65-4105(d)(17). K.S.A. 21-5702(b) makes clear that "[t]he prohibitions of this act shall apply unless the conduct prohibited is authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, the commercial industrial hemp act or otherwise authorized by law."

The statutory prohibition on marijuana possession does contain an exception for certain "cannabidiol treatment preparations" used for the treatment of "debilitating medical conditions", as defined in K.S.A. 65-6235 (enacted in 2019, and known as "Claire and Lola's Law"). K.S.A. 21-5706(d). Such treatments do not include marijuana, per se, but instead certain oils containing

cannabidiol and tetrahydrocannabinol, up to a maximum concentration level.³ K.S.A. 65-6235(b)(1).

Marijuana possession is also prohibited under Section 9.9.1(a) of the Uniform Public Offense Code (UPOC), as adopted by the City:

Except as authorized by the Uniform Controlled Substance Act, K.S.A. 65-4101 *et seq.*, and amendments thereto⁴, it shall be unlawful for any person to possess or have under such person's control marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinol, as designated in K.S.A. 65-4105(h), and amendments thereto.

The UPOC, as adopted by the City, also contains the same "Claire and Lola's Law" exceptions as found in Kansas statute.

Under Kansas law, possession of marijuana is a "Class B" nonperson misdemeanor (with exceptions described below). K.S.A. 21-5706(c)(3)(A). K.S.A. 21-6602(a)(2) establishes that, for a Class B misdemeanor, the sentence "shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six months". In addition, a person may be punished by a fine (which, for Class B misdemeanors, may not exceed \$1,000.00). K.S.A. 21-6602(b); K.S.A. 21-6611(b)(2). Furthermore, for persons under the age of 21 years that are convicted, a drug evaluation is required:

... [I]n addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under [K.S.A. 21-5701 through 21-5717, which would include possession of marijuana under K.S.A. 21-5706(b)(3)], the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

Notwithstanding the foregoing, if a person convicted of marijuana possession has a prior conviction, the second offense would raise possession to a "Class A" nonperson misdemeanor (up to one year in jail, and up to a \$2,500.00 fine). K.S.A. 21-6602(a)(1), (b); K.S.A. 21-6611(b)(1).

³ We also note that, in the 2021 session, the Kansas Legislature considered (but did not ultimately pass) a new "medical marijuana regulation act" (2021 House Sub. for Senate Bill No. 158) that, in its latest draft form, provided (in relevant part): "No person shall grow, harvest, process, sell, barter, transport, deliver, furnish or **otherwise possess any form of marijuana**, except as specifically provided in the Kansas medical marijuana regulation act or the commercial industrial hemp act, K.S.A. 2020 Supp. 2-3901 *et seq.*, and amendments thereto." (Emphasis supplied). As of this writing, this legislation had passed the Kansas House, but was referred by the Kansas Senate to its Committee on Federal and State Affairs, and no further action was taken before adjournment. Should this legislation be enacted, it would seem to provide another limitation on the City's ability to regulate marijuana possession (as no person may possess marijuana "except as specifically provided" in the noted state acts).

⁴ The UPOC may need to be updated by the League of Kansas Municipalities to reflect the language of K.S.A. 21-5702(b) that possession may also be as otherwise permitted under "the commercial industrial hemp act or otherwise authorized by law".

Additional convictions may result in a case rising to a "drug severity level 5 felony"⁵, which could result in a fine of up to \$100,000.00 (K.S.A. 21-6611(a)(3)), and with probation or jail time as may be established in the so-called "sentencing grid" established in K.S.A. 21-6805.⁶

Section 9.9.1(b) of the UPOC, as adopted by the City, contains similar penalty provisions:

Penalty. Violations of subsection (a) is a Class B violation for a first offense and a [C]lass A violation if the person has a prior conviction under K.S.A. 65-4162, prior to its repeal, under substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.

One difference is that the UPOC does not address additional prior convictions that would cause the matter to rise to a felony level, as felonies must generally be prosecuted in district court, and not municipal court. However, there appears to be a special exception as to marijuana possession (and select other crimes) where the elements of the marijuana possession crime may rise to a felony level (*e.g.*, where there are prior convictions). K.S.A. 12-4104 provides (in relevant part):

12-4104. Municipal court; jurisdiction; search warrants proscribed.

(a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city, including concurrent jurisdiction to hear and determine a violation of an ordinance when the elements of such ordinance violation are the same as the elements of a violation of one of the following state statutes and would constitute, and be punished as, a felony if charged in district court:

(5) subsection (b)(3) of K.S.A. 2020 Supp. 21-5706, and amendments thereto, possession of marijuana.

IV. POSSESSION OF MARIJUANA UNDER MISSOURI STATE LAW.

Missouri law on marijuana possession does differ from Kansas law. Although a full examination of every aspect of Missouri criminal law is beyond the scope of this memorandum, we can provide few highlights.

Possession of marijuana appears to be primarily covered under Section 579.015 of the Revised Statutes of Missouri (RSMo.).⁷ This statute was heavily revised in 2014 by the Missouri

⁵ As discussed below, felonies are not generally prosecuted in municipal court, so offenses rising to these levels are handled at the district court.

⁶ We note that K.S.A. 21-6805(a) (captioned "Sentencing grid for drug crimes; authority and responsibility of sentencing court; presumptive disposition" provides (with emphasis supplied): "The provisions of this section **shall be applicable** to the sentencing guidelines grid for drug crimes. The following sentencing guidelines grid for drug crimes **shall be applicable** to felony crimes under K.S.A. 2020 Supp. 21-5701 through 21-5717 [which would include marijuana possession], and amendments thereto, except as otherwise provided by law[.]" Judges are given some discretion to sentence within the sentencing grid.

⁷ This memorandum does not explore other statutory enactments which may impact the improper possession of marijuana, such as under the Missouri Comprehensive Drug Control Act (RSMo. Sec. 195.005 *et seq.*), which contains enactments related to medical marijuana, industrial hemp, and the like.

Legislature with its Senate Bill 491, which became law without receiving the signature of then-Governor Jay Nixon (the provisions did not become effective until January 2017). Among the provisions of Senate Bill 491 were the following:

- Possession of any controlled substance except 35 grams or less of marijuana or a synthetic cannabinoid went from being a "Class C" felony to a "Class D" felony;
- The possession of more than 10 grams of marijuana, but less than 35 grams, is a "Class A" misdemeanor; and
- In a new section, the possession of less than 10 grams of marijuana became a "Class D" misdemeanor (previously, possession of amounts up to 10 grams was also a Class A misdemeanor; however, prior convictions would cause the offense to again rise to the level of a Class A misdemeanor).

Under Missouri statute, a Class A misdemeanor carries a maximum fine of \$2,000.00, while a Class D misdemeanor carries a maximum fine of \$500.00. RSMo. 558.002.1. Whereas a Class A misdemeanor may also carry a prison sentence not to exceed one year, Missouri statute does not establish a prison sentence for Class D misdemeanors. RSMo. 558.011.1. Therefore, one result of Senate Bill 491 was to eliminate the threat of jail time for first-time offenders, with small amounts of marijuana. Fines were also reduced.

Of course, that is not the case under current Kansas law.

V. CITY OF WICHITA MARIJUANA ORDINANCE.

In January 2015, the Wichita City Council voted to submit a question to the electorate at a special election regarding reducing penalties (which may be referred to generally as "decriminalizing") certain marijuana-related offenses. The ordinance submitted for a vote contained, among others, a provision that a conviction of any person over 21-years-old of 32 grams or less of marijuana, as a first offense, is an "infraction" (not a defined class of misdemeanor), with a maximum fine of \$50.00 and with no jail time, probation, or other punitive or rehabilitative measure. In March 2015, the Kansas Attorney General issued an opinion (Kan. Atty. Gen. Op. No. 2015-4) stating that Kansas state statute preempted the City of Wichita from adopting such an ordinance.

The Kansas Attorney General first stated that drug laws are plainly enactments of the legislature that are of statewide concern and that apply uniformly to all cities. Kan. Atty. Gen. Op. No. 2015-4 at 6-7 (citing *Blevins v. Hiebert*, 247 Kan. 1, 11 (1990)).⁸ The Attorney General noted that the proposed ordinance eliminated parallels with state law by (1) decreasing the penalty for a first offense conviction for possession of 32 grams or less of marijuana by persons 21-years-old or older (an exception not found in K.S.A. 21-5706), and (2) classifying the offense as an "infraction" with only a \$50.00 fine (contrary to K.S.A. 21-5706 establishing it as a misdemeanor, and K.S.A. 21-6602 and K.S.A. 21-6611, establishing penalties). To further clarify, the Attorney

⁸ It should be noted that the Kansas Supreme Court has since stepped away from certain holdings in the *Blevins* case regarding "implied legislative preemption", and instead a home rule analysis requires language manifesting a clear intent to preempt the field. *Dwagfys Manufacturing, Inc., v. City of Topeka*, 309 Kan. 1336, 1343 (2019). However, and as discussed above, "preemption is not the last restriction on a city's home rule power. In order to clear the final hurdle, the Ordinance must not conflict with state law." *Id.* at 1343-44.

General found that the proposed Wichita ordinance would conflict with state law in the following four ways:

- (1) The ordinance lowered the penalty established by state law for the illegal conduct, citing *State v. Jenkins* (discussed above) for the proposition that:

[C]ities can adopt an ordinance relating to a local police power, even though there is a state law on the subject uniformly applicable to all municipalities, as long as the ordinance does not conflict with the state statute. In *Jenkins*, the Court found a conflict when a city ordinance classified the offense as a misdemeanor, but the legislature had classified the crime as a felony.

Kan. Atty. Gen. Op. No. 2015-4 at 7. Additionally, because Wichita's ordinance defined the violation as an "infraction", a classification not contained in state law, the Attorney General found the conflict to be even more acute than in *Jenkins*, which at least recognized two types of violations that did exist under state law (felony to misdemeanor). *Id.* at 8. Further, because the ordinance would not have treated a first offense conviction as a misdemeanor, it would have the impact of reclassifying other state felonies—subsequent convictions for marijuana—as a lesser offense, in conflict with state statute. *Id.* at 8.

- (2) Second, the proposed ordinance contained a "decay period" whereby a second conviction occurring one year or more after the first offense conviction would nevertheless be classified as a first conviction. The Attorney General found that "state law recognizes no such decay factor for prior convictions", and that the provision was in conflict with K.S.A. 21-6810(d)(3)(A) (sentencing guidelines, that there shall be no decay period for adult convictions). Kan. Atty. Gen. Op. No. 2015-4 at 8.
- (3) Third, by establishing an amount of marijuana that demarcates the level of violation, the ordinance impermissibly established a factual element—that must be proved in court—that does not exist under state law. That is, the amount of marijuana a person possesses is not an element of the crime under state statute.
- (4) Finally, the Wichita ordinance established an age restriction (21-years-old) that would allow, by itself, for a more lenient sentence. Under state law, adult convictions do not require that a specific age be alleged or proven. "Again, the statute and ordinance would no longer be parallel, and the ordinance would allow conduct that state law prohibits ...". Kan. Atty. Gen. Op. No. 2015-4 at 9.

In our opinion, the Attorney General was likely correct in opining that the Wichita ordinance—as originally proposed—conflicted with state law, and would not have been a proper exercise of the city's home rule powers.

The Wichita ordinance was nevertheless approved by the voters in April 2015. The Attorney General then sued the City of Wichita to prohibit the city from publishing, implementing, or enforcing the ordinance. The Kansas Supreme Court did not ultimately reach the merits of the actual ordinance, holding that the ordinance was not enacted in accordance with the procedures

set forth in the Kansas initiative and referendum statute, K.S.A. 12-3013. See *State ex re. Schmidt v. City of Wichita*, 303 Kan. 650 (2016).

In 2017, the City of Wichita then passed a new ordinance intended to work around the actual and direct conflicts identified above with Kansas statute. As an example, the city's ordinance no. 50-540 (now codified at Sec. 5.26.040 of the Wichita City Code) kept possession of marijuana as a misdemeanor (matching again K.S.A. 21-5706(c)(3)(A)) with, for a first offense, a maximum fine of \$1,000.00 and/or imprisonment of up to six months (matching again K.S.A. 21-6602(a)(2), K.S.A. 21-6602(b), and K.S.A. 21-6611(b)(2)). A second conviction would result in a fine not to exceed \$2,500.00 and/or imprisonment of up to twelve months in jail (again matching K.S.A. 21-6602(a)(1), (b) and K.S.A. 21-6611(b)(1)). The revised possession ordinance also removed (as a requirement) the age and quantity amounts at issue in the Attorney General's opinion.

However, at the same time, the City of Wichita adopted by ordinance certain "Policies for Marijuana and Marijuana Paraphernalia Offenses", with the "intent to enact an ordinance consistent with the spirit and intent of the ordinance approved by the Wichita voters, while remaining in compliance with provisions and dictates of state law." Wichita City Code Sec. 5.26.050(a). At first glance, it appears that even these "policies" may conflict with state law, in that (as an example), Sec. 5.26.050(d) states:

Unless the arrest of an individual is required by state or federal law, a valid court order, or the identity of the individual cannot be determined, when any Wichita police officer suspects any individual over the age of twenty-one (21) years of age, other than those excluded herein, of possession of a small quantity of marijuana or marijuana paraphernalia, that person shall not be required to post bond, suffer arrest, be taken into custody for any purpose or detained for any reason other than the issuance of a summons, suffer incarceration, suffer loss of driver's license, or any other punishment or penalty other than the issuance of a summons **and, if found guilty, a fine of up to fifty (50) dollars and all applicable court costs and laboratory fees.** There shall be a strong presumption that the proper disposition of any such case by the court is limited to the assessment of a fifty (50) dollar fine and all applicable court costs.

(Emphasis supplied). However, there may be aspects of the full ordinance that have resulted in the ordinance not being challenged.

For example, these policies (in Sec. 5.26.050) should likely be read in conjunction with immediately-preceding code section (discussed above) that retained the classifications and penalties established under Kansas law. Further, the fact that the ordinance and code section are titled as "policies" may imply that the \$50.00 penalty is not binding, but instead merely expresses the wishes of the City. In addition, Sec. 5.26.050(d) ends with the statement that "[t]here shall be a strong presumption that the proper disposition of any such case by the court is limited to the assessment of a fifty (50) dollar fine and all applicable court costs".

It is important to note, as discussed in more detail below, that when the City of Lawrence adopted an ordinance on marijuana possession, it did not include language that might appear to still be in direct conflict with Kansas law, but only included the wording that "there shall be a strong presumption" as to the disposition of the case.

VI. CITY OF LAWRENCE MARIJUANA ORDINANCE.

In April 2019, the City of Lawrence, Kansas, also adopted a new ordinance pertaining to the possession of marijuana. Similar to the City of Wichita, Lawrence's ordinance provides—for a small amount (no more than 32 grams)—that while the available punishments as to fines and jail times remain consistent with Kansas statute, "there shall be a strong presumption that the court is limited to the assessment of a \$1 fine in addition to all applicable court costs, laboratory fees, and the cost of any evaluation ordered pursuant to this Section." While not necessarily binding, the ordinance serves to provide guidance and direction as to the City of Lawrence's expectations.

A factor that may distinguish Lawrence (and Douglas County) from Prairie Village (and Johnson County) is that, in 2019, the Douglas County District Attorney's Office announced that it would not itself continue to prosecute cases of simple marijuana possession. As part of that announcement, the Douglas County DA did make clear that, while simple possession would not be charged in Douglas County, possession is still illegal under state and Federal law. The Johnson County District Attorney's office has not voiced any intent to not prosecute marijuana possession in Johnson County.

VII. OPTIONS PRESENTED TO THE PRAIRIE VILLAGE COUNCIL COMMITTEE OF THE WHOLE.

At the May 3 meeting of the Prairie Village Council Committee of the Whole, City Staff presented at least two options that Prairie Village might consider, if it wanted to enact changes to how the City handles marijuana possession:

- (1) Remove marijuana possession from the Uniform Public Offense Code, as adopted by the City; and
- (2) Follow the Lawrence, Kansas, model by adopting "policy" language suggesting that lower fines or penalties should be encouraged and presumed (without mandating such lower fines or penalties).

As we stated at the meeting that night, we believe that either approach would likely be permitted under Kansas law, in that neither would result in a conflict with Kansas state statutes regulating marijuana possession. To be clear, with either approach, marijuana would be and remain illegal under both state and Federal law. And there are policy considerations for the City, with either approach.

Should the City remove marijuana possession from the UPOC, that would not make the possession of marijuana legal in Prairie Village. The City would not be authorizing by ordinance that which the legislature has forbidden. *Dwagfys*, 309 Kan. at 1344. However, removing marijuana possession from the UPOC would take the matter out of municipal court. The City Prosecutor would not have the authority to prosecute such offenses in municipal court.⁹ This

⁹ See K.S.A. 12-4104, that "The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city, including concurrent jurisdiction to hear and determine a violation of an ordinance when the elements of such ordinance violation are the same as the elements of a violation of one of the following state statutes" (with the following list of statutes including K.S.A. 21-5706(b)(3), possession of marijuana).

would result in all marijuana possession cases going to Johnson County District Court (where the District Attorney has not voiced any inclination to not prosecute marijuana possession). City Staff (and, as we understand it, the City Prosecutor and the City's Municipal Judges) felt that the impact to defendants would be greater in district court, and that municipal court might have more flexibility when handling cases.

As to the "Lawrence Model", we again are of the opinion that the City likely could adopt a policy or suggested presumption as to lower penalties, provided the City does not directly conflict with state law by requiring or mandating such penalties that are inconsistent with Kansas law, or defining the offense as an "infraction" instead of a "misdemeanor" (or adopt other similar differing standards as challenged in the case of Wichita). City Staff again raised concerns with this model, including the following:

- Lowered fines may dissuade defendants from taking a diversion, which would be in the defendants' better interests (*e.g.*, accepting a lower fine would come with a "guilty" plea, which would go on a person's record, and perhaps make such person ineligible for jobs, scholarships, or housing).
- Costs may be higher in the long run, if a person that pays a smaller fine now attempts later to obtain an expungement.
- Judges may feel compelled to explain the consequences of paying a lower fine *vs.* going through a diversion process, putting judges in the difficult position of giving legal advice which they should not do.

VIII. CONSIDERATION OF COLUMBIA, MISSOURI, ORDINANCE.

In response to this, the Council Committee of the Whole asked us to review Section 16-255.2 of the City Code of Columbia, Missouri. This ordinance was passed by the Columbia City Council in 2004, an election was called, and the ordinance was then passed by the voters in November 2004. In many ways, it is clear that Wichita's "policy" ordinance is based on Sec. 16-255.2 from Columbia:

- Both establish, in very similar wording, a policy statement as to the purposes of the respective laws, to "ensure" that certain individuals who possess small amounts of marijuana are "not arrested and suffer only a fine and/or community service ... and no other punishment or penalty". It may be important to note that both Wichita and Columbia have captioned their respective code sections as being "policies" for enforcement.
- Both the Wichita ordinance and the Columbia ordinance contain nearly identical language in establishing a fine limitation (in Wichita, \$50.00; in Columbia, \$250.00). See the discussion above as to the possible remaining conflict as to Wichita's language, which was not included as part of Lawrence's efforts.
- While both ordinances contain language establishing a "strong presumption", they do differ in effect. Wichita's ordinance repeats the \$50.00 penalty, but the presumption relates back directly to that \$50.00: "There shall be a strong presumption that the proper disposition of any such case by the court is limited to the assessment of a fifty (50) dollar fine and all applicable court costs." On the

other hand, Columbia's ordinance establishes a \$250.00 fine, but then adds instead a "strong presumption that the proper disposition of any such case is to suspend the imposition of sentence and/or require community service work and/or drug counseling and education."

There is a significant difference in that the Columbia ordinance also provides as follows:

All such matters shall only be referred to the municipal prosecuting attorney, and no other prosecuting attorney, and the municipal prosecuting attorney shall not refer the matter to any prosecutor, agency, or office, unless [certain exceptions related to previous convictions] are applicable.

Issues under Kansas law (again, noting that Columbia is located in Missouri) related to this portion of the ordinance are discussed further below, as is language in both the Wichita and Columbia ordinances regarding limitations on arrest.

We are not generally qualified to opine on Missouri criminal law; however, we do note that—similarly to Wichita, which before its "policy" section established the state law penalties—Columbia, at its Code Sec. 16-253, also establishes that:

It shall be unlawful for any person to possess thirty-five (35) grams or less of marijuana or cannabis [sic] in any species or form thereof, including but not limited to cannabis [sic] sativa L., or five (5) grams or less of hashish. Any person found guilty of violating the provisions of this section shall be deemed guilty of a Class A misdemeanor.

In some ways, this may actually be stricter than Missouri statute, which allows for the possession of less than 10 grams of marijuana to be classified as a lower "Class D" misdemeanor.¹⁰ What this means is that it is not entirely clear whether Columbia's ordinance actually "conflicts" with state law, or whether it—similarly to Wichita (and Lawrence)—should be read as non-binding policy direction. We have not felt that it would serve the City of Prairie Village to examine this issue—a matter of Missouri law, not applicable to Kansas—in more detail, but we certainly can if the City would so request.

The language of Columbia's Code Sec. 16-253—similar to the case of Wichita's ordinance—also reflects the importance of looking at the entirety of legislative enactments (and municipal ordinances), rather than looking to just one particular ordinance or code section as providing the full story.

Ultimately—and leaving aside the aspects of the Columbia ordinance related to arrests and referrals outside of municipal court (discussed below)—we would construe the Columbia ordinance as to marijuana possession similar to how we have analyzed the Wichita ordinance. We believe that the more-direct language from Columbia's ordinance—if applied to Kansas precedent—establishing a not-to-exceed fine that is lower than state statute (without appropriate presumption language or wording allowing for appropriate judicial discretion) could be seen as being in conflict with state law and, therefore, beyond the powers of the City of Prairie Village. In our opinion, if the City would like to take measures regarding marijuana regulation, we would likely

¹⁰ As discussed above, under Missouri statute, a Class A misdemeanor carries a maximum fine of \$2,000.00, while a Class D misdemeanor carries a maximum fine of \$500.00. RSMo. 558.002.1.

recommend instead the model adopted by the City of Lawrence (from a legal perspective, and not taking into account policy considerations of doing so).

IX. RESTRICTION OF POWERS OF POLICE TO ARREST.

The Council Committee of the Whole has also asked us to consider the City's home rule authority to enact an ordinance which prohibits arrests by Prairie Village police for state criminal law violations involving possession of specified minor amounts of marijuana and/or marijuana paraphernalia, such activities being collectively referred to hereafter in this memorandum as "the decriminalized activities". Again, members of the Council Committee of the Whole referred to Columbia (MO) City Code Sec. 16-255.2(b), which begins (with emphasis supplied):

When any law enforcement officer suspects any adult as defined by state criminal statutes, other than those excluded herein, of possession of a misdemeanor amount of marijuana and/or possession of marijuana paraphernalia, that person shall **not be required to** post bond, **suffer arrest, be taken into custody for any purpose nor detained for any reason other than the issuance of a summons,** **suffer incarceration,** suffer loss of driver's license, or any other punishment or penalty **other than the issuance of summons** and, if found guilty, a fine of up to two hundred fifty dollars (\$250.00). ...

The City of Wichita's ordinance (which, again, appears to have been based on Columbia's) similarly—but with a few differences—provides:

Unless the arrest of an individual is required by state or federal **law,** a valid court order, or the identity of the individual cannot be determined, when any Wichita police officer suspects any individual over the age of twenty-one (21) years of age, other than those excluded herein, of possession of a small quantity of marijuana or marijuana paraphernalia, that person shall **not be required to** post bond, **suffer arrest, be taken into custody for any purpose or detained for any reason other than the issuance of a summons,** **suffer incarceration,** suffer loss of driver's license, or any other punishment or penalty **other than the issuance of a summons** and, if found guilty, a fine of up to fifty (50) dollars and all applicable court costs and laboratory fees. There shall be a strong presumption that the proper disposition of any such case by the court is limited to the assessment of a fifty (50) dollar fine and all applicable court costs.

Wichita Code Sec. 5.26.050(d) (emphasis supplied).

A. Initial Conclusion.

We believe that an ordinance generally modeled after the current Wichita ordinance, which is limited to policy direction to police in exercising their discretionary authority to make arrests for decriminalized activities, and preserves the authority to make such arrests, is within Prairie Village's home rule authority. However, we believe that such an ordinance would not, and could not—under the City's home rule powers—prevent or remove the discretionary authority of Prairie Village police to make arrests for the decriminalized activities for prosecution under state criminal laws. That is to say, there is a line between providing policy direction and establishing a legal prohibition.

To be certain, this is a fine line, and could perhaps be criticized as being "too cute by half", meaning that if the City Council were to provide "policy" direction, City staff and the police department might be unlikely to deviate from such direction, for fear of losing employment or having other adverse employment actions taken against them. In that respect, while providing such policy may not be a "*de jure*" removal of discretionary authority (according to law or officially prohibited), it would likely constitute a "*de facto*" (a state of affairs that is true in fact) removal or prohibition of discretion.

The City should carefully consider this when discussing proceeding any options with City staff, including impacts on police training, recruitment, advancement, and the like. The following analysis focuses on the "legal" issues involved, and not necessarily the "practical" staff issues that may be present.

B. Statutes Governing Arrests by Prairie Village Police Officers.

We begin our review of this issue with a summary of the Kansas Statutes which govern the authority of local law enforcement officers, including Prairie Village police officers, to arrest persons suspected of violating state criminal laws. The applicable statutes are in the Code of Criminal Procedure, K.S.A. 22-2201 *et. seq.*, which governs state criminal law matters. Arrests by Prairie Village police for state criminal law violations are authorized by K.S.A. 22-2401¹¹, which provides (with emphasis supplied):

A law enforcement officer¹² **may** arrest a person under any of the following circumstances:

- (a) The officer has a warrant commanding that the person be arrested.
- (b) The officer has probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein.

¹¹ Arrests for municipal ordinance violations is authorized under the Kansas Code of Procedure of Municipal Courts, K.S.A. 12-4101 through 12-4602 ("KCPMC"), which governs municipal court matters. K.S.A. 12-4212 authorizes arrests by local law enforcement officers, primarily as to violations of municipal ordinances. However, that statute also authorizes police officers to arrest individuals for state law matters where there is a warrant for such person's arrest. We note that K.S.A. 12-4212(b) does provide that "A law enforcement officer may **not** arrest a person who is charged only with committing an ordinance traffic infraction or an ordinance cigarette or tobacco infraction unless the person charged has received service of a notice to appear and has failed to appear for the infraction." (Emphasis supplied). This may reflect a legislative intent that those types of infractions are not of the kind that should subject a person to arrest, but that such a legislative determination has not yet been made as to marijuana-related offenses.

¹² "Law enforcement officer" is defined almost identically in the KCPMC and in the Code of Criminal Procedure. "Law enforcement officer" under the KCPMC means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof. K.S.A. 12-4113(j). "Law enforcement officer" under the Code of Criminal Procedure means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority." K.S.A. 22-2202(m).

- (c) The **officer has probable cause to believe that the person is committing or has committed:**
- (1) **A felony**; or
 - (2) **a misdemeanor**, and the law enforcement officer has probable cause to believe that:
 - (A) The person will not be apprehended or evidence of the crime will be irretrievably lost unless the person is immediately arrested;
 - (B) the person may cause injury to self or others or damage to property unless immediately arrested; or
 - (C) the person has intentionally inflicted bodily harm to another person.
- (d) **Any crime, except a traffic infraction or a cigarette or tobacco infraction, has been or is being committed by the person in the officer's view.**¹³

In our opinion, by using the term "may", this statute grants to the Prairie Village police the discretionary authority, but does not impose an obligation, to make arrests for violations of state criminal laws. Our conclusion that this authority is discretionary is also supported by the line of Kansas cases holding that for purposes of immunity under the discretionary function exception of the Kansas tort claims act (K.S.A. 75-6104(e)), the authority of law enforcement officers to arrest under K.S.A. 22-2401 is discretionary.¹⁴

Notwithstanding this discretion, we would point out that members of the City police department may also have certain ethical obligations as to law enforcement under current City Code. Section 1-212 of the Prairie Village Code does state:

Responsibilities of Public Office. Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this State and to carry out impartially the laws of the nation, state, and city and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office, regardless of personal consideration, recognizing that the public interest must be their primary concern. The conduct in both official and private affairs should be above reproach.

C. Analysis of Home Rule Authority to Enact Ordinance Prohibiting Prairie Village Police Officers from Making Arrests or Stops.

Having concluded that there are state laws which govern the authority of Prairie Village police to make arrests for violations of state criminal laws, we turn to the question of whether a City ordinance restricting the authority of Prairie Village police to make arrests for the decriminalized activities would be a valid exercise of its home rule power. Under the *Dwagfys*

¹³ Note again the specific exceptions established by the Kansas Legislature as to traffic and tobacco infractions.

¹⁴ These courts rely on the use of the term "may" to hold such authority to arrest to be discretionary. "Sheriff Morse had complete discretion to either arrest or not arrest Chism based on the circumstances. See K.S.A. 22-2401(c)(1) (A law enforcement officer *may* arrest a person if the officer has probable cause to believe the person has committed a felony)." *Stormont-Vail Healthcare, Inc. v. Board of County Commissioners*, 437 P.3d 105 (Table), 2019 WL 1303580 (2019) (emphasis in original).

case (the Tobacco 21 case discussed above), the answer requires an analysis of the following factors:

(1) Is there a state law that governs the subject?

As noted above, factor (1) is satisfied by K.S.A. 22-2401, part of the Code of Criminal Procedure.

(2) Is the state law uniformly applicable to all cities?

In our opinion, the Code of Criminal Procedure is uniformly applicable to all cities because there are no provisions in Code of Criminal Procedure that impose different regulations on different classes of cities.

(3) If there is a uniform state law, does it preempt further action by cities?

The preemption described under factor (3) occurs when the legislature has reserved exclusive jurisdiction to regulate in a particular area. In such a situation, cities are prohibited from legislating at all, including from adopting ordinances that duplicate or supplement state law, and the State exercises exclusive jurisdiction. As noted by the Kansas Supreme Court in *State ex rel. Kline v. Unified Bd. of Com'rs, of Unified Government of Wyandotte County*, 277 Kan. 516, 527, 85 P.3d 1237 (2004), the multiple references to municipal courts included in the Code of Criminal Procedure indicates a lack of preemption. Therefore, in our opinion, the Code of Criminal Procedure does not preempt further action by cities. However, such further action—if taken—must be analyzed as to the following *Dwagfys* factor (4).

(4) If there is a uniform state law but there has been no preemption, does the local regulation conflict with the uniform state law?

As noted previously in this memorandum, the following test as to factor (4) applies for determining what constitutes a conflict:

Whether the ordinance permits or licenses that which the statute forbids or **prohibits that which the statute authorizes**; if so, there is conflict, but where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by ordinance that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict.

Dwagfys, 309 Kan. at 1344 (emphasis supplied).

If the answer to factor (4) is affirmative, then the City does not have the home rule authority to enact the local regulation (e.g., enact an ordinance similar to that of Columbia, Missouri, or Wichita, Kansas, that legally restricts the authority of Prairie Village police to make arrests for the decriminalized activities). Put another way, in this instance, the question posed by *Dwagfys* factor (4) is:

Does a Prairie Village ordinance prohibiting Prairie Village police from making arrests for state criminal law violations involving the decriminalized activities

(marijuana possession) conflict with the applicable provisions of the Code of Criminal Procedure?

We believe that an ordinance which purports to completely remove the discretionary authority of Prairie Village police to arrest under K.S.A. 22-2401 would prohibit that which state law authorizes, and therefore the City lacks the home rule authority to enact such an ordinance.

However, for the reasons discussed below, we do not believe that the current Wichita ordinance goes so far, so we ask an alternate question for *Dwagfys* factor (4):

Does a Prairie Village ordinance modeled after the current Wichita ordinance and limited to providing policy direction to the Prairie Village police in making arrests for state criminal law violations involving the decriminalized activities (marijuana possession) conflict with the applicable provisions of the Code of Criminal Procedure?

For the following reasons we believe that such an ordinance—while presenting practical issues discussed above, and while perhaps establishing a "*de facto*" prohibition—would nevertheless not be in direct legal conflict with applicable provisions of the Code of Criminal Procedure.

First, as noted in a previous section of this memorandum, the current Wichita ordinance establishes a policy statement as to the purposes of the ordinance, to "ensure" that certain individuals who possess small amounts of marijuana are "not arrested and suffer only a fine and/or community service ... and no other punishment or penalty". Both Wichita and Columbia have captioned their respective code sections as being "policies" for enforcement.

Second, in the current Wichita ordinance, the introductory "carve out" phrase, "Unless the arrest of an individual is required by state or federal law..." implicitly acknowledges a continuing authority to arrest for state law criminal violations. In fact, since we believe that the authority of Wichita police to arrest under K.S.A. 22-2401 is discretionary, this carve out phrase appears to refer to those state or federal laws which override the discretionary authority to arrest and impose a duty to arrest.¹⁵ We note that this interpretation leaves open the argument that unless arrest is mandated under state law, the ordinance purports to absolutely prohibit arrests for the decriminalized activities for state criminal prosecution. Should Prairie Village desire to follow a similar path, a "safer" carve out to negate a home rule challenge would be language to the effect, "to the extent the provisions of this ordinance conflict with K.S.A. 22-2401, (or the Kansas Code of Criminal Procedure) the provisions of the statute (or Code) govern."

Taken together, we believe that the "policy" feature of the current Wichita ordinance, coupled with the acknowledgment of authority to arrest for state law violations, should negate a legal argument that the current Wichita ordinance conflicts with a uniform state law (and therefore exceeds home rule authority). To our knowledge the Kansas Attorney General has not made a home rule authority challenge to the current Wichita ordinance, which supports our opinion that it

¹⁵ *E.g.*, K.S.A. 22-2307 specifying mandatory arrests in certain domestic violence situations, and K.S.A. 8-2104 specifying mandatory arrests for certain traffic offenses (note that whether this later statute requires mandatory arrest is before the Kansas Supreme Court on review of holding by the Kansas Court of Appeals in *University of Kansas Health Authority v. Commissioners of Franklin County*, 58 Kan.App.2nd 367 (2020)).

is a valid exercise of Wichita's home rule authority. We find no reported Kansas cases which consider this question.¹⁶

In conclusion, it is our opinion that a Prairie Village ordinance generally modeled after the current Wichita ordinance, which is limited to policy direction to police in exercising their discretionary authority to make arrests for decriminalized activities, and preserves the authority to make such arrests, would not conflict with the applicable provisions of the Code of Criminal Procedure and therefore would be a valid exercise of its home rule authority. As a caveat, we note again that such an ordinance would not, and could not under the City's home rule powers, prevent or remove the discretionary authority of Prairie Village police to make arrests for the decriminalized activities under state criminal laws. One may also argue that, at some point, failure to make arrests for state law violations may itself constitute an abuse of discretion. Additional practical implications—mentioned above—of implementing such a policy ordinance are beyond the scope of this memorandum.

X. RESTRICTIONS ON POLICE REFERRALS TO STATE AUTHORITIES FOR PROSECUTION.

The Council Committee of the Whole has also asked us to consider the City's home rule authority to enact an ordinance which prohibits Prairie Village police from referring state criminal law violations to state authorities for prosecution.

The Columbia, Missouri code, at Sec. 16-255.2(b), prohibits referrals to state authorities, providing:

All such matters shall only be referred to the municipal prosecuting attorney, and no other prosecuting attorney, and the municipal prosecuting attorney shall not refer the matter to any other prosecutor, agency, or office, unless provisions of subsection (c) are applicable.

(Subsection (c) generally addresses prior convictions.) Neither the Lawrence nor current Wichita ordinances include a similar provision. However, a prior proposed Wichita ordinance¹⁷ (over

¹⁶ We note a somewhat analogous situation was considered by the Kentucky Supreme Court. Kentucky recognizes home rule authority like Kansas. Kentucky has a statutory provision which authorizes city police to make arrests for state criminal law violations anywhere within the county in which the city is located. The city adopted a police personnel policy directing that absent emergency, its police were to patrol only within city limits. Based upon the city's limit of its police authority, a criminal defendant sought to avoid a criminal charge arising out of an arrest made by city police outside of the city limits. Discussing whether the city policy conflicted with state law, the court found that the policy did not prevent city police officers from exercising their county wide arrest powers or make such arrests unlawful. The court found that the purpose of the policy was not to prevent city police from exercising arrest powers, but rather to focus their efforts on the security of the citizens of the city. "In other words, having a personnel policy that requires city police officers to remain within city limits does not mean that if those officers do go out into the county, even absent an emergency, their statutorily authorized arrest powers somehow dissipate or vanish. At most, the officers may have violated an employment regulation and be subject to appropriate discipline." *Commonwealth v. Bishop*, 245 S.W. 3rd 733, 737 (Ky. 2008).

¹⁷ As noted in a previous section of this memorandum, the prior proposed ordinance was approved by the voters in April 2015. The Attorney General then sued the City of Wichita to prohibit the city from publishing, implementing, or enforcing the ordinance. The Kansas Supreme Court did not ultimately reach the merits of the actual ordinance,

which the Attorney General sued the City of Wichita) did include language prohibiting law enforcement officers from referring violations to state prosecutors, providing:

Nothing herein shall be construed to restrict law enforcement officers of the City of Wichita, Kansas, to complain of violations of offenses other than Subsections (b) and (c) of this Chapter. **No law enforcement officer of the City of Wichita, Kansas, or his or her agent, shall complain of violations of these Subsections to any other authority except the City Attorney of the City of Wichita, Kansas;** and, furthermore, the City Attorney of the City of Wichita, Kansas, or any of his or her authorized assistants, shall not refer any said complaint to any other authority for prosecution. No convictions pursuant [*sic*] Subsections (b) and/or (c) of this Chapter shall be recorded as a misdemeanor to the Kansas Bureau of Investigation Central Repository or any other state or federal law enforcement reporting agency.

(Emphasis supplied). This section of the proposed Wichita ordinance was found to exceed Wichita's home rule authority by the Kansas Attorney General and likely explains why it is not included in the current Wichita code. See Kan. Atty. Gen. Op. No. 2015-4.

We note that referrals are implicit in arrests for state criminal law violations, which has been discussed in the previous section. We limit our analysis in this section to referrals which might be made independent of arrests.

A. Initial Conclusion.

We believe that an ordinance which is limited to "policy direction" to police in exercising their discretionary authority to make referrals to state authorities for prosecution of decriminalized activities, and which preserves the authority to make such referrals under K.S.A. 22-2408, is within Prairie Village's home rule authority. However, we believe again that such an ordinance would not, and could not—under the City's home rule powers—prevent or remove the discretionary authority of Prairie Village police to make such referrals. Again, there must be a distinction between policy direction, and legal prohibitions. As with the issue of making arrests, the practical implications of implementing such a policy ordinance are beyond the scope of this memorandum, and significant policy input from police and the City Prosecutor should be considered.

B. Statutes Governing Referrals to State Authorities for Prosecution.

Under the Code of Criminal Procedure, state criminal proceedings may be initiated¹⁸ by a complaint filed with a magistrate judge, K.S.A. 22-2301, or by an information filed by a prosecutor, which in turn is based upon information received by the prosecutor from others. K.S.A. 22-2303. In either case, clearly local law enforcement may be one, if not the primary, source of the evidence forming the basis for the complaint or information. Neither statute includes any reference to duties, or even authority, of law enforcement officers to furnish, provide or make such referrals.

holding that the ordinance was not enacted in accordance with the procedures set forth in the Kansas initiative and referendum statute, K.S.A. 12-3013. See *State ex re. Schmidt v. City of Wichita*, 303 Kan. 650 (2016).

¹⁸ Grand jury proceedings are excluded from this discussion because such proceedings are not relevant.

The only relevant section in the Code of Criminal Procedure which refers to law enforcement officers is K.S.A. 22-2408, which authorizes law enforcement officers, in lieu of arrest, to issue a notice to appear in court to answer for state misdemeanor crimes. K.S.A. 22-2408 provides:

- (1) Except as otherwise provided in subsection (6) of this section, whenever a law enforcement officer detains any person without a warrant, for any act punishable as a misdemeanor, and such person is not immediately taken before a magistrate for further proceedings, the officer **may** serve upon such person a written notice to appear in court. Such notice to appear shall contain the name and address of the person detained, the crime charged, and the time and place when and where such person shall appear in court.
- (2) The time specified in such notice to appear must be at least seven days after such notice is given unless the person shall demand an earlier hearing.
- (3) The place specified in such notice to appear must be before some court within the county in which the crime is alleged to have been committed which has jurisdiction of such crime.
- (4) The person detained, in order to secure release as provided in this section, must give his or her written promise to appear in the court by signing the written notice prepared by the officer. The original of the notice shall be retained by the officer; a copy delivered to the person detained, and the officer shall forthwith release the person.
- (5) Such law enforcement officer shall cause to be filed, without unnecessary delay, a complaint in the court in which a person released under subsection (4) is given notice to appear, charging the crime stated in said notice. If the person released fails to appear as required in the notice to appear, a warrant shall be issued for his or her arrest.
- (6) The procedures prescribed by this section shall not apply to the detention or arrest of any person for the violation of any law regulating traffic on the highways of this state, and the provisions of K.S.A. 8-2104 through 8-2108¹⁹, and amendments thereto, and the code of procedure for municipal courts shall govern such procedures.

(Emphasis supplied). A notice to appear issued under K.S.A. 22-2408 may serve as a valid complaint in district court. *State v. Rissen*, 353 P.3d 471 (2015) 2015 WL 4579844 (Kan. App. 2015).

As with sections in the Code of Criminal Procedure authorizing arrests, we note that the term "may" is used in K.S.A. 22-2408, indicating that the authority to refer state misdemeanor violations for state prosecution by issuing a notice to appear in lieu of arrest is also discretionary rather than mandatory.

¹⁹ Governing arrests or citations for certain traffic stops.

C. Analysis of Home Rule Authority to Enact Ordinance Prohibiting Prairie Village Police from Referring Certain State Criminal Law Violations Involving Decriminalized Activities to State Authorities for Prosecution.

In Kan. Atty. Gen. Op. No. 2015-4, the Attorney General concluded that the portion of the original Wichita ordinance (that prohibited referrals to anyone other than the Wichita city attorney) conflicts with uniform state law. This conclusion was in turn based upon the Attorney General's opinion that all law enforcement officers, including those employed by the City of Wichita, "have a duty to enforce state criminal laws, which necessarily includes **the authority to present cases for prosecution to state authorities** when appropriate." (Emphasis supplied).

The Attorney General relied on two state statutes. One of those statutes is part of the Kansas Code of Procedure of Municipal Courts, K.S.A. 12-4101 through 12-4602 (the "**KCPMC**"), which governs municipal court matters. The section of the KCPMC relied on by the Attorney General is K.S.A. 12-4111, which provides:

The governing body may employ law enforcement officers who shall have power to execute all process issued by any municipal judge within the state and delivered to him or her for that purpose, to detain persons, to place them in custody, and to arrest them, pursuant to the terms of this act.

The powers of law enforcement officers with respect to the code of criminal procedure shall not be reduced by this code.

Emphasis in Kan. Atty. Gen. Op. No. 2015-4. The Attorney General seems to rely on this emphasized language in K.S.A. 12-4111 to make the powers granted to law enforcement officers under the Code of Criminal Procedure applicable to Wichita police. The Attorney General then considered the definition of "law enforcement officer" set forth in the Code of Criminal Procedure, K.S.A. 22-2201 *et. seq.*, which governs state criminal law matters:

"Law enforcement officer" is defined in K.S.A. 22-2202(m)²⁰, which provides:

"Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority."

Emphasis in Kan. Atty. Gen. Op. No. 2015-4.

The Attorney General concluded that the emphasized language itself imposes a duty to enforce state laws, and that enforcement necessarily includes the referral of state law violations

²⁰ The Attorney General opinion referred to subsection (13) of K.S.A. 22-2202, which has now been renumbered as subsection (m).

to state authorities for prosecution. By prohibiting law enforcement officers from referring to state authorities, the Attorney General concluded that the "restriction on referral" provision of the proposed Wichita ordinance conflicted with uniform state law and therefor was an invalid exercise of home rule authority.

We agree that that local law enforcement officers have authority to make referrals, but for different reasons than those relied upon by the Attorney General. There is an express discretionary authority for police to refer state misdemeanor matters for state prosecution by issuing notices to appear under K.S.A. 22-2408. However, we find no express statutory provisions otherwise authorizing, or obligating, local law enforcement officers to refer felony state criminal matters to state authorities for prosecution. We believe this authority is implied under the general authority of law enforcement officers to arrest and stop²¹ for state crimes, and to issue notices to appear for state misdemeanor violations. Since those authorities are discretionary, we believe that a court would likely find the implied authority to refer felony matters to state authorities for prosecution to be discretionary as well.

It may be argued that such "implied" authority operates, in practice, as a requirement in that, for example, felony cases can generally only be heard in district court. K.S.A. 22-2601 (but noting again, as discussed above, that certain cases with elements that would rise to the level of a felony may be considered in municipal court, per K.S.A. 12-4104). Of course, if the City were to remove marijuana possession from the municipal court process, police officers may have no choice as to where prosecutions may be referred.

Next, we apply the *Dwagfys* analysis to whether the City has home rule authority to enact an ordinance which prohibits such referrals.

(1) Is there a state law that governs the subject?

K.S.A. 22-2408 governs referrals for state misdemeanor violations. We find no state statutes which expressly authorize or impose a duty on local law enforcement to make referrals for felony state criminal law violations. We note that the Attorney General disagrees with this analysis and has opined that the such an ordinance would conflict with the sections of the Kansas Statutes discussed above. We find no Kansas cases which have considered this issue.

To summarize our conclusion under factor (1), we believe that there is a state law that governs the authority of Prairie Village police to make referrals for state misdemeanor violations involving the decriminalized activities, and accordingly must move on to factors (2), (3) and (4) as to ordinances relating to such referrals.

²¹ K.S.A. 22-2402. Stopping of suspect

(1) Without making an arrest, a law enforcement officer **may** stop any person in a public place whom such officer reasonably suspects is committing, has committed or is about to commit a crime and may demand of the name, address of such suspect and an explanation of such suspect's actions.

(2) When a law enforcement officer has stopped a person for questioning pursuant to this section and reasonably suspects that such officer's personal safety requires it, such officer may frisk such person for firearms or other dangerous weapons. If the law enforcement officer finds a firearm or weapon, or other thing, the possession of which may be a crime or evidence of crime, such officer may take and keep it until the completion of the questioning, at which time such officer shall either return it, if lawfully possessed, or arrest such person. (Emphasis supplied).

We are unsure if a court would agree with the Attorney General that there is state law that governs the authority of Prairie Village police to make referrals for state felony violations, if any, involving the decriminalized activities. We find no other state statutes expressly governing the subject. If court were to find no state law governing the subject, then Prairie Village has home rule authority to enact an ordinance prohibiting such felony (non-misdemeanor) referrals. If a court were to find that a state law governs the subject (by express or implied terms) then factors (2), (3) and (4) analysis would follow (and the following factors would apply in any event, as to misdemeanor marijuana-related crimes).

(2) Is the state law uniformly applicable to all cities?

K.S.A. 22-2408, as part of the Code of Criminal Procedure, is uniformly applicable. We assume for purposes of this analysis that any implied authority which a court might find to be state law which governs the subject would be under the Code of Criminal Procedure, which is uniformly applicable.

(3) If there is a uniform state law, does it preempt further action by cities?

As discussed above (see page 14 of this memorandum), we do not believe that the Code of Criminal Procedure preempts further action by cities. However, such further action—if taken—must be analyzed as to the following *Dwagfys* factor (4).

(4) If there is a uniform state law but there has been no preemption, does the local regulation conflict with the uniform state law?

Again, the following test as to factor (4) applies for determining what constitutes a conflict:

Whether the ordinance permits or licenses that which the statute forbids or **prohibits that which the statute authorizes**; if so, there is conflict, but where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by ordinance that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict.

Dwagfys, 309 Kan. at 1344 (emphasis supplied).

If the answer to factor (4) is affirmative, then the City does not have the home rule authority to enact the local regulation (e.g., enact an ordinance similar to that of Columbia, Missouri, that puts limitations on the ability of Prairie Village police to refer matters to state authorities for prosecution). Put another way, in this instance, the question posed by *Dwagfys* factor (4) is:

Does a Prairie Village ordinance prohibiting Prairie Village police from referring certain state criminal law violations involving the decriminalized activities to state authorities for prosecution conflict with the applicable provisions of the Code of Criminal Procedure?

Under this test, we believe that an ordinance which purports to completely remove the discretionary authority of Prairie Village police from exercising its discretionary authority to refer misdemeanor violations for state prosecution under K.S.A. 22-2408 would prohibit that which

state law authorizes, and therefore the City lacks the home rule authority to enact such an ordinance.

As to the implied discretionary authority to refer felony violations, we are unsure if a court would agree with the Attorney General that there is a duty or express authority under the Kansas statutes he relied upon to make such referrals, and that therefore an ordinance restricting that authority conflicts with a uniform state law. As a practical matter, we understand that the "decriminalized activities" for which Prairie Village might want to restrict referrals are state misdemeanor crimes for the most part, and therefore focus our factor (4) analysis on a conflict with K.S.A. 22-2408.

As with our factor (4) analysis of an ordinance restricting arrest authority, we believe an ordinance restricting police referrals could be drafted in a manner which, if challenged, a court would find does not conflict with applicable provisions of state law. If such an ordinance does not purport to remove police discretion to make referrals, but rather imposes policy guidelines for the exercise of such discretion, we do not believe that such an ordinance would legally conflict with K.S.A. 22-2408. We note that if a home rule authority challenge were made, a court would be more likely to find no conflict if the ordinance included language to the effect that it does not limit the discretionary authority of Prairie Village police under K.S.A. 22-2408, or alternatively language to the effect, "to the extent the provisions of this ordinance conflict with K.S.A. 22-2408, (or the Kansas Code of Criminal Procedure) the provisions of the statute (or Code) govern."

In conclusion, we believe that an ordinance which is limited to policy direction to police in exercising their discretionary authority to make referrals to state authorities for prosecution of decriminalized activities (marijuana possession), but which preserves the authority to make such referrals under K.S.A. 22-2408, is within Prairie Village's home rule authority. As a caveat, we note that such an ordinance would not, and could not under the City's home rule powers, prevent or remove the discretionary authority of Prairie Village police to make such referrals. The same practical issues—a "*de jure*" vs. a "*de facto*" removal of police discretion (that is, a "policy" ordinance may have the same practical effect as a "non-policy" ordinance)—would remain, and must be considered. However, the practical implications of implementing such a policy ordinance are beyond the scope of this memorandum, and we would defer to City staff on those considerations.

XI. IMPACT ON MARIJUANA REGULATION SCENARIOS PRESENTED BY CITY STAFF.

Finally, as to the issue of police duties and authorities, we would like to tie the foregoing information into the bigger picture of options presented to the Council Committee of the Whole as to marijuana regulation.

Should the City remove marijuana possession from the UPOC completely, then marijuana would cease to be a violation of the Prairie Village Municipal Code. Accordingly, the powers of police officers to make arrests for ordinance violations under K.S.A. 12-4212 (of the KCPMC) would also necessarily be limited. However, again, marijuana would remain illegal under both Federal and state law, and as the Kansas Code of Criminal Procedure authorizes arrests for decriminalized activities which are violations of state law, we do not believe that removing marijuana possession from the UPOC would (or could), in turn, act to prohibit police officers from enforcing state law. Some of the policy consequences of removing marijuana possession from the UPOC are set forth above in this memorandum.

Should the City enact more of a "Lawrence Model" as to the decriminalized activities, that also would not likely impact the duties and obligations of police officers. (We note that the Lawrence Model does not contain language purporting to establish limitations on City of Lawrence Police Officers.) Under the Lawrence Model, Prairie Village police officers would continue to enforce City ordinances and state law in accordance with the KCPMC and the Code of Criminal Procedure. Issues of "presumption" and maximum penalties are also discussed above in this memorandum.

Given the detailed analysis above (and to repeat), we do not believe the City could enact an ordinance with the language of Columbia, Missouri's, appearing to limit the authority of police to arrest and to refer altogether. The City could perhaps enact an ordinance—similar to Wichita's—with an exception for cases where "the arrest is required by state or federal law" or a "valid court order", or otherwise indicating that the ordinance does not reduce the authority of police under the Code of Criminal Procedure, but this is an exception that at best swallows the rule, as we do not believe the City has the home rule power to enact either an ordinary ordinance or a charter ordinance which absolutely prohibits Prairie Village police from making arrests or referrals for certain state criminal violations involving the decriminalized activities.

XII. RESTRICTIONS ON PROSECUTOR REFERRALS TO STATE AUTHORITIES FOR PROSECUTION.

The Council Committee of the Whole has also asked us to consider the City's home rule authority to enact an ordinance which prohibits the Prairie Village City Prosecutor from referring state criminal law violations to state authorities for prosecution.

The Columbia, Missouri code (at Sec. 16-255.2(b)) prohibits referrals to state authorities, providing:

All such matters shall only be referred to the municipal prosecuting attorney, and no other prosecuting attorney, and the municipal prosecuting attorney shall not refer the matter to any other prosecutor, agency, or office, unless provisions of subsection (c) are applicable.

(Subsection (c) generally addresses prior convictions.) Again, neither the Lawrence nor current Wichita ordinances include a similar provision. However, the prior proposed Wichita ordinance (similar to Columbia, Missouri, and which was challenged by the Attorney General) did include language prohibiting the City Attorney and his or her assistants from referring violations to state prosecutors, providing (with emphasis supplied):

Nothing herein shall be construed to restrict law enforcement officers of the City of Wichita, Kansas, to complain of violations of offenses other than Subsections (b) and (c) of this Chapter. No law enforcement officer of the City of Wichita, Kansas, or his or her agent, shall complain of violations of these Subsections to any other authority except the City Attorney of the City of Wichita, Kansas; **and, furthermore, the City Attorney of the City of Wichita, Kansas, or any of his or her authorized assistants, shall not refer any said complaint to any other authority for prosecution.** No convictions pursuant [*sic*] Subsections (b) and/or (c) of this Chapter shall be recorded as a misdemeanor to the Kansas Bureau of Investigation Central Repository or any other state or federal law enforcement reporting agency.

The Kansas Attorney General did not specifically address this language in Kan. Atty. Gen. Op. No. 2015-4. We find no state statutes concerning the authority or duty of city prosecutors or city attorneys to refer city ordinance violations which also violate state criminal statutes to state authorities for prosecution. Thus, under Dwagfys factor (1), since there appears to be no state law governing the subject, such an ordinance should be permitted under Prairie Village's home rule authority. Of course, how this issue is handled (if at all) would turn quite a bit on whether the City removes marijuana possession from the City's UPOC (in which case, matters of referral would not come from the City Prosecutor, but would then be referred to the district court by police—see above for further discussion on that issue).

We would also recommend further conversations with the City Prosecutor on the extent to which the City Prosecutor may require additional resources (beyond the City Prosecutor's office) in handling certain criminal matters.

XIII. PROSECUTORIAL DISCRETION TO FIX FEES FOR DIVERSION PROGRAMS.

We understand that members of the Governing Body have also requested that we review what Kansas laws, if any, restrict the ability of the Prairie Village City Council to fix lower diversion fees for municipal possession of marijuana offenses.²² We understand that the current practice is for the amount of diversion fees in all cases to be fixed at the discretion of the prosecutor, considering multiple factors, including those required by the KCPMC. For the reasons discussed below, we do not believe the proposed action by the Council is prohibited under Kansas law.

The following sections of the KCPMC relate to municipal court diversion agreements. K.S.A. 12-4414 authorizes municipal prosecutors to offer diversion agreements for municipal offenses (except for certain alcohol related offenses), and requires that they have policies and guidelines for the same. K.S.A. 12-4415(a) sets forth minimum factors to be considered by the prosecutor when "determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community." K.S.A. 12-4416 specifies mandatory provisions which must be included in such agreements, and the following optional provisions: The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and **diversion costs**, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. K.S.A. 12-4416(b).

We find no provision in the KCPMC, or elsewhere in the Kansas statutes, which governs the manner in which diversion fees are to be set in municipal courts.

However, the answer to the question posed also requires us to examine the concept of "prosecutorial discretion" and constitutional principles of separation of powers. Attempts by one branch of government (here the legislative branch—the City Council) to usurp the internal administrative functions of the other branch (here the executive—the City Prosecutor) may violate the constitutional separation of powers doctrine. Therefore, we consider whether the Prairie Village City Council's removal of the prosecutor's current discretion to fix diversion fees for

²² We note there has also been an inquiry about whether the Council can require the prosecutor to waive diversion fees for persons with the inability to pay. We do not address this issue because we understand it is already the practice for the prosecutor to waive diversion fees for such persons when appropriate.

possession of marijuana cases would improperly usurp the executive function of the City Prosecutor under Kansas law.

While this precise question is not answered in reported case law, the concept of prosecutorial discretion, as an executive administrative function, is recognized by the Kansas Supreme Court at the municipal court level, as well as the state court level. See *City of Hutchinson v. Anguiano* (Kan. App. 2019) (not designated for publication) 2019 WL 5090327 (finding prosecutorial discretion resides in city prosecutor of the City of Hutchinson). Thus, we conclude that the Prairie Village City Prosecutor is vested with prosecutorial discretion under Kansas law.

Prosecutorial discretion is discussed by the Kansas Supreme Court in *State v. Greenlee*, 228 Kan. 712 (1980). "The prosecutor has always had the discretion to decide whether to file charges, to enter into plea bargaining, to reduce charges or to dismiss without prosecution." *Id.* at 717. The court in *Greenlee* recognized that prosecutorial discretion includes the decision to allow defendants to participate in diversion programs, stating that prosecutors have discretion "... to file charges but postpone trial for a period of time while the accused participates in various rehabilitation programs. If the program is successfully completed, the charge will be dropped." *Id.* at 717.

The *Greenlee* court considered whether sections of the then criminal code of procedure, K.S.A. 22-2907 and K.S.A. 22-2908, which impose certain guidelines on district attorneys relating to diversion programs (similar to the provisions of the KCPMC described above), constituted an unwarranted usurpation of the prosecutor's power of discretion and therefore violated the separation of powers doctrine. The court held that those statutes did not usurp prosecutorial discretion in violation of the separation of powers doctrine because they merely provided guidelines for the exercise of discretion. The court applied the following factors in finding no improper usurpation:

1. The statutes²³ did not enlarge that inherent power nor did they destroy or unreasonably restrict it;
2. The statutes did not create an unreasonable control on the prosecutor; and
3. The decision to grant diversion still rests largely with the prosecutor.

Aside from the practical effect of Council action to fix lower diversion fees for possession of marijuana offenses²⁴, we consider whether it would improperly usurp prosecutorial discretion under the *Greenlee* factors.

1. We do not believe that such action would enlarge, destroy or unreasonably restrict the inherent power of the City Prosecutor to allow defendants to participate in diversion programs for possession of marijuana cases, or for other offenses.

²³ Referring to the applicable sections of the then criminal code of procedure.

²⁴ We note that (a) such action would actually remove prosecutorial discretion currently exercised and (b) that City staff has concerns about the practical effects of such action which are beyond the scope of this Memorandum. We have not discussed with the City Prosecutor what her practical concerns may be.

2. Even though such action imposes a control on the City Prosecutor for the specified offenses, we do not believe such control would be found to be unreasonable, since it would not legally prevent or restrict the City Prosecutor's inherent power (though, again, there may be a "*de facto*" restriction).
3. The decision to grant diversion still rests largely with the prosecutor.

Based upon the above analysis, we do not believe that the Prairie Village City Council's imposition of fixed lower diversion fees for possession of marijuana cases would violate the separation of powers doctrine as an improper usurpation of the inherent power of prosecutors to allow defendants to participate in diversion programs. Of course, interference by the City Council in the City Prosecutor's roles and discretion may give rise to other practical concerns, which City staff would be in a better position to address.

Finally, however, we observe that singling out possession of marijuana cases for lower diversion fees might trigger equal protection claims from persons charged with other offenses. We have not separately researched the issue and accordingly do not have an opinion on the likely outcome of such claims. We mention it here for consideration if the Council decides to pursue the action described.

XIV. Conclusions.

As these policy issues were initiated by the Council Committee of the Whole, we do not have recommendations for the Committee or the Governing Body. The following bullet points attempt to summarize the matters set forth above, to aid in guiding the City's policy discussions.

- The City of Prairie Village cannot legalize the possession of marijuana within the City. Marijuana is illegal under both state and Federal law, and the City does not have home rule authority to authorize what the legislature has forbidden. We agree with the Kansas Attorney General's Opinion No. 2015-4 on this point.
- We agree with City staff's analysis that the City's home rule powers likely do allow Prairie Village to enact an ordinance similar to the "Lawrence Model". That model would create a "presumption" or policy that penalties (in municipal court) lower than those established by statute should be provided, but would not directly conflict with state statute. We agree with City staff that this model presents several practical issues that the Governing Body should consider.
- We further agree that the City likely could—under its home rule authority—remove marijuana possession from the Uniform Public Offense Code, as adopted by the City. That would not make marijuana legal in Prairie Village, but would result in violations being prosecuted in district court. City staff has offered problems that could arise in district court vs. municipal court, including the lack of flexibility as to handling of cases.
- In considering the City of Columbia, Missouri, ordinance, there are similarities between it and what—after an adverse Attorney General opinion and litigation that reached the Kansas Supreme Court—the City of Wichita, Kansas, ultimately enacted. In our opinion, the City of Prairie Village likely does have home rule authority to enact a "policy" ordinance similar to that of Wichita. However, to the

extent the City attempts to legally remove the discretionary authority to make arrests or to refer matters to state authorities for prosecution, we believe that would fall outside of the City's home rule powers. In addition, there are several practical concerns as to whether a "policy" would constitute a "*de facto*" prohibition on police authority. To the extent Columbia, Missouri's ordinance operates as a legal prohibition and a fixed standard for not-to-exceed fine amounts, and does not act as mere "policy", we believe adoption by the City of such an ordinance would also be beyond the City's home rule powers.

- The City may have some ability to provide guidelines to the City Prosecutor as to the exercise of discretion in fixing diversion fees. While the City should respect the concepts of prosecutorial discretion and separation of powers, current Kansas case law suggests that the City does have some room in this area in which it may work. We would defer to City staff and the City Prosecutor as to further practical issues that may arise should the City Council make enactments in this area.



Consider new and revised employee handbook policies to include paid parental leave, military leave, and designation of Juneteenth and Christmas Eve as City holidays

BACKGROUND

Offering competitive pay and benefits is crucial to ensuring the City continues to recruit and retain exceptional employees. Periodically, city administration reviews the benefits and policies offered to employees to ensure we are remaining competitive and providing similar benefits to that of our peers. With these goals in mind, staff is recommending revisions to three policies: a new policy to offer paid parental leave, revisions to the City’s current military leave policy, and the designation of Juneteenth and Christmas Eve as holidays by the City. In addition to these policy recommendations, the City will be conducting a thorough compensation and benefits study in 2022 and bringing forward recommendations to ensure the total compensation package remains competitive and is neither lacking nor overly generous when compared with the compensation package offered by similar jurisdictions.

Paid Parental Leave

Several cities in Johnson County have started to offer paid parental leave benefits in recent years, as well as the state and federal government. The City does not currently offer such benefits to our employees, so employees are required to take their paid sick and vacation leave in conjunction with FMLA if they want to take time off after the birth of the child. If an employee does not have enough sick or vacation leave accumulated, they are still able to take leave without pay under FMLA.

Staff is proposing a paid parental leave policy for full-time employees that will grant 6 weeks of paid leave to new parents for the birth or adoption of a child. The policy requires that the leave be taken within 12 weeks following the event, and once the 6 weeks of paid parental leave is exhausted, the employee has the option to use their accrued sick and vacation leave balances, take unpaid leave, or return to work. A leave of absence after the birth or adoption of a child, whether paid or unpaid, is limited to 12 weeks under the City’s FMLA policy. The proposed policy requires the employee to return to work for at least 12 months following the use of this benefit or reimburse the city for the cost of the leave upon separation of employment. Johnson County, Roeland Park, Shawnee, and KCMO currently offer this benefit, and several other cities are looking into offering the benefit. Below is a summary of how other cities in Johnson County currently handle paid parental leave.

City/County	Offers Paid Parental Leave
Johnson County	Yes, 4 weeks of paid parental leave for both parents within 12 months of birth/adoption
Leawood	No; subject to FMLA and accrued vacation and sick leave
Lenexa	No; subject to FMLA and accrued vacation and sick leave
Merriam	No; subject to FMLA and accrued vacation and sick leave; may be working on policy in future to create a paid parental leave benefit
Mission	No; subject to FMLA and accrued vacation and sick leave; may be working on policy in future to create a paid parental leave benefit
Olathe	No; subject to FMLA and accrued vacation and sick leave; may be working on policy in future to create a paid parental leave benefit
Overland Park	No; subject to FMLA and accrued vacation and sick leave
Prairie Village	No; subject to FMLA and accrued vacation and sick leave
Roeland Park	Yes, 6 weeks of paid leave for both parents
Shawnee	Yes, 6 weeks of paid leave for employee who gives birth and 3 weeks for parent who does not give birth

Military Leave

Under federal law, the City is required to grant an employee leave for service in the armed forces and reinstate the employee upon return from active duty or training. The City's current military leave policy also provides a pay differential to the employee for any military service that extends beyond 30 days. During the leave, the employee is paid the difference between their city rate of pay and military rate of pay to make the employee whole. For leave that is less than 30 days, the employee is able to take their accrued vacation or personal leave (or leave without pay) but are not currently eligible for the military pay differential as an alternative. Staff is recommending a revision to this policy based on feedback from employees currently serving in the armed forces to allow the employee to receive military leave pay even if the leave does not extend beyond 30 days. This would mean employees could receive military leave pay for short-term military leave rather than using their paid vacation and sick leave balances. Below is a summary of how other cities in Johnson County handle military leave.

City/County	Military Leave
Johnson County	Employee receives pay equal to the difference between an employees' regular pay and military pay, up to 15 working days per year for short-term military service. After 15 working days, the employee can use available vacation leave balances.
Leawood	Employee receives 10 days of paid military leave per year (not a pay differential); can use accrued leave benefits after that
Lenexa	Employee receives pay equal to the difference between an employees' regular pay and military pay, up to 10 working days per year for short-term military service. After 10 working days, the employee can use available vacation leave balances.
Merriam	Allows employee to take vacation and personal time for military duty obligations; otherwise, leave is unpaid.
Mission	Allows employee to take vacation and personal time for military duty obligations; otherwise, leave is unpaid.
Olathe	Employee receives pay equal to the difference between employees' regular pay and military pay up to two weeks per year. Leave beyond two weeks can be paid through accrued leave balances or taken as unpaid.
Overland Park	Employee receives pay equal to the difference between an employees' regular pay and military pay, up to 10 working days per year for short-term military service. After 10 working days, the employee can use available leave balances or take it unpaid.
Prairie Village	Employee receives pay equal to the difference between employee's regular pay and military pay when military leave exceeds 30 days. For leave less than 30 days, the employee can use accrued vacation and sick leave as well as leave without pay.
Roeland Park	Allows employee to take vacation and personal time for military duty obligations; otherwise, leave is unpaid.
Shawnee	Employee receives pay equal to the difference between employee's regular pay and military pay, up to 80 hours per calendar year. After 80 hours, employee can use vacation leave accruals or use vacation in lieu of military pay differential.

Addition of Juneteenth and Christmas Eve as City Holidays

Recently, the federal government designated Juneteenth as a federal holiday to commemorate the emancipation of African-American slaves. The City historically has recognized all federal holidays as city holidays, with the exception of Columbus Day, in which City employees are instead given a floating holiday to use on a date of their choosing. Staff is recommending adding Juneteenth as an official recognized holiday in the City of Prairie Village. No other cities in Johnson County have adopted Juneteenth as a recognized holiday yet that we are aware of, but staff has heard from several other cities that will be planning to incorporate Juneteenth into their official city holiday policies in the future.

In addition, Christmas Eve is not currently designated as a paid holiday; however, it has long been a tradition for employees to be dismissed at noon on Christmas Eve by the Mayor. While this is a tradition that many of our employees enjoy and are grateful for, it can become an administrative challenge to

manage the timecards for employees who work in the field, have taken the day off in advance, or who are required to work on the holiday due to being an essential public safety employee. To alleviate this issue, ensure equity in treatment of all employees, and be consistent with historical practice, staff is recommending designating Christmas Eve as an official half-day city holiday. Below is a summary of the number of holidays currently recognized by other jurisdictions in Johnson County.

City/County	Total Holidays (including official city holidays and floating holidays/personal days)
Johnson County	12 days per year
Leawood	11 days per year
Lenexa	11 days per year
Merriam	12 days per year
Mission	12 days per year
Olathe	11.5 days per year
Overland Park	11 days per year
Prairie Village	11 days per year
Roeland Park	10 days per year
Shawnee	11 days per year

BUDGET IMPACT

Each of these proposed policy changes has the potential to have a minor budget and operational impact. Some of these impacts are quantifiable in actual costs, while some of the impacts instead will be experienced through reduced productivity while employees are on leave or increased workload and overtime for other employees to cover the leave of another employee. All department directors have reviewed the proposed policies and believe that the benefit to the employees and the City outweigh the potential organizational impacts. Below is a summary of the assumed impacts by each of the proposed policies:

Paid Parental Leave

Employees are already eligible to take up to 12 weeks off after the birth or adoption of a child and use a combination of sick, vacation, and unpaid FMLA during this time. Adding a paid parental leave policy will not have a significant financial impact to the City because employees are already being paid through their accrued leave balances. This policy could result in an employee taking more time off due to the ability to receive paid time off for a longer period of time after the birth of a child than they might under current policy if they did not have enough paid sick and vacation leave available. This could result in a minor increase in overtime costs to cover the shifts of non-exempt employees on leave in the police department. Otherwise, the workloads of employees in other departments would be shifted to accommodate the leave consistent with current practice, and the overall impact would be minimal.

Military Leave Revisions

Revising the military leave policy to apply to short-term military leave has a minor budget impact and could result in a budget savings for the City. The City currently has 4 employees in military reserves. If all four of these employees took 30 days of paid military leave each year, the cost of their total military pay combined would be \$3,787. This is less than what the City would pay to these employees if they instead took vacation or personal leave (which is current practice), as the City would then be paying them their full-time rate of pay rather than the difference between their city rate of pay and military rate

of pay. There will be minimal operational impacts by adopting this policy, as the City is required by law to grant the military leave regardless of whether or not the employee receives military leave pay.

Paid Holiday Revisions

Recognizing Juneteenth and Christmas Eve (half-day) as city holidays will have a minimal budget impact. The actual costs of recognizing the holiday will occur in the police department, in which some employees are required to work on city holidays. The anticipated cost to the City by adding these holidays as paid holidays is \$3,849. This cost assumes that non-exempt employees who are required to work on the holiday receive holiday pay rather than taking the holiday off on a different day. Historically, many of our employees have chosen to take the holiday off on a different day rather than receiving holiday pay, so the actual costs of adding these holidays could be less. Staff believes the organizational impacts of adopting these holidays will be minimal, other than lost productivity by not requiring employees to work and reduced availability to residents due to city offices being closed.

ATTACHMENTS

- Proposed New Employee Handbook Policy 4.8 - Paid Parental Leave
- Proposed Revised Employee Handbook Policy 4.9 - Military Leave
- Proposed Revised Employee Handbook Policy 4.2 - Holidays

PREPARED BY

Cindy Volanti
Human Resources Manager
Date: June 30, 2021

4.8 PAID PARENTAL LEAVE - NEW POLICY (CHANGE NUMBERS OF SUBSEQUENT POLICIES)

Purpose

The purpose of paid parental leave is to enable employees to care for and bond with a newborn or newly-adopted child. This policy will be in effect for births or adoptions occurring on or after August 1, 2021.

Eligibility

Regular full-time employees are provided with paid parental leave upon the birth or adoption of a child with the employee and are eligible from their first day of employment with the City of Prairie Village. In order to receive paid parental leave, employees must meet one of the following criteria:

- a) Have given birth to a child.
- b) Be the spouse or domestic partner of a woman who has given birth to a child.
- c) Be listed as a parent on the child's official birth certificate.
- d) Have adopted a child.

Surrogate mothers and sperm donors are excluded from coverage under this policy. The adoption of a biological child by a new spouse is excluded from this policy. Foster placement is not eligible for paid parental leave under this policy.

Term of Leave

Eligible employees will receive 240 hours of paid parental leave equivalent to six weeks of pay. Paid parental leave is in addition to, and not a replacement for, any other paid leave for which an employee is eligible, excluding FMLA leave, which will run concurrently with paid parental leave. An employee who qualifies for paid parental leave who does not qualify for FMLA leave will be afforded the same level of job protection for the period of time that the employee is on paid parental leave as if the employee was on FMLA-qualifying leave.

Paid leave will be based on the employee's certified normal rate of pay. Paid parental leave must be used within twelve (12) weeks following the birth or adoption of a child and may only be used once per child. Multiple births or adoptions (such as the birth of twins) does not increase the length of paid parental leave granted for the event.

Paid Leave and Other Benefits

During the duration of the paid parental leave, the employee will continue to accrue paid vacation and sick leave benefits. The City will continue to pay the employer share of an eligible employee's group health benefits and the employee's share of premiums will continue to be deducted from their bi-weekly pay.

If paid parental leave is paired with other forms of paid leave, such as sick, vacation, and floating holiday, the paid parental leave shall be administered first followed by other forms of paid time off available to the employee. Under no circumstances will an employee receive more than 100% of their regular rate of pay during their leave period. If a City holiday occurs while the employee is on paid parental leave, such day will be charged as holiday pay and will not be deducted from the employee's paid parental leave hours. Paid parental leave will not count as hours worked for purposes of calculating overtime.

Paid parental leave may not be donated or transferred from one employee to another.

Procedures for Requesting Paid Parental Leave

An eligible employee must submit a completed Leave Request Form to Human Resources requesting Paid Parental Leave at least thirty (30) days prior to the anticipated date of leave. To the extent that 30-day notice is not possible, a leave request should be made as soon as possible. Employees may be asked to furnish appropriate adoption documentation. A fraudulent request for paid parental leave is grounds for dismissal. Upon the receipt of a completed Leave Request Form, Human Resources will review the request in coordination with the employee's supervisor and notify the employee of approval or denial of the leave request.

Return to Work

Employees who use paid parental leave must acknowledge on their leave request form that they intend to return to work and complete one year of employment with the City following the use of paid parental leave. Employees who are terminated within the one year of employment following the reimbursement of expenses for unsatisfactory performance/conduct will be required to reimburse the City for paid parental leave that was received. Employees will not be required to reimburse the City should any of the following events take place:

- Termination of employment for any reason other than unsatisfactory performance/conduct.
- Employee has completed one year of employment following the use of paid parental leave.

In no case will payment be made for an employee who has made it known that they plan to resign after utilizing the paid parental leave benefit. Exceptions to this return to work policy for extenuating circumstances may be granted with written approval from the City Administrator.

4.9 MILITARY LEAVE

It is the policy of the City of Prairie Village to provide paid military leave and reinstatement rights to full-time regular employees in a manner that benefits our employees and meets requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA). No employee or prospective employee will be subjected to any form of discrimination on the basis of that person's membership in or obligation to perform service to any of the Uniformed Services of the United States.

Eligibility

Full-time employees taking part in a variety of military duties are covered under this policy. Such military duties include leaves of absence taken by members of the uniformed services, including active duty, reserve, or National Guard, for training, periods of active military service, and funeral honors duty, as well as time spent being examined to determine fitness to perform such service. All full-time employees are eligible for military leave from the first day of employment with the City.

Military Leave Pay and Benefits

A military leave of absence will be granted to an employee to serve in the uniformed services of the United States in accordance with applicable law. Persons who perform and return from military service will retain certain rights with respect to reinstatement, seniority, layoffs, compensation and other benefits, as provided by applicable law. ~~Employees who wish to serve in the military and take military leave should contact Human Resources for more information.~~

~~Should the employee wish to apply for military leave pay, he/she will need to complete the Paid Military Leave Application Form. The employee will not be eligible for military leave pay until he/she has been called to active duty for more than thirty (30) days.~~ Military leave pay will be granted to employees during a military leave of absence to make the employee whole. Military leave pay will be limited to the amount of wages, when added to military wages, that would allow the employee to earn the same rate of pay if they were not on military leave. The military leave pay differential will be calculated at the time of application and will not change unless substantial changes in military or City pay occur. Under no circumstances will an employee receive more than 100% of their regular rate of pay when combining the employee's military leave pay from the City with the earnings received from the military during the military leave of absence.

The City will continue to cover the employer portion of the employee's premiums for benefits during military leave. Employee is responsible for continuing to pay the employee portion of premiums for all benefits in which employee is enrolled.

Employees ~~may, but are not required,~~ are not required to take benefit time or leave without pay during their approved leave and will be reinstated to their position when the military leave of absence concludes. ~~e his/her accrued utilize paid leave time during their military duty.~~

Procedures for Requesting Military Leave Pay

Unless military necessity prevents it, or is otherwise impossible or unreasonable, an employee should provide their direct supervisor and Human Resources with notice of the need for leave as far in advance as is reasonable under the circumstances. Written notice is preferred but not required. Department supervisors should notify Human Resources if they become aware of an employee with an upcoming need for military leave.

To receive military leave pay, an employee should provide Human Resources with a letter from their commanding officer establishing the dates of military leave and the employee's rate of pay with the military. Human Resources will then review the request to ensure all requirements of this policy have been met and notify the employee when their request is approved or denied. Human Resources must be notified of any change in the dates for the military leave of absence as soon as reasonably possible.

4.2 HOLIDAYS

~~Each year the Governing Body will designate the official City holidays for that year.~~ Full-time employees are eligible for holiday pay for any holiday approved by the Governing Body. The following days are typically recognized as official City holidays each year:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
<u>Juneteenth</u>	<u>June 19</u>
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November and the Friday following Thanksgiving Day
<u>Christmas Eve (half day)</u>	<u>December 24 (half day)</u>
Christmas Day	December 25
Floating Holiday	Upon approval of Department Manager

When an official City holiday occurs on a Saturday, it will be observed on the Friday preceding the actual holiday; if an official City holiday occurs on a Sunday, it will be observed on the Monday following the actual holiday. Christmas Eve will only be observed as a half day holiday when it falls on a weekday. If Christmas Eve falls on a Friday, it will be observed on the preceding Thursday afternoon.

If a non-exempt employee is required to work on an official City holiday, ~~he/she~~ the employee will receive an additional eight (8) hours of leave to use at a time mutually agreed upon by the employee and the Department Manager or receive compensation for the holiday hours at ~~his/her~~ their normal rate of pay. An exempt employee required to work on a designated holiday will be given another day off at a time mutually agreed upon by the employee and the Department Manager.

An employee who is terminated or who commences an unpaid leave of absence on the last scheduled workday preceding a holiday will not receive holiday pay. Holiday pay will not be paid for any employee who does not work on ~~his/her~~ their regularly scheduled workday before or after a designated holiday due to an unexcused absence. An employee who wishes to observe a religious holiday not identified above may take leave chargeable to floating holiday, accrued vacation, or leave without pay upon written request to and approval of the Department Manager.

Due to COVID-19 restrictions, most meetings will be held virtually. Please continue to check <http://pvkansas.com> for access details.

MAYOR'S ANNOUNCEMENTS
Tuesday, July 6, 2021

Arts Council	07/07/2021	5:30 p.m.
Planning Commission	07/13/2021	7:00 p.m.
City Council	07/19/2021	6:00 p.m.

INFORMATIONAL ITEMS
July 6, 2021

1. Environmental Committee meeting minutes - May 26, 2021
2. JazzFest Committee meeting minutes - June 2, 2021
3. July plan of action

The Environmental Committee met via Zoom on May 26, 2021 at 5:30 p.m.

Members in Attendance:

Chair - Ian Graves

Co-chair - Piper Reimer

City staff liaison - Ashley Freburg

Committee members – Stephanie Alger, Magda Born, Travis Carson, Richard Dalton, Beth Held, Nathan Kovac, Laura Lyons, Penny Mahon, Margaret Thomas

Agenda

Ian made a motion to approve the agenda. Magda seconded the motion. The motion was approved unanimously.

Minutes

Ian made a motion to approve the minutes from March 2021. Rich seconded the motion. The motion was approved unanimously.

New Business

Community Garden presentation

Community garden volunteer Linda Cosgrove discussed the status of the Prairie Village Community Garden. She stated there is a waiting list of 5-10 people each year. Plots are \$40 per plot, each gardener is required to volunteer at least three hours per summer, and surplus produce is donated through a local church.

Shade cast by a Siberian Elm tree on the south side of the garden has become a problem for some garden plots. The tree also prevents the expansion of the garden to accommodate additional gardeners. Community gardeners requested removal of the tree approximately five years ago, but at the time, the Tree Board did not want to remove the tree. Linda mentioned that the community garden was approximately five years old and there was uncertainty about its long-term viability five years ago. However, as the tree has continued to grow, the shade has become a bigger problem.

After discussing potential solutions, including additional locations for community gardens, the committee unanimously requested city staff look into removal of the tree and expansion of the garden at its current location.

Sleepy Head Beds mattress pickup

Councilmember Bonnie Limbird contacted city staff and asked that the city look into mattress recycling opportunities with Sleepyhead Beds. The city clerk's office researched and learned that Overland Park has a partnership with Sleepyhead Beds that allows residents to have mattresses picked up and recycled from their homes. The cost for this service is \$19 per mattress and is covered by the city. The normal cost is \$40, covered by the homeowner.

A large number of mattresses are hauled to the landfill each year during Prairie Village's large item pickup. After discussion, the Environmental Committee indicated they would be interested in seeing a similar program in Prairie Village.

Ian made a motion to recommend city council approval of an agreement with Sleepyhead Beds and allocating \$2,400 from the Environmental Committee's budget for the mattress pickup program. Rich seconded the motion. The vote was taken and recorded as follows:

Yes - Magda, Travis, Richard, Beth, Laura, Penny, Margaret, Piper, Ian

No - Nathan and Stephanie

Nathan and Stephanie noted they're willing to have the city explore the possibility but are not ready to support funding the program without more information.

Leaf Blowers

Ian reported that a resident sent an email regarding leaf blower usage in Prairie Village, specifically, the resident didn't like the noise. The resident asked what can be done about leaf blowers. Piper noted that the resident made a distinction between electric leaf-blowers and gas-powered, two-stroke engines.

Ashley indicated that the city has a noise ordinance that addresses noise concerns.

The committee discussed the environmental concerns of gas-powered blowers and mowers. The general consensus was that the committee is not interested in banning gas-powered lawn equipment, but instead would like to develop ways to incentivize the use of electric or battery powered. Margaret, Magda, and Nathan agreed to collaborate on an article for the Village Voice regarding the issue.

Old Business

KORA/KOMA

Kansas Open Meetings Act and Kansas Open Records Act training will be the primary focus of the Environmental Committee's next meeting. The League of Kansas Municipalities has prepared a training video that each volunteer committee will view.

Dynamhex Software:

The Dynamhex team is finalizing the city's carbon emissions tracking website. They are preparing a video to demonstrate how to use the software. The project is behind schedule. City staff anticipates it to launch sometime in the next month.

VillageFest 2021

The committee unanimously agreed not to participate in VillageFest To Go.

New Schedule

The request to update the committee's meeting schedule to enable more meetings was approved by the City Council. Meetings will be the fourth Wednesday of every month at 5:30.

There will not be a July meeting, and the November and December meetings will be combined and held the first week of December.

Updates on in-progress items with Public Works

Ian reported Public Works is working on an inventory of chemicals used in city parks.

Ian discussed trash traps in Brush Creek with Public Works Director Keith Bredehoft. Keith said he would reach out to Mid-America Regional Council to see how other communities are using them.

Other old business

Nathan discussed sending information about affordable EV charger installations to Ian, Piper, and Ashley to distribute and discuss in the future. This was previously mentioned in the January meeting.

Announcements

No announcements were made

Adjournment

Nathan made a motion to adjourn the meeting. Magda seconded. The motion was carried, and the meeting adjourned at 7:06.

Prairie Village Jazz Fest 2021
Committee Meeting
Wednesday June 2, 2021, 5:30 p.m.
MPR, Prairie Village City Hall

Attendees

Elissa Andre	Marketing Chair
Jim Barnes	Stage and Technical Chair
Meghan Boom	Assistant City Administrator
Al Guarino	PV Arts Council Liaison
J.D. Kinney	Special Events Coordinator, Committee Chair
Brooke Morehead	Fundraising Chair
Inga Selders	Prairie Village City Council, Council Liaison
Kyle Vanlanduyt	Master of Ceremonies
John Wilinski	Backstage/Artist Services Chair

Committee Chair's Report

JD Kinney reported he had accepted a new position with City as Special Events Coordinator. JD offered to remain Chair of the 2021 Jazz Fest Committee serving at the pleasure of the Mayor and the Committee, but will support a new Chair if a current volunteer wishes to serve in 2022.

He noted that it is looking more and more like we should plan for a Jazz Fest crowd of traditional size and asked subcommittee chairs if they anticipated that this would change any of the assumptions they have been making regarding the scope of the event or services offered.

JD noted that Mike Poelich has withdrawn as Chair of Rental Infrastructure for the 2021 event and that JD will assume his duties until Mike returns or a new Chair is found.

Fundraising and Sponsorships

We have had sponsorship (booth) inquiries from Humana and another company as yet unidentified. JD has reached out to Beckman Dentistry and will contact Renewal by Andersen this week. Meghan Boom will coordinate contributions from Republic Services Van Trust and First Washington for now, as those organizations make donations to the Prairie Village Foundation, which are then allocated between the various events under the Foundation's leadership. Brooke Morehead expressed interest in managing other fundraising. JD will forward Brooke a list of companies who have donated \$1,000 or more in previous years.

Talent

Alex Toepfer reported via text that two acts; Back Alley Brass Band and Glamour Profession had been secured. Contracts pending.

F&B

Liquor license acquisition is underway.

VIP Services

We will proceed with a dedicated seating area bounded by staked wrought iron fence and city mesh barriers rather than a rented tent. The dedicated seating area will have easy access to the beverage service tent

It is proposed to provide VIP-level sponsors (\$1,000 or more) not marketing via booth rental receive a *Festival Kit* including: One or two bag chairs with Jazz Fest logo, one or two Jazz Fest blankets, 2 can wraps, unlimited beverages, and VIP picnic food in PV insulated bag. The intent is to fill the food bag with selections from PV companies such as Laura Little, French Market, Better Cheddar, Caffeteria, etc.

Booth sponsors would receive a *Sponsors Kit* including: One Jazz Fest blanket, 2 can wraps, unlimited nonalcoholic beverages and a variety of snacks in PV insulated bag. The variety of snacks might include items from both PV companies and bulk retail items.

Stage, Lighting and Technical Services

Jim Barnes reported that he had been in contact with SECT and asked them to prepare a bid for a stage, light, sound and electrical configuration with the same specifications as 2019. Assuming the Skate Park electrical access point is finished in time, one less mobile generator would be needed than 2019.

Rented Infrastructure

Marquee Event Rentals and AAA Party Rental have submitted bids based on need assumptions based on the 2019 Jazz Fest final invoice from Accent Special Event Rental (out of business), final decision pending.

Marketing

Elissa Andre reported that Bridge FM extended our 2 year contract originally slated for 2019-2020 to cover the 2021 event. Shawnee Mission Post offered a similar "Take Over the Site" Marketing blitz for August 11- September 11. It was agreed to let them announce the headline act exclusively when a contact has been finalized.

A Save the Date postcard is planned to be added to the Village Fest (July 4th Celebration) gift bag giveaway. Design and cost TBD pending final talent lineup.

Bag Chairs for Festival Kit - Pricing and vendor needed - qty 50 Preliminary cost estimated at \$25 each. 120 yard signs including stakes budgeted for \$780.00. 1,500 fans - Beckman may sponsor, has right of first refusal based on previous sponsorship of fan. Pricing estimated at .85 each

Lanyards rather than volunteer t-shirts will be used in 2021 to save some money. Distinctive lanyards needed for: committee members, stage crew, volunteers, sponsors, talent and VIPs to identify each for access to venues and services

Backstage

John Wilinski asked whether plans are being made to limit the number of people allowed to congregate backstage if public health becomes a concern. The size of the ensembles performing (and potential plus ones) will drive determination of maximum occupancy. Our intent is to maintain a comfortable and collegial environment as in years past. Carpeted platform with rented furniture id planned and budgeted. Wine from 2019, water/soda and bulk retail food to be provided.

Stage Crew meals are to be sourced through PV companies - Minsky's, Einstein Brothers, Panera, Great Harvest, Johnny's, etc. PV PD, JOCO EMT and onsite Public Works meals also to be coordinated through the Backstage Chair with Luke Roth.

Artist F&B to be separate from Stage Crew, PD and VIP.

Arts Council

Al Guarino provided a layout of the Arts Council booth space indicating rented items and items already owned by the Arts Council. Al reported that the Arts Council will not be sponsoring a separate 10 foot booth designated for kids or youth activities at the 2021 Festival.

The next Jazz Fest Committee meeting was scheduled for Wednesday, June 23, 2021, at 5:30 p.m., in the City Council Chambers at Prairie Village City Hall.


The meeting concluded at 6:15 p.m.

Respectfully submitted: JD Kinney



THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: June 30, 2021
TO: Mayor Mikkelson
City Council
FROM: Wes Jordan 
SUBJECT: JULY PLAN OF ACTION

The following projects will be initiated during the month of July:

- 2022 MH Budget & Contract - Chief (07/21)
- Climate Action KC Presentation - Jamie (07/21)
- PW New Building Open House/Social Media - Keith/Melissa/Ashley (07/21)
- 2021 Annual CID Report - Nickie (07/21)
- Building Permit Software Research & Evaluation - Jamie (07/21)
- Health-related Benefits Review w/Insurance Committee - Jamie/Cindy (07/21)
- Planning Codes Dept. Move to Public Works - Jamie/Mitch (07/21)
- Policy/KOMA Training for Committee Members - Meghan (07/21)
- 2022-2023 Crossing Guard Contract - Chief (07/21)
- Roberts Rules of Order Training/MARC - Adam/Meghan (07/21)
- 2022-2023 SRO Contract - Chief (07/21)
- 2022 Budget
 - Resolution Regarding Exceeding Revenue Neutral Rate/Public Hearing - Nickie (07/21)

In Progress

- UCS Racial Equities in Communities Program - Tim (06/21)
- Receptionist Hiring Process - Meghan/Adam (06/21)
- Review/Revise Site Planning Criteria in Zoning Regulations - Jamie (06/21)
- Organize/Combine Property Maintenance Ordinances - Jamie/David (06/21)
- Schedule UCS Housing Task Force Presentation - Jamie (06/21)
- Bird Scooters/Draft Pilot Program - Keith (06/21)
- Plan for In Person Council/Committee Meetings - Tim (05/21)
- Investment Policy for Voya 457/401a Plans - Cindy/Jamie (05/21)
- Internal Accounting Policy/Vendor Process Changes - Nickie (04/21)
- Regional Benchmarking Initiative - Meghan (04/21)
- American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)

- Pool Mural Project - Meghan (04/21)
- 2022 Budget Process - Staff (04/21)
- City Hall Conceptual Review - Staff (03/21)
- 2021 International Energy Conservation Code - Jamie/Mitch (03/21)
- Implementation of Smoking Ban in Parks - Meghan (03/21)
- VillageFest Feasibility and Planning - Meghan (03/21)
- JazzFest Feasibility and Planning - Meghan (03/21)
- Geothermal Software Upgrade - PW (10/20)
- E/V Charging Station Installation - PW (10/20)
- Dynamhex Implementation - Ashley (10/20)
- Historic Trail Signage - Keith (09/20)
- Bias Training - Tim/Byron (07/20)
- PW New Facility Planning - Keith (09/19)
- Memorial Plaques in Parks Criteria Review - Staff (08/19)
- Research Viability of Interior Rental Inspections - Jamie (06/19)
- Statuary Maintenance Plan - Meghan (05/19)
- Personnel Policy Updates - Cindy/Jamie (07/18)

Completed

- JOCO Municipalities Housing Study Task Force - Jamie (07/19)
- Orientation Process for New Volunteer Committee Members - Staff (12/20)
- Juneteenth Event at Franklin Park - Staff (06/21)
- 2020 Audit Presentation/CAFR - Nickie (06/21)
- Meadowbrook Phase II Park Plan Presentation - Jamie (06/21)
- Review Alternative Changes to the Marijuana Ordinance - Tim (02/21)
- Update Beverage Ordinance(s) - David/Adam (06/21)
- Legal Review of Marijuana Enforcement - David (06/21)
- Pool Repairs/Logistics - Keith/Meghan (06/21)
- Review of Court Diversion Costs - Tim (06/21)
- Animal Boarding Agreement - Chief (06/21)
- Meadowbrook Phase II Park Planning - Jamie/Meghan (04/21)
- Sculpture Unveiling - Meghan/Bonnie/Keith (11/19)

Tabled Initiatives

- 20/20 Fitness Business Introduction to Council - Wes (04/20) [delayed]
- Civic Center Action Plan - Staff (03/20) [on hold]
 - Bond Capacity Discussion w/Council - Jeff White [completed]
 - Framework of Partnership Agreements with YMCA & Library
 - MOU - Public Engagement & Site Design
- Review & update the City Code/Ordinances
- Review & Update City Policies
- Review of Smoking Ordinance/e-cigs
- Single Use Plastic Bag Discussion - Staff (02/20) [pending Council direction]