

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
Tuesday, February 22, 2022
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 February 22. 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 February 22 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 - February 7, 2022
- 2. Approval of expenditure ordinance #3011
- 3. Consider Ordinance 2467 correcting nuisance abatement numbering error
- 4. Consider appointment of committee members
- 5. Approval of construction contract for Taliaferro Park shelter and restroom improvements (BG460001)

VIII. **COMMITTEE REPORTS**

IX. **MAYOR'S REPORT**

X. **STAFF REPORTS**

XI. **OLD BUSINESS**

XII. **NEW BUSINESS**

COU2022-16 Consider approval of Resolution 2022-01, declaring it to be the intent of the Governing Body to vacate and discontinue a public utility easement at 4415 W. 89th Street
Jamie Robichaud

COU2022-18 Consider repealing Ordinance 2466 requiring the wearing of face coverings or masks
Mayor Mikkelson

Consider return to hybrid Council meeting format
Mayor Mikkelson

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

COU2022-17 2023 Budget calendar
Nickie Lee

Transient guest tax discussion
Nickie Lee

XIV. **ANNOUNCEMENTS**

XV. **ADJOURNMENT**



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
FEBRUARY 7, 2022**

The City Council of Prairie Village, Kansas, met in regular session on Monday, February 7, 2022, 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: Chad Herring, Cole Robinson, Inga Selders, Ron Nelson, Lauren Wolf, Bonnie Limbird, Dave Robinson, Piper Reimer, Greg Shelton, Courtney McFadden, Ian Graves, and Terrence Gallagher. Staff present: Byron Roberson, Chief of Police; Melissa Prenger, Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Tim Schwartzkopf, Assistant City Administrator; Meghan Boom, Assistant City Administrator; Nickie Lee, Finance Director; Ashley Freburg, Public Information Officer/Deputy City Clerk; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Herring made a motion to approve the agenda for February 7, 2022. Mr. Nelson seconded the motion, which passed unanimously.

PRESENTATIONS

- Mayor Mikkelson recognized Councilmembers for their service, and presented their annual ceremonial checks.
- Mayor Mikkelson read a proclamation declaring February 2022 as Black History Month in Prairie Village.

PUBLIC PARTICIPATION

None

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 - January 12, 2022
2. Approval of regular City Council meeting minutes - January 18, 2022
3. Consider approval of 2022 agreements with the Johnson County Park and Recreation District
4. Consider appointment of committee members
5. Consider 2022 recreation fee schedule

Ms. Limbird made a motion to approve the consent agenda as presented. A roll call vote was taken with the following votes cast: “aye”: Herring, C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, McFadden, Graves, Gallagher. The motion passed unanimously.

COMMITTEE REPORTS

- **Environmental Committee**

Consider approval of a mattress removal and recycling program with Sleepyhead Beds

Ms. Reimer stated that the Johnson County landfill was expected to reach full capacity by 2043, and that it was critical to divert items from the landfill whenever possible. The Environmental Committee proposed a partnership with Sleepyhead Beds to divert mattresses destined for the landfill during Prairie Village’s annual large-item trash pickup. Sleepyhead Beds is a non-profit, 501(c)(3) charitable organization founded in 2010 that takes gently-used, donated beds and bedding and distributes them to Kansas City area children and families in need, free of charge. In 2017, more than 2,000 families received beds and over 56 tons of waste was diverted from landfills.

If approved, residents would be asked to let the City know if they will be putting out mattresses during the large-item pickup and indicate how many and what condition they are in. City staff will then provide a list to Sleepyhead Beds, who will visit each of the City’s four pickup zones the Friday before Republic crews will be in the area. Any mattresses that are not in a condition to be re-used will be collected by Avenue of Life and recycled.

For 2022, Sleepyhead Beds has offered Prairie Village a rate of \$19 per mattress collected. The organization has a similar program in Overland Park, where in 2020, a total of 983 mattresses were collected. If Prairie Village households participated at the same rate as Overland Park, Sleepyhead Beds and Avenue of Life could anticipate picking up 228 mattresses at a cost of \$4,335.50.

City staff asked solid waste contractor Republic Services for information on the number of mattresses hauled to the landfill in recent years during the large-item pickup. Republic estimated anywhere from 5%-10% of households may put at least



one mattress out for collection. With 8,450 houses on the City's solid waste contract, 5% participation would result in 423 mattresses at a cost of \$8,037, and 10% would result in 845 at a cost of \$16,055.

At its January 26, 2022 meeting, the Environmental Committee voted unanimously to commit the entirety of its 2022 budget, totaling \$8,000, to the proposed mattress removal and recycling program with Sleepyhead Beds. Any additional costs for the program would be covered by the General Fund.

Mrs. McFadden made a motion to approve the mattress removal and recycling program with Sleepyhead Beds in conjunction with the annual large-item pickup. Ms. Reimer seconded the motion. After further discussion, the motion passed unanimously.

- Mr. Shelton congratulated Greg Wolf and James Breneman for being unanimously reelected as Planning Commission Chair and Vice-Chair, respectively.
- Mr. Dave Robinson stated that the JazzFest Committee met on January 22, and selected Saturday, September 10 as the date for the event at Harmon Park. The committee is attempting to re-book musical acts that were originally planned to perform at the cancelled event in 2021.
- Mrs. McFadden said that the VillageFest Committee met and discussed plans to hold the event in-person on July 4, 2022.
- Ms. Selders noted that the REIC pilot program group met on January 19 to review learning highlights from the first half of the program, and discussed how those concepts could lead to culturally responsive systems change in jurisdictions, to better address systemic racism.

Ms. Selders also reported the Diversity Committee met on January 19, at which a presentation was given by Dr. John McKinney, Director of Student and Family Services for the Shawnee Mission School District, and Dr. Tyrone Bates, the Director and Coordinator of Diversity, Equity and Inclusion for the District. Additionally, funding for a BIPOC "playdate" was approved, which will be spearheaded by several Diversity Committee members. An affordable housing town hall event would also be held in Prairie Village at a later date.

- Ms. Limbird acknowledged new Arts Council member Abby Magariel, and stated that the February artist reception at the Meadowbrook Park clubhouse had been rescheduled for February 16. Additionally, entries for the "2022 Art of Photography" exhibit were now being accepted.



- Ms. Reimer stated that the UCS Drug and Alcoholism Council met on January 20. Reports on vaping and overdose data were reviewed, and preparations for the 2022 grant cycle were underway.

MAYOR'S REPORT

- The Mayor stated that he attended board meetings for the Mid-America Regional Council (MARC) and United Community Services of Johnson County.
- The Mayor chaired a Johnson County/Wyandotte County Mayors Council meeting.
- The Mayor co-chaired the MARC First Suburbs Coalition meeting, at which a discussion on a regional housing data hub was held.
- The Mayor congratulated the Shawnee Mission East boys' swimming team for winning the league championship.
- The Mayor attended a kick-off press conference for the Faith Always Wins Foundation at the World War I Memorial in Kansas City, MO.
- The Mayor congratulated members of the Northeast Johnson County Chamber of Commerce leadership class, which included Mr. Cole Robinson, Mr. Schwartzkopf, and Human Resource Manager Cindy Volanti.
- A virtual Council work session was planned for Saturday, February 12.
- The rescheduled Martin Luther King, Jr. Day celebration would be held on February 26 at the Village Presbyterian Church.
- The Mayor will provide a civic update at the Mission Chateau senior living facility in early March.

STAFF REPORTS

- Consolidated Fire District #2 Chief Steve Chick gave a report on the state of the department, including COVID-19 challenges and recent hires. He also shared data about call activity within the City over the past four years.
- Chief Roberson noted that he had participated in a law enforcement symposium at the Kansas City Police Academy, and shared information on recruitment efforts. He also introduced recently hired co-responder, Amy Hennes.
- Mr. Geffert gave a report on the property tax rebate program, noting that over 20 households had been provided refunds, and approximately \$9,000 in funding remained.
- Mr. Jordan said that the February plan of action was included in the meeting packet.

OLD BUSINESS

There was no old business to come before the Council.



NEW BUSINESS

COU2022-13

Consider agreement with Witt O'Brien's, LLC to provide consulting services to the City regarding use of American Rescue Plan funds

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

According to the allocation formula, the City of Prairie Village will receive in total \$3,382,298.77. Fifty percent of the funds, or \$1,691,149.39, were received in July 2021, and the additional fifty percent will be distributed in July 2022. Cities will have until 2024 to obligate the funds. In general, the legislation allows for the following uses: 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.

Ms. Lee noted that the City did not typically receive direct federal funding, and as such, staff did not have the expertise to stay in compliance with federal procurement regulations. She added that Witt O'Brien's was currently the consultant for the State of Kansas, Johnson County, and other local jurisdictions.

Mr. Nelson made a motion to approve the agreement with Witt O'Brien's, LLC to provide consulting services regarding the use of American Rescue Plan Act funds. Mr. Dave Robinson seconded the motion, which passed unanimously.

COU2022-14

Consider extending an ordinance requiring the wearing of face coverings or masks during the COVID-19 public health emergency and recovery

Johnson County Health Director Dr. Sanmi Areola provided an update on the COVID-19 pandemic in Johnson County, noting that incidence and positivity rates had both begun dropping in the past week, as had hospitalizations. He added that rates were still higher than previous waves, and as a result, mitigation efforts such as social distancing and masking were still recommended.

Mr. Schwartzkopf said that the current ordinance would expire at midnight on February 16, 2022. He noted that staff had received very few complaints directly, and the Police Department had not issued tickets to anyone for violating the ordinance. Council was presented with three options to consider:

1. No action - the ordinance will expire by default



2. Extend the current ordinance with a new date of expiration of March 16, 2022
3. Amend the current ordinance with any changes and a new date of expiration

Councilmembers shared concern that some City businesses had posted signage that did not state masks were required indoors, which did not follow the rules of the ordinance. Mayor Mikkelson noted that several businesses had requested signage created by City staff indicating masks were required.

Mrs. McFadden made a motion to extend the current mask ordinance with a new date of expiration of March 16, 2022. Mr. Herring seconded the motion.

Mayor Mikkelson said that Council could reevaluate the expiration date at its next meeting on February 22.

After further discussion, a roll call vote was taken with the following votes cast: “aye”: Herring, C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, McFadden, Graves, Gallagher. The motion passed unanimously.

COU2022-10 Consider approval of revisions to CP509 - swimming pool schedule

Ms. Buum stated that the Council Committee of the Whole had approved the following changes to Council Policy 509 at its January 18 meeting:

- A noon opening for all pools within the pool complex to make it possible to hire 15 year-old lifeguards
- Reduced hours beginning in August
- Slide/diving area closure during dive meets
- 6 p.m. closure on the Fourth of July
- Adjustment of pool closure for swim meets to begin at 4:00 p.m. from 4:30 p.m.
- 5:00 p.m. closure on Labor Day to allow pool staff more time for closing operations (currently closes at 6:00 p.m.)

Mrs. McFadden made a motion to approve the revisions to CP509 - Swimming Pool Schedule, establishing new hours for the regular season, and clarifying current practice for reduced and special hours. Mr. Gallagher seconded the motion.

Mr. Herring shared his concern of hiring 15 year-olds to serve as lifeguards.

A roll call vote was taken with the following votes cast: “aye”: C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, McFadden, Graves, Gallagher; “nay”: Herring. The motion passed 11-1.



Ms. Limbird made a motion for the City Council to move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Ms. Reimer and passed unanimously.

COUNCIL COMMITTEE OF THE WHOLE

COU2022-15 Consider construction contract for Taliaferro Park shelter and restroom improvements (BG460001)

Ms. Prenger said that the proposed bid included the construction of a new, permanent restroom and replacement of the shelter at Taliaferro Park, located at 2900 W. 79th Street. The restroom design is similar to the restrooms recently installed at Porter and Wassmer Parks, with a color palette to match Taliaferro Park. The shelter was bid with two options: a pre-fabricated steel structure or a custom-built structure. Staff recommended the custom-built shelter as the final construction option for the park.

Ms. Prenger added that four acceptable bids were received, and that two other bids were incomplete and disqualified:

- Combes: \$521,367.57
- Herner: \$590,488.01
- Centric: \$633,385.02
- Gunter: \$704,976.00
- Consultant's estimate: \$447,323.00

Ms. Prenger noted that the consultant's estimate was approximately 14% below the lowest bid. The estimate functions as a benchmark to reflect market pricing and serves as a baseline for bid evaluation. In compiling the estimate, the consultant attempted to anticipate market conditions; however, prices continued to change rapidly due to the pandemic and its effect on transportation, supply and manufacturing. Ms. Prenger suggested that there would be no benefit to rebidding the project due to market instability, and recommended awarding the contract to the lowest responsible bidder, Combes Construction, in the amount of \$521,367.57. This cost includes the custom-built shelter option that was considered. A transfer from the Park Infrastructure Reserve fund to the project in the amount of \$25,000 will also be included. Funding is available in the CIP fund for the shelter and restroom improvements.

Mr. Gallagher made a motion to approve the construction contract with Combes Construction, LLC for the Taliaferro Park shelter and restroom improvements. Mrs. McFadden seconded the motion, which passed unanimously.

Mrs. McFadden moved that the City Council end the Council Committee of the Whole portion of the meeting. The motion was seconded by Mr. Shelton, and passed unanimously.



PRAIRIE VILLAGE
KANSAS

ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

ADJOURNMENT

Mayor Mikkelson declared the meeting adjourned at 8:07 p.m.

Adam Geffert
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

February 7, 2022

Copy of Ordinance
3011

Ordinance Page No. _____

An Ordinance Making Appropriate for the Payment of Certain Claims.

Be it ordained by the governing body of the City of Prairie Village, Kansas.

Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of funds in the City treasury the sum required for each claim.

NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
25417-25514	1/7/2022	629,685.57	✓
25515-25517	1/14/2022	6,906.59	✓
25518-25635	1/21/2022	728,164.05	✓
25636-25642	1/28/2022	19,135.76	✓
Payroll Expenditures			
1/14/2022		335,954.69	✓
1/28/2022		652,100.34	✓
Electronic Payments			
Electronic Pmnts	1/1/2022	3,004.58	✓
	1/5/2022	4,456.31	✓
	1/10/2022	5,310.53	✓
	1/11/2022	7,239.67	✓
	1/18/2022	200.26	✓
	1/19/2022	147.69	✓
	1/25/2022	157.92	✓
	1/28/2022	850,000.00	✓
TOTAL EXPENDITURES:			3,242,463.96
Voided Checks			
	Check #	(Amount)	
Office Depot	25417	(147.73)	✓
Quality Litho Inc	25418	(219.00)	✓
Creative Product Sourcing Inc	25432	(4,920.48)	✓
Kaw Valley Engineering Inc	25472	(1,427.00)	✓
Travis Gray	25546	(48.00)	✓
Kaw Valley Engineering Inc	25594	(2,109.00)	✓
TOTAL VOIDED CHECKS:			(8,871.21)
GRAND TOTAL CLAIMS ORDINANCE			3,233,592.75

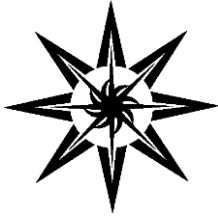
Section 2. That this ordinance shall take effect and be in force from and after its passage.

Passed this 7th day of February 2022.

Signed or Approved this 7th day of February 2022.

ATTEST: *[Signature]* 2/4/22
City Treasurer

ATTEST: *[Signature]* 1/31/2022
Finance Director



Consider Ordinance 2467 correcting nuisance abatement numbering error

RECOMMENDATION

Staff recommends that the Governing Body adopt Ordinance 2467, correcting the numbering errors in Ordinance 2459, creating Chapter 8, Article 6 of the Municipal Code of Prairie Village.

BACKGROUND

On November 1, 2021, the Governing Body approved the passage of Ordinance 2459, creating a new Article 6 of Chapter 8 (Health and Welfare); establishing standards and procedures related to nuisances, unsafe or dangerous structures, abatement of code violations, and establishing penalties therefore. Due to a scrivener's error, certain sections were numbered incorrectly. Ordinance 2467 corrects the numbering of this article.

ATTACHMENTS

Ordinance 2459
Ordinance 2467 (redline)
Ordinance 2467 (final version)

PREPARED BY

Adam Geffert
City Clerk
February 16, 2022

ORDINANCE NO. 2459

AN ORDINANCE CREATING NEW ARTICLE 6 (NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS) OF CHAPTER VIII (HEALTH AND WELFARE), AND ENUMERATED SECTIONS THEREIN; ESTABLISHING STANDARDS AND PROCEDURES RELATED TO NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS; AND ESTABLISHING PENALTIES THEREFORE.

WHEREAS, the Governing Body of the City of Prairie Village, Kansas, finds that the allowances of nuisances and unsafe or dangerous structures, and properties that otherwise do not comply with the building, property maintenance, and other codes of the City may be public nuisances which are unsightly or dangerous to the health, safety, and welfare of the inhabitants of the City;

WHEREAS, the City has adopted certain building, property, maintenance, and other life/safety codes applicable to properties and structures within the City;

WHEREAS, Kansas statutes, including but not limited to K.S.A. 12-1617e *et seq.*, and K.S.A. 12-1750 *et seq.*, as amended, provides for the abatement of unsafe or dangerous structures, abandoned properties, and other nuisances; and

WHEREAS, K.S.A. 12-1671g, as amended, provides that the governing body of any city is granted the power to pass and adopt all ordinances that are necessary to carry into effect statutory provisions related to the abatement of general nuisances, and to provide penalties for the violation of the provisions of such ordinances not inconsistent with the provisions of statute.

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

Section 1. That a new Article 6 to Chapter VIII of the Prairie Village Municipal Code, with the enumerated sections set forth below, is hereby established to read as follows:

CHAPTER VIII. HEALTH AND WELFARE

ARTICLE 6. NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS

SUBDIVISION 1. GENERAL TERMS

**6-101 NUISANCES AND UNSAFE OR DANGEROUS STRUCTURES;
LEGISLATIVE FINDINGS.**

(a) The purpose of this article is to provide reasonable controls restricting and prohibiting the allowance of nuisances and unsafe structures to exist on property within the City; to declare that certain conditions which are unsightly, are a menace and dangerous to the health of the inhabitants of the City, or are offensive to the general public health, safety and welfare of the community constitute public nuisances; to provide a method of enforcement of this section; to provide procedures to notify property owners or those in control of real property, notification and an opportunity to be heard concerning violations of this section; to provide administrative procedures to allow the City to direct the abatement of violations; to provide a method of assessment

or collection of costs for abatement by the City; to declare that the existence of such violations are unlawful; and to provide penalties for enforcement through the municipal court system.

(b) The Governing Body of the City hereby finds that the allowances of nuisances and unsafe or dangerous structures, as defined herein, on private property or adjacent rights-of-way or easements, are public nuisances, a menace and dangerous to the health of the inhabitants of the City, and of the residential or commercial areas of the City, and are offensive to the general public health, safety, and welfare of the community. Such nuisances or unsafe structures promote conditions which may cause disease; pollution; proliferation of rats, vermin, mosquitoes and snakes; the spread of fire; a harmful environment for transients and the community as a result of transient use; harmful attractions for children; creates long and short-term impacts on the area including the diminution of property values and the integrity of the neighborhood; and interferes with the orderly development of property in the City.

6-102 DEFINITIONS.

Certain terms used herein but not defined herein shall have such meanings as set forth in the International Building Code or the International Property Maintenance Code, as adopted by the City, which definitions are incorporated herein by this reference.

(a) *Abandoned property* – means:

(1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding ninety (90) days; or

(2) commercial real estate for which the taxes are delinquent for the preceding two (2) years and which has a blighting influence on surrounding properties.

(b) *Blighting influence* – means conditions in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the municipality or which have an adverse impact on properties in the area. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; air pollution; light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations.

(c) *Commercial real estate* - means any real estate for which the present use is other than one to four residential units or for agricultural purposes.

(d) *Enforcing officer or building official or codes official*– means the building official, building inspector, code enforcement officer, or other designated city official tasked with enforcing property maintenance laws in the City.

(e) *Graffiti* – means any drawing, painting, writing, inscription, figure or mark, regardless of its content, of the type which is commonly known and referred to as graffiti, which is written, drawn, painted, sprayed, scratched or otherwise placed or affixed, regardless of the nature of the material used, on any wall, window, rock, building or portion thereof, fence, gate, sign, other structure, tree or other real or

personal property, either publicly or privately owned, and that is visible from any adjacent public or private property or public or private right-of-way.

(f) *Nuisance* – means any condition which has been declared a nuisance under other provisions of this code, and also includes any condition which causes or creates an unreasonable interference with the rights of the general public and shall include but not be limited to: graffiti; rank vegetation; noxious weeds or uncontrolled thickets; weeds or plant growth (excluding trees or shrubs or cultivated flowers and gardens) in excess of eight (8) inches in height; rank or infested compost heaps; dense smoke; excessive dust; ash or fine particles in the air; rank ponds or standing water including swimming pools, water receptacles and un-drained areas; cesspools creating on or rising to the surface; rank odors; unkempt trash, refuse, brush, leaves, or limbs; unkempt landscaping; debris or building materials; rank sewage or septic system; excessive accumulation of animal waste; exposed animal carcasses after death; sheds, garages or buildings allowing infestation of rodents or insects or left unsecured to allow the entry of animals, humans or the natural elements such as rain, hail and snow, or otherwise left unkempt or unsightly, except for outdoor dog or pet houses maintained in a clean and reasonable manner; trees, shrubs, or plants which are dead, diseased or infested which present a harmful or dangerous condition to the public; exposed refrigerators or freezers or other appliances left unsecured; any condition that essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others; and any other condition which is determined to present a dangerous or harmful condition or unreasonable interference with the rights of the general public.

(g) *Perennial violator* – means any person who shows an annual pattern of failing to comply with this section which may be shown by repeated notices of abatement, notices of costs, or previous violations.

(h) *Person* – means any individual; individual's partnership; corporation; unincorporated association; other business organization; committee; board; trustee; receiver; agent; or any representative who has charge, care or responsibility of maintenance of any property, lot or parcel of land regardless of status of owner, tenant or lessee, or occupant, and regardless of whether such person has possession.

(i) *Property owner* – means the named property owner as indicated by the register of deeds, appraiser's office, or treasurer's office in Johnson County, Kansas.

(j) *Qualified expert* – means a person who is regularly employed to conduct structural inspections to comply with life, safety, mechanical, plumbing, health and building codes or a licensed professional in the field of engineering or architecture.

(k) *Representative or agent* – means any person or entity listed in the Johnson County, Kansas appraiser's office or treasurer's office for the purposes of paying taxes; a registered agent with the Kansas Secretary of State's Office for corporate, partnership, or other business entity ownership; an agent or manager directed by the property owner, estate, or court order to represent the interests of the property or to otherwise control activities on the real property; or a corporate or other business entity or similar entity officer.

(l) *Tenant or occupant* – means any person who has a severable or non-severable interest in the real property either oral or written lease or covenant or by other methods of conveying a limited interest in such lands; or by any person who occupies or has possession of such real property.

(m) *Unsafe or Dangerous Structure* – means (i) any structure that is deemed unsafe, unfit for human occupancy, unlawful, or dangerous as established under the International Property Maintenance Code, as adopted by the City, and/or (ii) any structure or part of a structure which remains or is damaged to present a

dangerous or unsafe condition to the public including, but not limited to, structures damaged by fires, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding, or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, missing boards or siding, unsecured doors, or unsecured openings which allow the harboring of animals, insects, transients, or create an attraction to children; structures which due to the opinion of qualified experts or inspectors, including but not limited to, fire, engineering, or architectural experts; present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued, and any building permit has lapsed for more than ninety (90) days; structures which remain unfinished, or without an occupancy permit, after eighteen (18) months from the date of the first building permit and where no inspection for newly completed work has been requested within the last ninety (90) days.

SUBDIVISION 2. UNSAFE OR DANGEROUS STRUCTURES

6-201 UNSAFE OR DANGEROUS STRUCTURES UNLAWFUL; RESPONSIBILITY TO ABATE.

It shall be unlawful for any property owner, owner's agent or tenant of real property to allow or maintain an unsafe or dangerous structure on any lot or parcel of ground within the City. The property owner, owner's agent, or tenant shall be responsible for the removal or abatement of any unsafe or dangerous structure. The City shall have the power to cause the repair or removal of, or to remove any structure located within the City, which may have become unsafe or dangerous, as provided in this article and under Kansas statute.

6-202 ENFORCEMENT AGAINST UNSAFE OR DANGEROUS STRUCTURES; DESIGNATION OF OFFICER; NOTICE TO APPEAR; HEARING; RESOLUTION OF ABATEMENT.

(a) The building official, or his or her designee, shall assist the Governing Body with the administration and enforcement of this article with regards to dangerous and unsafe structures, and shall be the enforcing officer for purposes of this article and K.S.A. 12-1750 *et seq.*, as amended. The building official shall authorize the investigation of unsafe or dangerous structures by his or her designated agents.

(b) Whenever the enforcing officer files with the Governing Body a statement in writing that any structure, describing the same and where located, is unsafe or dangerous, the governing body, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished. Such resolution shall be published once each week for two (2) consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three (3) days after its first publication to each such owner, agent, lienholder and occupant, at the last known address and shall be marked "deliver to addressee only."

(c) On the date fixed for hearing or any adjournment thereof, the Governing Body shall hear all evidence submitted by the owner, the owner's agent, lienholders of record, and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the Governing Body finds that such structure is unsafe or dangerous,

such resolution shall direct the structure to be repaired or removed and the premises made safe and secure. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record, and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the Governing Body will cause the unsafe or dangerous structure to be repaired or razed and removed.

6-203 EXCAVATION FILL.

It shall be the duty of the property owner, representative, or the tenant, upon removal of a structure, to fill any basement, after removing all concrete footings and foundation walls, or other excavation located upon the premises and take any other action necessary to leave such premises in a safe condition, including grading and seeding or sodding of the area, removal of dirt or mud from roads, streets, alleys, or sidewalks, to allow for proper drainage of the site, and to remove any and all refuse, trash, debris, brush and limbs, or materials from the site.

6-204 REMOVAL OF UNSAFE OR DANGEROUS STRUCTURES; SALVAGE; SALE; ASSESSMENT AND COLLECTION OF COSTS; PROCEDURE.

(a) If the owner of any structure has failed to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the City may proceed to raze and remove such structure, make the premises safe and secure, or let the same to contract. The City shall keep an account of the cost of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the cost of removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay such costs and the cost of publications of notice and any postage for mailing of notice, after the payment of all costs, shall be paid to the owner of the premises upon which the structure was located.

(b) The City shall give notice to the owner of such structure by restricted mail of the total cost incurred by the city in removing such structure and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the City Clerk at the time of certifying other City taxes, shall certify the unpaid portion of the costs and the County Clerk shall extend the same on the tax rolls of the County against such lot or parcel of land. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full. Whenever any structure is removed from any premises under the provisions of this article, the City Clerk shall certify to the County Appraiser that such structure, describing the same, has been removed.

(c) If there is no salvageable material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the costs of the work and the cost of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this article the Governing Body shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 12-1,115, and amendments thereto, when and if paid, shall be placed in the general fund of the City.

6-205 DAMAGE BY FIRE, EXPLOSION, WINDSTORM, OR OTHER CASUALTY; INSURANCE PROCEEDS.

Damage created by a fire, explosion or windstorm shall comply with the provisions below:

(a) If fire, explosion, windstorm, or other casualty causes damage to a structure that is covered by insurance and the covered claim payment is in excess of seventy-five percent (75%) of the face value of the policy covering the structure, then the insurance provider shall be required to pay to the City an amount not to exceed fifteen percent (15%) of the proceeds of such policy. The insurer first shall pay all amounts due to the holder of a first real estate mortgage against the structure pursuant to the terms of the policy and endorsements thereto and then shall withhold from the covered claim payment the sums required to be paid to the City. Such payments shall be made to the City on or before the date any moneys are released by the insurer to any party, or within thirty (30) days of the incident resulting in the claim, whichever is earlier in time. The payment shall be made by check or money order made payable to the "City of Prairie Village" with no post-dating of the check or money order allowed and sent by certified mail, return receipt requested to the City Clerk of Prairie Village, Kansas, 7700 Mission Road, Prairie Village, Kansas 66208, along with a statement explaining the reason for payment and giving the address of the property involved. All such funds received by the City Clerk shall be placed in an interest-bearing account of the City.

(b) The City shall release the insured's proceeds and any interest which has accrued thereon within thirty (30) days after receipt of such monies, unless the City has instituted abatement proceedings and/or a permit has been issued for re-construction pursuant to this article or other applicable portion of City code. If such proceedings have been instituted, the City shall retain the proceeds until the abatement proceedings and/or re-construction is complete. At the conclusion of the abatement proceedings and/or re-construction, all monies in excess of that expended by the City for abatement proceedings and/or re-construction expenses (such as removing mud or debris off the streets), less any salvage value, shall be paid to the insured.

(c) The City may create a lien in favor of the City in the proceeds of any

insurance policy based upon a covered payment made for damage or loss to the building or other structure, caused by or arising out of any fire, explosion, windstorm, or other casualty.

(d) The City Clerk shall notify the Commissioner of Insurance for the State of Kansas within fourteen (14) days after the adoption of this section. Such notification shall state that the city has enacted an ordinance, pursuant to the authority of K.S.A. 40-3901 *et seq.*, concerning payment of insurance proceeds to the City arising out of claims due to fire, explosion, windstorms, or other casualty. A copy of the notice shall be maintained by the City Clerk.

6-206 INSURANCE PROCEEDS; PROOF OF REPAIRING OR REBUILDING.

In lieu of the payment of insurance proceeds, the insured may present satisfactory proof to the building official that the insured has or will remove debris and repair, rebuild or otherwise make the premises safe and secure. Upon presentation of such sufficient evidence, the building official along with the City Clerk shall certify that adequate proof of repairing or rebuilding has been given and that the payment of insurance proceeds to the City shall not be paid, subject to any lien created by the City should the insured fail to rebuild, repair, or secure the property as presented. The insured shall be responsible for presenting such certificate to the insurer. The insured, in seeking such certificate, shall present a timetable showing when repairs or rebuilding will be completed; render architectural or engineering plans, subject to approval by the building official, showing the method, manner and materials to be used in repairing or rebuilding; and any other evidence deemed necessary by the building official to demonstrate that the repairs or rebuilding will be completed in a timely and lawful manner. Failure of the insured to comply with the certificate shall result in the institution of continuation of proceedings for abatement.

6-207 FAILURE TO PAY INSURANCE PROCEEDS OR TO OBTAIN A CERTIFICATE IN LIEU OF PAYMENT PROCEEDS.

It is unlawful for any person to fail to provide the payment of insurance proceeds as required by this section unless a certificate in lieu of payment of proceeds has been obtained through the City.

6-208 CITY NOT PARTY TO INSURANCE CONTRACT.

This article does not make the City a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

6-209 IMMEDIATE HAZARDS OR IMMINENT DANGER.

(a) Notwithstanding anything in this article to the contrary, when in the opinion of the enforcing officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any such action shall be assessed against the property and paid in the manner provided by this article and K.S.A. 12-1755.

(b) An immediate hazard may include, but is not limited to, imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life or safety is endangered by the occupation of the structure, or when there is an actual or potential danger to the

building occupants or those in proximity thereto because of explosives, fumes, gases, vapors, or operation of defective or dangerous equipment.

(c) It shall be unlawful for any person to enter a structure that has been deemed an immediate hazard except for the purposes of securing the structure, making the required repairs, removing the hazardous condition, or demolishing the structure.

DIVISION 3. ABANDONED PROPERTY

6-301 ABANDONED PROPERTY.

The Governing Body shall have the power to cause the rehabilitation of or to rehabilitate any abandoned property located within the City.

6-302 DESIGNATION OF OFFICER; NOTICE TO APPEAR; HEARING; RESOLUTION OF REHABILITATION.

(a) The building official, or his or her designee, shall assist the Governing Body with the administration and enforcement of this article with regards to abandoned property, and shall be the enforcing officer for purposes of this article and K.S.A. 12-1750 *et seq.*, as amended. The building official shall authorize the investigation of abandoned property by his or her designated agents.

(b) Whenever the enforcing officer files with the Governing Body a statement in writing that any structure, describing the same and where located, is abandoned property, the Governing Body, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be rehabilitated. Such resolution shall be published once each week for two (2) consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three (3) days after its first publication to each such owner, agent, lienholder and occupant, at the last known address and shall be marked "deliver to addressee only."

(c) On the date fixed for hearing or any adjournment thereof, the Governing Body shall hear all evidence submitted by the owner, the owner's agent, lienholders of record and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the Governing Body finds that such structure is abandoned property, the Governing Body may authorize the rehabilitation of such property as provided by K.S.A. 12-1756a. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the Governing Body will cause the structure to be rehabilitated.

DIVISION 4. NUISANCES AND WEEDS

6-401 NUISANCES UNLAWFUL; RESPONSIBILITY TO ABATE.

It shall be unlawful for any property owner, owner's agent or tenant of real property to allow or maintain a nuisance on any lot or parcel of ground within the City, including any areas between the property lines of said property and the center line of any adjacent street

or alley including sidewalks, streets, alleys, easements, and rights-of-way. The property owner, owner's agent, or tenant shall be responsible for the removal or abatement of any nuisance. The City shall have the power to cause the removal of, or to remove or abate, any nuisance as provided in this article and under Kansas statute.

6-402 DESIGNATION OF OFFICER; NOTICE OF ABATEMENT; HEARING.

(a) The Governing Body hereby designates the building official, or his or her own designee, as the person responsible for the administration and enforcement of this article with regards to nuisances. The building official shall authorize the investigation of nuisances by his or her designated agents.

(b) If it is determined that a nuisance exists, then the building official, or his or her designated agent, shall file a written report describing the situation, its location, and the circumstances supporting the determination that the matter is a nuisance. The building official, on behalf of the Governing Body, shall issue an Order of Abatement directing the property owner or owner's agent, and any tenant, to remove and abate the nuisance within a time, not exceeding ten (10) days, to be specified in the Order of Abatement.

(c) The Order of Abatement shall state:

(1) A common or legal description of the property, or both;

(2) That the property is in violation of this article;

(3) The nature of the nuisance, including relevant ordinances or statutes, with sufficient information to reasonably enable the recipient to determine the nature of the violation to allow for self-abatement;

(4) That the recipient must remove and abate the nuisance within a time, not exceeding ten (10) days, to be specified in the order;

(5) That the recipient, upon written request, may obtain a hearing before the Governing Body or its designated representative, provided that such request is received by the City Clerk within the period of time established for abatement of the nuisance;

(6) That failure to comply with the order shall result in the City's right to remove and abate the nuisance with assessment of the City's costs being made against the property and the recipient;

(7) That failure to pay such assessment within thirty (30) days after the City's notice of costs of such removal and abatement may result in the filing of a tax lien against the property, or the filing for a personal judgment against the recipient, or both; and

(8) That such violations are subject to prosecution, and that such prosecution shall be independent of the order of any enforcement of the order.

(d) The Order of Abatement shall be served on the property owner or owner's agent, or tenant by certified mail, return receipt requested, or by personal service; provided any order served on a tenant shall also be served on the owner or owner's agent. If the property is unoccupied and the owner is a nonresident, then the order will be mailed by certified mail, return receipt requested, to the owner's last known address. If during the preceding twenty-four (24) month period the owner, owner's agent or tenant has failed to accept delivery or to otherwise effectuate receipt of a notice or order sent pursuant to this section, in addition to the methods of service described above, the building official, on behalf of the Governing Body, may serve on such person any further order by other methods, including but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail; provided, if the property is

unoccupied and the owner is a nonresident, any alternative notice provided for in this paragraph shall be given by telephone communication or first class mail.

(e) If a recipient of an Order of Abatement makes a written request for a hearing within the period of time established by the order, a hearing shall be scheduled before the Governing Body or its designated representative. At such hearing, all relevant parties, interest holders, and City officials shall be allowed to present evidence concerning the status of the property and the conditions creating the nuisance. Thereafter, the Governing Body or its designated representative may rescind, modify, or uphold the Order of Abatement. In making such a determination the Governing Body or its designated representative shall describe the relevant facts and specific statute or code provisions being relied upon and state any such other stipulations, methods of removal and abatement of orders as deemed necessary. If the Order of Abatement is either modified or upheld, the property owner, owner's agent or tenant shall be given a reasonable time to remove and abate the nuisance, not to exceed ten (10) days.

(f) Notwithstanding the foregoing, the building official and the Governing Body shall grant extensions of such ten-day time period if the owner or agent of the property demonstrates that due diligence is being exercised in abating the nuisance.

6-403 ABATEMENT OF NUISANCE BY CITY; NOTICE OF COSTS; ASSESSMENT AND COLLECTION.

(a) If the recipient of the notice of abatement fails to comply with the Order of Abatement or, if appropriate, with any order after a hearing on the matter, the City shall have the right to go onto the property to remove and abate the nuisance in a reasonable manner, or as otherwise permitted under applicable law. It shall be unlawful for any person to interfere with or attempt to prevent the City or its agents from such action. The City and its agents shall not be responsible for damage to any real or personal property due to reasonable methods of gaining entrance onto the property or for damages to any real or personal property in the reasonable exercise of the removal and abatement of the nuisance. The City may use its own employees or contract for services to remove and abate the nuisance.

(b) If the City removes and abates the nuisance, the City shall give a Notice of Costs to the property owner or owner's agent, or tenant, by certified mail, return receipt requested, stating the costs of such removal and abatement incurred by the City; provided, any notice served on a tenant shall also be served on the owner or owner's agent. The costs shall include the City's cost of providing the notice, including any postage. The recipient shall have thirty (30) days from the date of receipt of such notice to make full payment. The Notice of Costs shall state:

- (1) The common or legal description of the property, or both;
- (2) The nature of the nuisance, including relevant ordinances;
- (3) The nature of the work performed to remove and abate the nuisance;
- (4) The costs incurred for the abatement of the nuisance in either a lump sum or in an itemized form (including the cost of the notice);
- (5) That payment is due and payable within thirty (30) days of receipt of the notice;
- (6) That payment should be made payable to the City of Prairie Village, Kansas, by check or money order with no post-dating of the check, and submitted to the City Clerk with a written indication of the purpose of the payment and the address of the property where the nuisance occurred;

(7) That failure to pay the entire amount within the thirty (30)-day period shall allow the City to file a lien against the property or to pursue litigation for recovery of the costs, or both; and

(8) That such additional remedies to recover costs shall include additional amounts, including interest, court costs, attorney fees and administrative costs.

(c) If the costs are not paid within the 30-day period, the costs shall be collected in a manner provided by K.S.A. 12-1,115 as amended, or shall be assessed as a special assessment against the property. The City Clerk at the time of certifying other City taxes, shall certify the unpaid portion of the costs, and the County Clerk shall extend the same on the tax roll of the County against the property, and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. The City may pursue collection both by levying a special assessment, and in the manner provided by K.S.A. 12-1,115 as amended, but only until the full costs, including applicable interest, court costs, attorney's fees, and administrative costs have been paid in full.

6-404 ADDITIONAL OR ALTERNATIVE PROVISIONS REGARDING WEEDS.

(a) As an alternative to the general nuisance provisions of this article, K.S.A. 12-1617f(b), as amended, provides that the Governing Body may provide for and require, and the Governing Body hereby does provide for and require, the cutting or destruction of all weeds on lots or pieces of land within the City as provided in this section. Reference is hereby further made to the International Property Maintenance Code (IPMC), as adopted by the City, which may contain additional provisions regarding weeds and plants.

(b) Except as provided by subsection (c) below, the City Clerk shall issue a notice to the owner, occupant or agent by certified mail, return receipt requested, or by personal service to cut or destroy such weeds. If the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner. The notice shall state that before the expiration of the waiting period provided herein the recipient thereof may request a hearing before the Governing Body or its designated representative. If the occupant, owner or agent fails to request a hearing or refuses to cut or remove such weeds, after five (5) days' notice by the City Clerk, or in cases where the owner is unknown or is a nonresident, and there is no resident agent, ten (10) days after notice has been published by the City Clerk in the official city paper, the City shall cut or destroy such weeds and shall keep an account of the cost of same and report to the City Clerk. Except as provided by subsection (c) below, the City shall give notice to the owner, occupant or agent by certified mail, return receipt requested, of the total cost of such cutting or removal incurred by the City. The City also may recover the cost of providing notice, including postage, required by this section. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost of such removal or abatement is not paid within the thirty-day period, the City may levy a special assessment for such cost against the lot or piece of land in the same manner as provided in Section 6-403 above and K.S.A. 12-1671e, and amendments thereto, or the City may collect the cost in the manner provided by K.S.A. 12-1,115, and amendments thereto. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

(c) In lieu of giving notice as provided by subsection (b) above, the City may give notice as provided by this subsection. Pursuant to K.S.A. 12-1617f, the City hereby incorporates by reference the provisions of this article and the International Property Maintenance Code, as adopted by the City, as its nuisance and weed removal policy. The building official shall issue a notice of violation and order the owner, occupant, or agent of any property in the City upon which weeds exist in violation of this article; provided, however, that if a notice and order regarding weeds was previously served upon the owner, occupant, or agent of the property for a violation of the City's weed control regulations, the City may provide a one-time yearly written notification by mail or personal service to the owner, occupant or agent of such policy and regulations. Such notice shall include the same information required by subsection (b) above. In addition, such notice shall include a statement that no further notice shall be given prior to removal of weeds by the City. Notwithstanding the foregoing, if there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the City may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this section.

6-405 MOTOR VEHICLES.

The City may remove and abate from property other than public property or property open to use by the public a motor vehicle determined to be a nuisance. Notwithstanding other provisions of this article, disposition of such vehicle shall be in compliance with the procedures for impoundment, notice, and public auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amendments thereto. Reference is hereby further made to the International Property Maintenance Code (IPMC), as adopted by the City, which may contain additional provisions regarding motor vehicles.

DIVISION 5. ADDITIONAL ENFORCEMENT PROVISIONS

6-501 RIGHT OF ENTRY; UNLAWFUL INTERFERENCE; PENALTY.

(a) Any authorized officer or agent of the City, pursuant to this article, shall be allowed to enter onto any land within the City limits to investigate violations of this article or for the abatement of violations pursuant to this article.

(b) It shall be unlawful for any person to interfere with a public officer or agent of the City in performing his or her duties pursuant to this article whether investigation or abating violations.

(c) Any person who interferes with an officer or agent of the City pursuant to this article shall be punished as provided in this article.

6-502 ENFORCEMENT IN MUNICIPAL COURT.

In addition to, or as an alternative to, any enforcement of this article as provided herein, or enforcement of any other portion of the Prairie Village Municipal Code that incorporates by reference the enforcement provisions of this article, if an authorized public officer determines that a violation of this article (or other portion of the Code that incorporates by reference this article) exists, he or she may issue a notice to appear in municipal court for such violation. No other procedures are required as a prerequisite to the issuance of a notice to appear. The imposition of any removal and abatement action described in this article shall not preclude any appropriate prosecution or penalties. Likewise, the imposition of any prosecution or penalties shall not preclude any appropriate action described in this article or otherwise provided by applicable law to remove or abate

a nuisance, an unsafe or dangerous structure, abandoned property, or to collect removal and abatement costs.

6-503 PENALTIES.

Any property owner, representative, tenant or person found in violation of this article shall be subject to prosecution in municipal court. Any such person found guilty of violating the provisions of this article shall be subject to a fine of not less than \$50.00 nor more than \$500.00 and not more than ten (10) days in jail, or both. Any person found guilty of violating the provisions of this article two (2) or more times within any one-year period, or determined by the municipal court to be a perennial violator, shall be fined not less than \$250.00 nor more than \$500.00 and shall be subject to a sentence not to exceed thirty (30) days in jail, or both. Prosecution of any offender under this article does not limit the City's right to pursue assessment or collection of costs as stated in this article, or by other laws. Each day that any violation shall continue shall constitute a separate offense.

Section 2. This ordinance shall take effect and be in force beginning December 1, 2021 upon and after its passage, approval, and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on November 15, 2021.

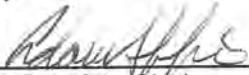
APPROVED by the Mayor on November 15, 2021.

CITY OF PRAIRIE VILLAGE, KANSAS



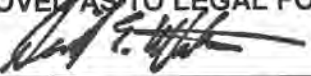
Eric Mikkelson, Mayor

ATTEST:



Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:



David E. Waters, City Attorney

ORDINANCE NO. 2467

AN ORDINANCE ~~CREATING NEW~~AMENDING ARTICLE 6 (NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS) OF CHAPTER VIII (HEALTH AND WELFARE), AND ENUMERATED SECTIONS THEREIN; ESTABLISHING STANDARDS AND PROCEDURES RELATED TO NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS; AND ESTABLISHING PENALTIES THEREFORE.

WHEREAS, the Governing Body of the City of Prairie Village, Kansas, finds that the allowances of nuisances and unsafe or dangerous structures, and properties that otherwise do not comply with the building, property maintenance, and other codes of the City may be public nuisances which are unsightly or dangerous to the health, safety, and welfare of the inhabitants of the City;

WHEREAS, the City has adopted certain building, property, maintenance, and other life/safety codes applicable to properties and structures within the City;

WHEREAS, Kansas statutes, including but not limited to K.S.A. 12-1617e *et seq.*, and K.S.A. 12-1750 *et seq.*, as amended, provides for the abatement of unsafe or dangerous structures, abandoned properties, and other nuisances; ~~and~~

WHEREAS, K.S.A. 12-1671g, as amended, provides that the governing body of any city is granted the power to pass and adopt all ordinances that are necessary to carry into effect statutory provisions related to the abatement of general nuisances, and to provide penalties for the violation of the provisions of such ordinances not inconsistent with the provisions of statute;

WHEREAS, the City had previously passed Ordinance No. 2459 on the same topic, and as a result of a scrivener's error, certain sections were misnumbered, and the purpose of this Ordinance is to establish correct numbering.

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

Section 1. That ~~a new~~ Article 6 ~~to of~~ Chapter VIII of the Prairie Village Municipal Code, is hereby deleted in its entirety, and replaced with the ~~enumerated sections set forth below, is hereby established to read as follows~~following:

CHAPTER VIII. HEALTH AND WELFARE

ARTICLE 6. NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS

SUBDIVISION 1. GENERAL TERMS

~~6-1048-601~~ NUISANCES AND UNSAFE OR DANGEROUS STRUCTURES;
LEGISLATIVE FINDINGS.

(a) The purpose of this article is to provide reasonable controls restricting and prohibiting the allowance of nuisances and unsafe structures to exist on property within the City; to declare that certain conditions which are unsightly, are a menace and dangerous to the health of the inhabitants of the City, or are offensive

to the general public health, safety and welfare of the community constitute public nuisances; to provide a method of enforcement of this section; to provide procedures to notify property owners or those in control of real property, notification and an opportunity to be heard concerning violations of this section; to provide administrative procedures to allow the City to direct the abatement of violations; to provide a method of assessment or collection of costs for abatement by the City; to declare that the existence of such violations are unlawful; and to provide penalties for enforcement through the municipal court system.

(b) The Governing Body of the City hereby finds that the allowances of nuisances and unsafe or dangerous structures, as defined herein, on private property or adjacent rights-of-way or easements, are public nuisances, a menace and dangerous to the health of the inhabitants of the City, and of the residential or commercial areas of the City, and are offensive to the general public health, safety, and welfare of the community. Such nuisances or unsafe structures promote conditions which may cause disease; pollution; proliferation of rats, vermin, mosquitoes and snakes; the spread of fire; a harmful environment for transients and the community as a result of transient use; harmful attractions for children; creates long and short-term impacts on the area including the diminution of property values and the integrity of the neighborhood; and interferes with the orderly development of property in the City.

~~6-102-8-602~~ DEFINITIONS.

Certain terms used herein but not defined herein shall have such meanings as set forth in the International Building Code or the International Property Maintenance Code, as adopted by the City, which definitions are incorporated herein by this reference.

(a) *Abandoned property* – means:

(1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding ninety (90) days; or

(2) commercial real estate for which the taxes are delinquent for the preceding two (2) years and which has a blighting influence on surrounding properties.

(b) *Blighting influence* – means conditions in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the municipality or which have an adverse impact on properties in the area. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; air pollution; light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations.

(c) *Commercial real estate* - means any real estate for which the present use is other than one to four residential units or for agricultural purposes.

(d) *Enforcing officer* or *building official* or *codes official*– means the building official, building inspector, code enforcement officer, or other designated city official tasked with enforcing property maintenance laws in the City.

(e) *Graffiti* – means any drawing, painting, writing, inscription, figure or mark, regardless of its content, of the type which is commonly known and referred to as graffiti, which is written, drawn, painted, sprayed, scratched or otherwise placed or affixed, regardless of the nature of the material used, on any wall, window, rock, building or portion thereof, fence, gate, sign, other structure, tree or other real or personal property, either publicly or privately owned, and that is visible from any adjacent public or private property or public or private right-of-way.

(f) *Nuisance* – means any condition which has been declared a nuisance under other provisions of this code, and also includes any condition which causes or creates an unreasonable interference with the rights of the general public and shall include but not be limited to: graffiti; rank vegetation; noxious weeds or uncontrolled thickets; weeds or plant growth (excluding trees or shrubs or cultivated flowers and gardens) in excess of eight (8) inches in height; rank or infested compost heaps; dense smoke; excessive dust; ash or fine particles in the air; rank ponds or standing water including swimming pools, water receptacles and un-drained areas; cesspools creating on or rising to the surface; rank odors; unkempt trash, refuse, brush, leaves, or limbs; unkempt landscaping; debris or building materials; rank sewage or septic system; excessive accumulation of animal waste; exposed animal carcasses after death; sheds, garages or buildings allowing infestation of rodents or insects or left unsecured to allow the entry of animals, humans or the natural elements such as rain, hail and snow, or otherwise left unkempt or unsightly, except for outdoor dog or pet houses maintained in a clean and reasonable manner; trees, shrubs, or plants which are dead, diseased or infested which present a harmful or dangerous condition to the public; exposed refrigerators or freezers or other appliances left unsecured; any condition that essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others; and any other condition which is determined to present a dangerous or harmful condition or unreasonable interference with the rights of the general public.

(g) *Perennial violator* – means any person who shows an annual pattern of failing to comply with this section which may be shown by repeated notices of abatement, notices of costs, or previous violations.

(h) *Person* – means any individual; individual's partnership; corporation; unincorporated association; other business organization; committee; board; trustee; receiver; agent; or any representative who has charge, care or responsibility of maintenance of any property, lot or parcel of land regardless of status of owner, tenant or lessee, or occupant, and regardless of whether such person has possession.

(i) *Property owner* – means the named property owner as indicated by the register of deeds, appraiser's office, or treasurer's office in Johnson County, Kansas.

(j) *Qualified expert* – means a person who is regularly employed to conduct structural inspections to comply with life, safety, mechanical, plumbing, health and building codes or a licensed professional in the field of engineering or architecture.

(k) *Representative or agent* – means any person or entity listed in the Johnson County, Kansas appraiser's office or treasurer's office for the purposes of paying taxes; a registered agent with the Kansas Secretary of State's Office for corporate, partnership, or other business entity ownership; an agent or manager directed by the property owner, estate, or court order to represent the interests of the property or to otherwise control activities on the real property; or a corporate or other business entity or similar entity officer.

(l) *Tenant or occupant* – means any person who has a severable or non-severable interest in the real property either oral or written lease or covenant or by other methods of conveying a limited interest in such lands; or by any person who occupies or has possession of such real property.

(m) *Unsafe or Dangerous Structure* – means (i) any structure that is deemed unsafe, unfit for human occupancy, unlawful, or dangerous as established under the International Property Maintenance Code, as adopted by the City, and/or (ii) any structure or part of a structure which remains or is damaged to present a dangerous or unsafe condition to the public including, but not limited to, structures damaged by fires, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding, or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, missing boards or siding, unsecured doors, or unsecured openings which allow the harboring of animals, insects, transients, or create an attraction to children; structures which due to the opinion of qualified experts or inspectors, including but not limited to, fire, engineering, or architectural experts; present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued, and any building permit has lapsed for more than ninety (90) days; structures which remain unfinished, or without an occupancy permit, after eighteen (18) months from the date of the first building permit and where no inspection for newly completed work has been requested within the last ninety (90) days.

SUBDIVISION 2. UNSAFE OR DANGEROUS STRUCTURES

6-2018-603 UNSAFE OR DANGEROUS STRUCTURES UNLAWFUL; RESPONSIBILITY TO ABATE.

It shall be unlawful for any property owner, owner's agent or tenant of real property to allow or maintain an unsafe or dangerous structure on any lot or parcel of ground within the City. The property owner, owner's agent, or tenant shall be responsible for the removal or abatement of any unsafe or dangerous structure. The City shall have the power to cause the repair or removal of, or to remove any structure located within the City, which may have become unsafe or dangerous, as provided in this article and under Kansas statute.

6-2028-604 ENFORCEMENT AGAINST UNSAFE OR DANGEROUS STRUCTURES; DESIGNATION OF OFFICER; NOTICE TO APPEAR; HEARING; RESOLUTION OF ABATEMENT.

(a) The building official, or his or her designee, shall assist the Governing Body with the administration and enforcement of this article with regards to dangerous and unsafe structures, and shall be the enforcing officer for purposes of this article and K.S.A. 12-1750 *et seq.*, as amended. The building official shall authorize the investigation of unsafe or dangerous structures by his or her designated agents.

(b) Whenever the enforcing officer files with the Governing Body a statement in writing that any structure, describing the same and where located, is unsafe or dangerous, the governing body, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished. Such resolution shall be published once each week for two (2) consecutive weeks on the same day of each week. At

least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three (3) days after its first publication to each such owner, agent, lienholder and occupant, at the last known address and shall be marked "deliver to addressee only."

(c) On the date fixed for hearing or any adjournment thereof, the Governing Body shall hear all evidence submitted by the owner, the owner's agent, lienholders of record, and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the Governing Body finds that such structure is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe and secure. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record, and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the Governing Body will cause the unsafe or dangerous structure to be repaired or razed and removed.

6-2038-605 EXCAVATION FILL.

It shall be the duty of the property owner, representative, or the tenant, upon removal of a structure, to fill any basement, after removing all concrete footings and foundation walls, or other excavation located upon the premises and take any other action necessary to leave such premises in a safe condition, including grading and seeding or sodding of the area, removal of dirt or mud from roads, streets, alleys, or sidewalks, to allow for proper drainage of the site, and to remove any and all refuse, trash, debris, brush and limbs, or materials from the site.

6-2048-606 REMOVAL OF UNSAFE OR DANGEROUS STRUCTURES; SALVAGE; SALE; ASSESSMENT AND COLLECTION OF COSTS; PROCEDURE.

(a) If the owner of any structure has failed to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the City may proceed to raze and remove such structure, make the premises safe and secure, or let the same to contract. The City shall keep an account of the cost of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the cost of removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay such costs and the cost of publications of notice and any postage for mailing of notice, after the payment of all costs, shall be paid to the owner of the premises upon which the structure was located.

(b) The City shall give notice to the owner of such structure by restricted mail of the total cost incurred by the city in removing such structure and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the cost of

such work, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the City Clerk at the time of certifying other City taxes, shall certify the unpaid portion of the costs and the County Clerk shall extend the same on the tax rolls of the County against such lot or parcel of land. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full. Whenever any structure is removed from any premises under the provisions of this article, the City Clerk shall certify to the County Appraiser that such structure, describing the same, has been removed.

(c) If there is no salvageable material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the costs of the work and the cost of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this article the Governing Body shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 12-1,115, and amendments thereto, when and if paid, shall be placed in the general fund of the City.

6-2058-607 DAMAGE BY FIRE, EXPLOSION, WINDSTORM, OR OTHER CASUALTY; INSURANCE PROCEEDS.

Damage created by a fire, explosion or windstorm shall comply with the provisions below:

(a) If fire, explosion, windstorm, or other casualty causes damage to a structure that is covered by insurance and the covered claim payment is in excess of seventy-five percent (75%) of the face value of the policy covering the structure, then the insurance provider shall be required to pay to the City an amount not to exceed fifteen percent (15%) of the proceeds of such policy. The insurer first shall pay all amounts due to the holder of a first real estate mortgage against the structure pursuant to the terms of the policy and endorsements thereto and then shall withhold from the covered claim payment the sums required to be paid to the City. Such payments shall be made to the City on or before the date any moneys are released by the insurer to any party, or within thirty (30) days of the incident resulting in the claim, whichever is earlier in time. The payment shall be made by check or money order made payable to the "City of Prairie Village" with no post-dating of the check or money order allowed and sent by certified mail, return receipt requested to the City Clerk of Prairie Village, Kansas, 7700 Mission Road, Prairie Village, Kansas 66208, along with a statement explaining the reason for payment and giving the address of the property involved. All such funds received by

the City Clerk shall be placed in an interest-bearing account of the City.

(b) The City shall release the insured's proceeds and any interest which has accrued thereon within thirty (30) days after receipt of such monies, unless the City has instituted abatement proceedings and/or a permit has been issued for re-construction pursuant to this article or other applicable portion of City code. If such proceedings have been instituted, the City shall retain the proceeds until the abatement proceedings and/or re-construction is complete. At the conclusion of the abatement proceedings and/or re-construction, all monies in excess of that expended by the City for abatement proceedings and/or re-construction expenses (such as removing mud or debris off the streets), less any salvage value, shall be paid to the insured.

(c) The City may create a lien in favor of the City in the proceeds of any insurance policy based upon a covered payment made for damage or loss to the building or other structure, caused by or arising out of any fire, explosion, windstorm, or other casualty.

(d) The City Clerk shall notify the Commissioner of Insurance for the State of Kansas within fourteen (14) days after the adoption of this section. Such notification shall state that the city has enacted an ordinance, pursuant to the authority of K.S.A 40-3901 *et seq.*, concerning payment of insurance proceeds to the City arising out of claims due to fire, explosion, windstorms, or other casualty. A copy of the notice shall be maintained by the City Clerk.

6-2068-608 INSURANCE PROCEEDS; PROOF OF REPAIRING OR REBUILDING.

In lieu of the payment of insurance proceeds, the insured may present satisfactory proof to the building official that the insured has or will remove debris and repair, rebuild or otherwise make the premises safe and secure. Upon presentation of such sufficient evidence, the building official along with the City Clerk shall certify that adequate proof of repairing or rebuilding has been given and that the payment of insurance proceeds to the City shall not be paid, subject to any lien created by the City should the insured fail to rebuild, repair, or secure the property as presented. The insured shall be responsible for presenting such certificate to the insurer. The insured, in seeking such certificate, shall present a timetable showing when repairs or rebuilding will be completed; render architectural or engineering plans, subject to approval by the building official, showing the method, manner and materials to be used in repairing or rebuilding; and any other evidence deemed necessary by the building official to demonstrate that the repairs or rebuilding will be completed in a timely and lawful manner. Failure of the insured to comply with the certificate shall result in the institution of continuation of proceedings for abatement.

6-2078-609 FAILURE TO PAY INSURANCE PROCEEDS OR TO OBTAIN A CERTIFICATE IN LIEU OF PAYMENT PROCEEDS.

It is unlawful for any person to fail to provide the payment of insurance proceeds as required by this section unless a certificate in lieu of payment of proceeds has been obtained through the City.

6-2088-610 CITY NOT PARTY TO INSURANCE CONTRACT.

This article does not make the City a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

6-2098-611 IMMEDIATE HAZARDS OR IMMINENT DANGER.

(a) Notwithstanding anything in this article to the contrary, when in the opinion of the enforcing officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any such action shall be assessed against the property and paid in the manner provided by this article and K.S.A. 12-1755.

(b) An immediate hazard may include, but is not limited to, imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life or safety is endangered by the occupation of the structure, or when there is an actual or potential danger to the building occupants or those in proximity thereto because of explosives, fumes, gases, vapors, or operation of defective or dangerous equipment.

(c) It shall be unlawful for any person to enter a structure that has been deemed an immediate hazard except for the purposes of securing the structure, making the required repairs, removing the hazardous condition, or demolishing the structure.

DIVISION 3. ABANDONED PROPERTY

6-3048-612 ABANDONED PROPERTY.

The Governing Body shall have the power to cause the rehabilitation of or to rehabilitate any abandoned property located within the City.

6-3028-613 DESIGNATION OF OFFICER; NOTICE TO APPEAR; HEARING; RESOLUTION OF REHABILITATION.

(a) The building official, or his or her designee, shall assist the Governing Body with the administration and enforcement of this article with regards to abandoned property, and shall be the enforcing officer for purposes of this article and K.S.A. 12-1750 *et seq.*, as amended. The building official shall authorize the investigation of abandoned property by his or her designated agents.

(b) Whenever the enforcing officer files with the Governing Body a statement in writing that any structure, describing the same and where located, is abandoned property, the Governing Body, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be rehabilitated. Such resolution shall be published once each week for two (2) consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three (3) days after its first publication to each such owner, agent, lienholder and occupant, at the last known address and shall be marked "deliver to addressee only."

(c) On the date fixed for hearing or any adjournment thereof, the Governing Body shall hear all evidence submitted by the owner, the owner's agent, lienholders of record and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the Governing Body finds that such structure is abandoned property, the Governing Body may authorize the rehabilitation of such property as provided by K.S.A. 12-1756a. Such resolution shall be published once in the official

city paper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the Governing Body will cause the structure to be rehabilitated.

DIVISION 4. NUISANCES AND WEEDS

~~6-4018-614~~ NUISANCES UNLAWFUL; RESPONSIBILITY TO ABATE.

It shall be unlawful for any property owner, owner's agent or tenant of real property to allow or maintain a nuisance on any lot or parcel of ground within the City, including any areas between the property lines of said property and the center line of any adjacent street or alley including sidewalks, streets, alleys, easements, and rights-of-way. The property owner, owner's agent, or tenant shall be responsible for the removal or abatement of any nuisance. The City shall have the power to cause the removal of, or to remove or abate, any nuisance as provided in this article and under Kansas statute.

~~6-402-8-615~~ DESIGNATION OF OFFICER; NOTICE OF ABATEMENT; HEARING.

(a) The Governing Body hereby designates the building official, or his or her own designee, as the person responsible for the administration and enforcement of this article with regards to nuisances. The building official shall authorize the investigation of nuisances by his or her designated agents.

(b) If it is determined that a nuisance exists, then the building official, or his or her designated agent, shall file a written report describing the situation, its location, and the circumstances supporting the determination that the matter is a nuisance. The building official, on behalf of the Governing Body, shall issue an Order of Abatement directing the property owner or owner's agent, and any tenant, to remove and abate the nuisance within a time, not exceeding ten (10) days, to be specified in the Order of Abatement.

(c) The Order of Abatement shall state:

- (1) A common or legal description of the property, or both;
- (2) That the property is in violation of this article;
- (3) The nature of the nuisance, including relevant ordinances or statutes, with sufficient information to reasonably enable the recipient to determine the nature of the violation to allow for self-abatement;
- (4) That the recipient must remove and abate the nuisance within a time, not exceeding ten (10) days, to be specified in the order;
- (5) That the recipient, upon written request, may obtain a hearing before the Governing Body or its designated representative, provided that such request is received by the City Clerk within the period of time established for abatement of the nuisance;
- (6) That failure to comply with the order shall result in the City's right to remove and abate the nuisance with assessment of the City's costs being made against the property and the recipient;
- (7) That failure to pay such assessment within thirty (30) days after the City's notice of costs of such removal and abatement may result in the filing of a tax lien against the property, or the filing for a personal judgment against the recipient, or both; and

(8) That such violations are subject to prosecution, and that such prosecution shall be independent of the order of any enforcement of the order.

(d) The Order of Abatement shall be served on the property owner or owner's agent, or tenant by certified mail, return receipt requested, or by personal service; provided any order served on a tenant shall also be served on the owner or owner's agent. If the property is unoccupied and the owner is a nonresident, then the order will be mailed by certified mail, return receipt requested, to the owner's last known address. If during the preceding twenty-four (24) month period the owner, owner's agent or tenant has failed to accept delivery or to otherwise effectuate receipt of a notice or order sent pursuant to this section, in addition to the methods of service described above, the building official, on behalf of the Governing Body, may serve on such person any further order by other methods, including but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail; provided, if the property is unoccupied and the owner is a nonresident, any alternative notice provided for in this paragraph shall be given by telephone communication or first class mail.

(e) If a recipient of an Order of Abatement makes a written request for a hearing within the period of time established by the order, a hearing shall be scheduled before the Governing Body or its designated representative. At such hearing, all relevant parties, interest holders, and City officials shall be allowed to present evidence concerning the status of the property and the conditions creating the nuisance. Thereafter, the Governing Body or its designated representative may rescind, modify, or uphold the Order of Abatement. In making such a determination the Governing Body or its designated representative shall describe the relevant facts and specific statute or code provisions being relied upon and state any such other stipulations, methods of removal and abatement of orders as deemed necessary. If the Order of Abatement is either modified or upheld, the property owner, owner's agent or tenant shall be given a reasonable time to remove and abate the nuisance, not to exceed ten (10) days.

(f) Notwithstanding the foregoing, the building official and the Governing Body shall grant extensions of such ten-day time period if the owner or agent of the property demonstrates that due diligence is being exercised in abating the nuisance.

6-4038-616 ABATEMENT OF NUISANCE BY CITY; NOTICE OF COSTS; ASSESSMENT AND COLLECTION.

(a) If the recipient of the notice of abatement fails to comply with the Order of Abatement or, if appropriate, with any order after a hearing on the matter, the City shall have the right to go onto the property to remove and abate the nuisance in a reasonable manner, or as otherwise permitted under applicable law. It shall be unlawful for any person to interfere with or attempt to prevent the City or its agents from such action. The City and its agents shall not be responsible for damage to any real or personal property due to reasonable methods of gaining entrance onto the property or for damages to any real or personal property in the reasonable exercise of the removal and abatement of the nuisance. The City may use its own employees or contract for services to remove and abate the nuisance.

(b) If the City removes and abates the nuisance, the City shall give a Notice of Costs to the property owner or owner's agent, or tenant, by certified mail, return receipt requested, stating the costs of such removal and abatement incurred by the City; provided, any notice served on a tenant shall also be served on the

owner or owner's agent. The costs shall include the City's cost of providing the notice, including any postage. The recipient shall have thirty (30) days from the date of receipt of such notice to make full payment. The Notice of Costs shall state:

- (1) The common or legal description of the property, or both;
- (2) The nature of the nuisance, including relevant ordinances;
- (3) The nature of the work performed to remove and abate the nuisance;
- (4) The costs incurred for the abatement of the nuisance in either a lump sum or in an itemized form (including the cost of the notice);
- (5) That payment is due and payable within thirty (30) days of receipt of the notice;
- (6) That payment should be made payable to the City of Prairie Village, Kansas, by check or money order with no post-dating of the check, and submitted to the City Clerk with a written indication of the purpose of the payment and the address of the property where the nuisance occurred;
- (7) That failure to pay the entire amount within the thirty (30)-day period shall allow the City to file a lien against the property or to pursue litigation for recovery of the costs, or both; and
- (8) That such additional remedies to recover costs shall include additional amounts, including interest, court costs, attorney fees and administrative costs.

(c) If the costs are not paid within the 30-day period, the costs shall be collected in a manner provided by K.S.A. 12-1,115 as amended, or shall be assessed as a special assessment against the property. The City Clerk at the time of certifying other City taxes, shall certify the unpaid portion of the costs, and the County Clerk shall extend the same on the tax roll of the County against the property, and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. The City may pursue collection both by levying a special assessment, and in the manner provided by K.S.A. 12-1,115 as amended, but only until the full costs, including applicable interest, court costs, attorney's fees, and administrative costs have been paid in full.

6-4048-617

ADDITIONAL OR ALTERNATIVE PROVISIONS REGARDING WEEDS.

(a) As an alternative to the general nuisance provisions of this article, K.S.A. 12-1617f(b), as amended, provides that the Governing Body may provide for and require, and the Governing Body hereby does provide for and require, the cutting or destruction of all weeds on lots or pieces of land within the City as provided in this section. Reference is hereby further made to the International Property Maintenance Code (IPMC), as adopted by the City, which may contain additional provisions regarding weeds and plants.

(b) Except as provided by subsection (c) below, the City Clerk shall issue a notice to the owner, occupant or agent by certified mail, return receipt requested, or by personal service to cut or destroy such weeds. If the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner. The notice shall state that before the expiration of the waiting period provided herein the recipient thereof may request a hearing before the Governing Body or its designated representative. If the occupant, owner or agent fails to request a hearing or refuses to cut or remove such weeds, after five (5) days' notice by the City Clerk, or in cases where the owner is unknown or is a nonresident, and there is no resident agent, ten (10) days after

notice has been published by the City Clerk in the official city paper, the City shall cut or destroy such weeds and shall keep an account of the cost of same and report to the City Clerk. Except as provided by subsection (c) below, the City shall give notice to the owner, occupant or agent by certified mail, return receipt requested, of the total cost of such cutting or removal incurred by the City. The City also may recover the cost of providing notice, including postage, required by this section. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost of such removal or abatement is not paid within the thirty-day period, the City may levy a special assessment for such cost against the lot or piece of land in the same manner as provided in Section ~~6-4038-616~~ above and K.S.A. 12-1671e, and amendments thereto, or the City may collect the cost in the manner provided by K.S.A. 12-1,115, and amendments thereto. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

(c) In lieu of giving notice as provided by subsection (b) above, the City may give notice as provided by this subsection. Pursuant to K.S.A. 12-1617f, the City hereby incorporates by reference the provisions of this article and the International Property Maintenance Code, as adopted by the City, as its nuisance and weed removal policy. The building official shall issue a notice of violation and order the owner, occupant, or agent of any property in the City upon which weeds exist in violation of this article; provided, however, that if a notice and order regarding weeds was previously served upon the owner, occupant, or agent of the property for a violation of the City's weed control regulations, the City may provide a one-time yearly written notification by mail or personal service to the owner, occupant or agent of such policy and regulations. Such notice shall include the same information required by subsection (b) above. In addition, such notice shall include a statement that no further notice shall be given prior to removal of weeds by the City. Notwithstanding the foregoing, if there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the City may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this section.

~~6-4058-618~~ **MOTOR VEHICLES.**

The City may remove and abate from property other than public property or property open to use by the public a motor vehicle determined to be a nuisance. Notwithstanding other provisions of this article, disposition of such vehicle shall be in compliance with the procedures for impoundment, notice, and public auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amendments thereto. Reference is hereby further made to the International Property Maintenance Code (IPMC), as adopted by the City, which may contain additional provisions regarding motor vehicles.

DIVISION 5. ADDITIONAL ENFORCEMENT PROVISIONS

~~6-5048-619~~ **RIGHT OF ENTRY; UNLAWFUL INTERFERENCE; PENALTY.**

(a) Any authorized officer or agent of the City, pursuant to this article, shall be allowed to enter onto any land within the City limits to investigate violations of this article or for the abatement of violations pursuant to this article.

(b) It shall be unlawful for any person to interfere with a public officer or agent of the City in performing his or her duties pursuant to this article whether investigation or abating violations.

(c) Any person who interferes with an officer or agent of the City pursuant to this article shall be punished as provided in this article.

6-5028-620 ENFORCEMENT IN MUNICIPAL COURT.

In addition to, or as an alternative to, any enforcement of this article as provided herein, or enforcement of any other portion of the Prairie Village Municipal Code that incorporates by reference the enforcement provisions of this article, if an authorized public officer determines that a violation of this article (or other portion of the Code that incorporates by reference this article) exists, he or she may issue a notice to appear in municipal court for such violation. No other procedures are required as a prerequisite to the issuance of a notice to appear. The imposition of any removal and abatement action described in this article shall not preclude any appropriate prosecution or penalties. Likewise, the imposition of any prosecution or penalties shall not preclude any appropriate action described in this article or otherwise provided by applicable law to remove or abate a nuisance, an unsafe or dangerous structure, abandoned property, or to collect removal and abatement costs.

6-5038-621 PENALTIES.

Any property owner, representative, tenant or person found in violation of this article shall be subject to prosecution in municipal court. Any such person found guilty of violating the provisions of this article shall be subject to a fine of not less than \$50.00 nor more than \$500.00 and not more than ten (10) days in jail, or both. Any person found guilty of violating the provisions of this article two (2) or more times within any one-year period, or determined by the municipal court to be a perennial violator, shall be fined not less than \$250.00 nor more than \$500.00 and shall be subject to a sentence not to exceed thirty (30) days in jail, or both. Prosecution of any offender under this article does not limit the City's right to pursue assessment or collection of costs as stated in this article, or by other laws. Each day that any violation shall continue shall constitute a separate offense.

Section 2. This ordinance shall take effect ~~and be in force beginning November 1, 2021~~ upon and after its passage, approval, and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on _____, ~~2021~~2022.

APPROVED by the Mayor on _____, ~~2021~~2022.

CITY OF PRAIRIE VILLAGE, KANSAS

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney

ORDINANCE NO. 2467

AN ORDINANCE AMENDING ARTICLE 6 (NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS) OF CHAPTER VIII (HEALTH AND WELFARE), AND ENUMERATED SECTIONS THEREIN; ESTABLISHING STANDARDS AND PROCEDURES RELATED TO NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS; AND ESTABLISHING PENALTIES THEREFORE.

WHEREAS, the Governing Body of the City of Prairie Village, Kansas, finds that the allowances of nuisances and unsafe or dangerous structures, and properties that otherwise do not comply with the building, property maintenance, and other codes of the City may be public nuisances which are unsightly or dangerous to the health, safety, and welfare of the inhabitants of the City;

WHEREAS, the City has adopted certain building, property, maintenance, and other life/safety codes applicable to properties and structures within the City;

WHEREAS, Kansas statutes, including but not limited to K.S.A. 12-1617e *et seq.*, and K.S.A. 12-1750 *et seq.*, as amended, provides for the abatement of unsafe or dangerous structures, abandoned properties, and other nuisances;

WHEREAS, K.S.A. 12-1671g, as amended, provides that the governing body of any city is granted the power to pass and adopt all ordinances that are necessary to carry into effect statutory provisions related to the abatement of general nuisances, and to provide penalties for the violation of the provisions of such ordinances not inconsistent with the provisions of statute;

WHEREAS, the City had previously passed Ordinance No. 2459 on the same topic, and as a result of a scrivener's error, certain sections were misnumbered, and the purpose of this Ordinance is to establish correct numbering.

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

Section 1. That Article 6 of Chapter VIII of the Prairie Village Municipal Code is hereby deleted in its entirety, and replaced with the following:

CHAPTER VIII. HEALTH AND WELFARE

ARTICLE 6. NUISANCES, UNSAFE OR DANGEROUS STRUCTURES, AND ABATEMENT OF CODE VIOLATIONS

SUBDIVISION 1. GENERAL TERMS

**8-601 NUISANCES AND UNSAFE OR DANGEROUS STRUCTURES;
LEGISLATIVE FINDINGS.**

(a) The purpose of this article is to provide reasonable controls restricting and prohibiting the allowance of nuisances and unsafe structures to exist on property within the City; to declare that certain conditions which are unsightly, are a menace and dangerous to the health of the inhabitants of the City, or are offensive to the general public health, safety and welfare of the community constitute public nuisances;

to provide a method of enforcement of this section; to provide procedures to notify property owners or those in control of real property, notification and an opportunity to be heard concerning violations of this section; to provide administrative procedures to allow the City to direct the abatement of violations; to provide a method of assessment or collection of costs for abatement by the City; to declare that the existence of such violations are unlawful; and to provide penalties for enforcement through the municipal court system.

(b) The Governing Body of the City hereby finds that the allowances of nuisances and unsafe or dangerous structures, as defined herein, on private property or adjacent rights-of-way or easements, are public nuisances, a menace and dangerous to the health of the inhabitants of the City, and of the residential or commercial areas of the City, and are offensive to the general public health, safety, and welfare of the community. Such nuisances or unsafe structures promote conditions which may cause disease; pollution; proliferation of rats, vermin, mosquitoes and snakes; the spread of fire; a harmful environment for transients and the community as a result of transient use; harmful attractions for children; creates long and short-term impacts on the area including the diminution of property values and the integrity of the neighborhood; and interferes with the orderly development of property in the City.

8-602 DEFINITIONS.

Certain terms used herein but not defined herein shall have such meanings as set forth in the International Building Code or the International Property Maintenance Code, as adopted by the City, which definitions are incorporated herein by this reference.

(a) *Abandoned property* – means:

(1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding ninety (90) days; or

(2) commercial real estate for which the taxes are delinquent for the preceding two (2) years and which has a blighting influence on surrounding properties.

(b) *Blighting influence* –means conditions in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the municipality or which have an adverse impact on properties in the area. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; air pollution; light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations.

(c) *Commercial real estate* - means any real estate for which the present use is other than one to four residential units or for agricultural purposes.

(d) *Enforcing officer or building official or codes official*– means the building official, building inspector, code enforcement officer, or other designated city official tasked with enforcing property maintenance laws in the City.

(e) *Graffiti* – means any drawing, painting, writing, inscription, figure or mark, regardless of its content, of the type which is commonly known and referred to as graffiti, which is written, drawn, painted, sprayed, scratched or otherwise placed or affixed, regardless of the nature of the material used, on any wall, window, rock, building or portion thereof, fence, gate, sign, other structure, tree or other real or personal property, either publicly or privately owned, and that is visible from any adjacent public or private property or public or private right-of-way.

(f) *Nuisance* – means any condition which has been declared a nuisance under other provisions of this code, and also includes any condition which causes or creates an unreasonable interference with the rights of the general public and shall include but not be limited to: graffiti; rank vegetation; noxious weeds or uncontrolled thickets; weeds or plant growth (excluding trees or shrubs or cultivated flowers and gardens) in excess of eight (8) inches in height; rank or infested compost heaps; dense smoke; excessive dust; ash or fine particles in the air; rank ponds or standing water including swimming pools, water receptacles and un-drained areas; cesspools creating on or rising to the surface; rank odors; unkempt trash, refuse, brush, leaves, or limbs; unkempt landscaping; debris or building materials; rank sewage or septic system; excessive accumulation of animal waste; exposed animal carcasses after death; sheds, garages or buildings allowing infestation of rodents or insects or left unsecured to allow the entry of animals, humans or the natural elements such as rain, hail and snow, or otherwise left unkempt or unsightly, except for outdoor dog or pet houses maintained in a clean and reasonable manner; trees, shrubs, or plants which are dead, diseased or infested which present a harmful or dangerous condition to the public; exposed refrigerators or freezers or other appliances left unsecured; any condition that essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others; and any other condition which is determined to present a dangerous or harmful condition or unreasonable interference with the rights of the general public.

(g) *Perennial violator* – means any person who shows an annual pattern of failing to comply with this section which may be shown by repeated notices of abatement, notices of costs, or previous violations.

(h) *Person* – means any individual; individual's partnership; corporation; unincorporated association; other business organization; committee; board; trustee; receiver; agent; or any representative who has charge, care or responsibility of maintenance of any property, lot or parcel of land regardless of status of owner, tenant or lessee, or occupant, and regardless of whether such person has possession.

(i) *Property owner* – means the named property owner as indicated by the register of deeds, appraiser's office, or treasurer's office in Johnson County, Kansas.

(j) *Qualified expert* – means a person who is regularly employed to conduct structural inspections to comply with life, safety, mechanical, plumbing, health and building codes or a licensed professional in the field of engineering or architecture.

(k) *Representative or agent* – means any person or entity listed in the Johnson County, Kansas appraiser's office or treasurer's office for the purposes of paying taxes; a registered agent with the Kansas Secretary of State's Office for corporate, partnership, or other business entity ownership; an agent or manager directed by the property owner, estate, or court order to represent the interests of the property or to otherwise control activities on the real property; or a corporate or other business entity or similar entity officer.

(l) *Tenant or occupant* – means any person who has a severable or non-severable interest in the real property either oral or written lease or covenant or by

other methods of conveying a limited interest in such lands; or by any person who occupies or has possession of such real property.

(m) *Unsafe or Dangerous Structure* – means (i) any structure that is deemed unsafe, unfit for human occupancy, unlawful, or dangerous as established under the International Property Maintenance Code, as adopted by the City, and/or (ii) any structure or part of a structure which remains or is damaged to present a dangerous or unsafe condition to the public including, but not limited to, structures damaged by fires, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding, or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, missing boards or siding, unsecured doors, or unsecured openings which allow the harboring of animals, insects, transients, or create an attraction to children; structures which due to the opinion of qualified experts or inspectors, including but not limited to, fire, engineering, or architectural experts; present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued, and any building permit has lapsed for more than ninety (90) days; structures which remain unfinished, or without an occupancy permit, after eighteen (18) months from the date of the first building permit and where no inspection for newly completed work has been requested within the last ninety (90) days.

SUBDIVISION 2. UNSAFE OR DANGEROUS STRUCTURES

8-603 UNSAFE OR DANGEROUS STRUCTURES UNLAWFUL; RESPONSIBILITY TO ABATE.

It shall be unlawful for any property owner, owner's agent or tenant of real property to allow or maintain an unsafe or dangerous structure on any lot or parcel of ground within the City. The property owner, owner's agent, or tenant shall be responsible for the removal or abatement of any unsafe or dangerous structure. The City shall have the power to cause the repair or removal of, or to remove any structure located within the City, which may have become unsafe or dangerous, as provided in this article and under Kansas statute.

8-604 ENFORCEMENT AGAINST UNSAFE OR DANGEROUS STRUCTURES; DESIGNATION OF OFFICER; NOTICE TO APPEAR; HEARING; RESOLUTION OF ABATEMENT.

(a) The building official, or his or her designee, shall assist the Governing Body with the administration and enforcement of this article with regards to dangerous and unsafe structures, and shall be the enforcing officer for purposes of this article and K.S.A. 12-1750 *et seq.*, as amended. The building official shall authorize the investigation of unsafe or dangerous structures by his or her designated agents.

(b) Whenever the enforcing officer files with the Governing Body a statement in writing that any structure, describing the same and where located, is unsafe or dangerous, the governing body, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished. Such resolution shall be published once each week for two (2) consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three (3) days

after its first publication to each such owner, agent, lienholder and occupant, at the last known address and shall be marked "deliver to addressee only."

(c) On the date fixed for hearing or any adjournment thereof, the Governing Body shall hear all evidence submitted by the owner, the owner's agent, lienholders of record, and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the Governing Body finds that such structure is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe and secure. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record, and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the Governing Body will cause the unsafe or dangerous structure to be repaired or razed and removed.

8-605 EXCAVATION FILL.

It shall be the duty of the property owner, representative, or the tenant, upon removal of a structure, to fill any basement, after removing all concrete footings and foundation walls, or other excavation located upon the premises and take any other action necessary to leave such premises in a safe condition, including grading and seeding or sodding of the area, removal of dirt or mud from roads, streets, alleys, or sidewalks, to allow for proper drainage of the site, and to remove any and all refuse, trash, debris, brush and limbs, or materials from the site.

8-606 REMOVAL OF UNSAFE OR DANGEROUS STRUCTURES; SALVAGE; SALE; ASSESSMENT AND COLLECTION OF COSTS; PROCEDURE.

(a) If the owner of any structure has failed to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the City may proceed to raze and remove such structure, make the premises safe and secure, or let the same to contract. The City shall keep an account of the cost of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the cost of removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay such costs and the cost of publications of notice and any postage for mailing of notice, after the payment of all costs, shall be paid to the owner of the premises upon which the structure was located.

(b) The City shall give notice to the owner of such structure by restricted mail of the total cost incurred by the city in removing such structure and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the City Clerk at the time of certifying other City taxes, shall certify the unpaid portion of the costs and the County Clerk shall extend the same on the tax rolls of the County against such lot or parcel of

land. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full. Whenever any structure is removed from any premises under the provisions of this article, the City Clerk shall certify to the County Appraiser that such structure, describing the same, has been removed.

(c) If there is no salvageable material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the costs of the work and the cost of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this article the Governing Body shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 12-1,115, and amendments thereto, when and if paid, shall be placed in the general fund of the City.

8-607 DAMAGE BY FIRE, EXPLOSION, WINDSTORM, OR OTHER CASUALTY; INSURANCE PROCEEDS.

Damage created by a fire, explosion or windstorm shall comply with the provisions below:

(a) If fire, explosion, windstorm, or other casualty causes damage to a structure that is covered by insurance and the covered claim payment is in excess of seventy-five percent (75%) of the face value of the policy covering the structure, then the insurance provider shall be required to pay to the City an amount not to exceed fifteen percent (15%) of the proceeds of such policy. The insurer first shall pay all amounts due to the holder of a first real estate mortgage against the structure pursuant to the terms of the policy and endorsements thereto and then shall withhold from the covered claim payment the sums required to be paid to the City. Such payments shall be made to the City on or before the date any moneys are released by the insurer to any party, or within thirty (30) days of the incident resulting in the claim, whichever is earlier in time. The payment shall be made by check or money order made payable to the "City of Prairie Village" with no post-dating of the check or money order allowed and sent by certified mail, return receipt requested to the City Clerk of Prairie Village, Kansas, 7700 Mission Road, Prairie Village, Kansas 66208, along with a statement explaining the reason for payment and giving the address of the property involved. All such funds received by the City Clerk shall be placed in an interest-bearing account of the City.

(b) The City shall release the insured's proceeds and any interest which has accrued thereon within thirty (30) days after receipt of such monies, unless the City has instituted abatement proceedings and/or a permit has been issued for reconstruction pursuant to this article or other applicable portion of City code. If such proceedings have been instituted, the City shall retain the proceeds until the

abatement proceedings and/or re-construction is complete. At the conclusion of the abatement proceedings and/or re-construction, all monies in excess of that expended by the City for abatement proceedings and/or re-construction expenses (such as removing mud or debris off the streets), less any salvage value, shall be paid to the insured.

(c) The City may create a lien in favor of the City in the proceeds of any insurance policy based upon a covered payment made for damage or loss to the building or other structure, caused by or arising out of any fire, explosion, windstorm, or other casualty.

(d) The City Clerk shall notify the Commissioner of Insurance for the State of Kansas within fourteen (14) days after the adoption of this section. Such notification shall state that the city has enacted an ordinance, pursuant to the authority of K.S.A 40-3901 *et seq.*, concerning payment of insurance proceeds to the City arising out of claims due to fire, explosion, windstorms, or other casualty. A copy of the notice shall be maintained by the City Clerk.

8-608 INSURANCE PROCEEDS; PROOF OF REPAIRING OR REBUILDING.

In lieu of the payment of insurance proceeds, the insured may present satisfactory proof to the building official that the insured has or will remove debris and repair, rebuild or otherwise make the premises safe and secure. Upon presentation of such sufficient evidence, the building official along with the City Clerk shall certify that adequate proof of repairing or rebuilding has been given and that the payment of insurance proceeds to the City shall not be paid, subject to any lien created by the City should the insured fail to rebuild, repair, or secure the property as presented. The insured shall be responsible for presenting such certificate to the insurer. The insured, in seeking such certificate, shall present a timetable showing when repairs or rebuilding will be completed; render architectural or engineering plans, subject to approval by the building official, showing the method, manner and materials to be used in repairing or rebuilding; and any other evidence deemed necessary by the building official to demonstrate that the repairs or rebuilding will be completed in a timely and lawful manner. Failure of the insured to comply with the certificate shall result in the institution of continuation of proceedings for abatement.

8-609 FAILURE TO PAY INSURANCE PROCEEDS OR TO OBTAIN A CERTIFICATE IN LIEU OF PAYMENT PROCEEDS.

It is unlawful for any person to fail to provide the payment of insurance proceeds as required by this section unless a certificate in lieu of payment of proceeds has been obtained through the City.

8-610 CITY NOT PARTY TO INSURANCE CONTRACT.

This article does not make the City a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

8-611 IMMEDIATE HAZARDS OR IMMINENT DANGER.

(a) Notwithstanding anything in this article to the contrary, when in the opinion of the enforcing officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents, lienholders and

occupants. The cost of any such action shall be assessed against the property and paid in the manner provided by this article and K.S.A. 12-1755.

(b) An immediate hazard may include, but is not limited to, imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life or safety is endangered by the occupation of the structure, or when there is an actual or potential danger to the building occupants or those in proximity thereto because of explosives, fumes, gases, vapors, or operation of defective or dangerous equipment.

(c) It shall be unlawful for any person to enter a structure that has been deemed an immediate hazard except for the purposes of securing the structure, making the required repairs, removing the hazardous condition, or demolishing the structure.

DIVISION 3. ABANDONED PROPERTY

8-612 ABANDONED PROPERTY.

The Governing Body shall have the power to cause the rehabilitation of or to rehabilitate any abandoned property located within the City.

8-613 DESIGNATION OF OFFICER; NOTICE TO APPEAR; HEARING; RESOLUTION OF REHABILITATION.

(a) The building official, or his or her designee, shall assist the Governing Body with the administration and enforcement of this article with regards to abandoned property, and shall be the enforcing officer for purposes of this article and K.S.A. 12-1750 *et seq.*, as amended. The building official shall authorize the investigation of abandoned property by his or her designated agents.

(b) Whenever the enforcing officer files with the Governing Body a statement in writing that any structure, describing the same and where located, is abandoned property, the Governing Body, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be rehabilitated. Such resolution shall be published once each week for two (2) consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three (3) days after its first publication to each such owner, agent, lienholder and occupant, at the last known address and shall be marked "deliver to addressee only."

(c) On the date fixed for hearing or any adjournment thereof, the Governing Body shall hear all evidence submitted by the owner, the owner's agent, lienholders of record and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the Governing Body finds that such structure is abandoned property, the Governing Body may authorize the rehabilitation of such property as provided by K.S.A. 12-1756a. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the Governing Body will cause the structure to be rehabilitated.

DIVISION 4. NUISANCES AND WEEDS

8-614 NUISANCES UNLAWFUL; RESPONSIBILITY TO ABATE.

It shall be unlawful for any property owner, owner's agent or tenant of real property to allow or maintain a nuisance on any lot or parcel of ground within the City, including any areas between the property lines of said property and the center line of any adjacent street or alley including sidewalks, streets, alleys, easements, and rights-of-way. The property owner, owner's agent, or tenant shall be responsible for the removal or abatement of any nuisance. The City shall have the power to cause the removal of, or to remove or abate, any nuisance as provided in this article and under Kansas statute.

8-615 DESIGNATION OF OFFICER; NOTICE OF ABATEMENT; HEARING.

(a) The Governing Body hereby designates the building official, or his or her own designee, as the person responsible for the administration and enforcement of this article with regards to nuisances. The building official shall authorize the investigation of nuisances by his or her designated agents.

(b) If it is determined that a nuisance exists, then the building official, or his or her designated agent, shall file a written report describing the situation, its location, and the circumstances supporting the determination that the matter is a nuisance. The building official, on behalf of the Governing Body, shall issue an Order of Abatement directing the property owner or owner's agent, and any tenant, to remove and abate the nuisance within a time, not exceeding ten (10) days, to be specified in the Order of Abatement.

(c) The Order of Abatement shall state:

- (1) A common or legal description of the property, or both;
- (2) That the property is in violation of this article;
- (3) The nature of the nuisance, including relevant ordinances or statutes, with sufficient information to reasonably enable the recipient to determine the nature of the violation to allow for self-abatement;
- (4) That the recipient must remove and abate the nuisance within a time, not exceeding ten (10) days, to be specified in the order;
- (5) That the recipient, upon written request, may obtain a hearing before the Governing Body or its designated representative, provided that such request is received by the City Clerk within the period of time established for abatement of the nuisance;
- (6) That failure to comply with the order shall result in the City's right to remove and abate the nuisance with assessment of the City's costs being made against the property and the recipient;
- (7) That failure to pay such assessment within thirty (30) days after the City's notice of costs of such removal and abatement may result in the filing of a tax lien against the property, or the filing for a personal judgment against the recipient, or both; and
- (8) That such violations are subject to prosecution, and that such prosecution shall be independent of the order of any enforcement of the order.

(d) The Order of Abatement shall be served on the property owner or owner's agent, or tenant by certified mail, return receipt requested, or by personal service; provided any order served on a tenant shall also be served on the owner or owner's agent. If the property is unoccupied and the owner is a nonresident, then the order will be mailed by certified mail, return receipt requested, to the owner's last known address. If during the preceding twenty-four (24) month period the owner, owner's agent or tenant has failed to accept delivery or to otherwise effectuate receipt

of a notice or order sent pursuant to this section, in addition to the methods of service described above, the building official, on behalf of the Governing Body, may serve on such person any further order by other methods, including but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail; provided, if the property is unoccupied and the owner is a nonresident, any alternative notice provided for in this paragraph shall be given by telephone communication or first class mail.

(e) If a recipient of an Order of Abatement makes a written request for a hearing within the period of time established by the order, a hearing shall be scheduled before the Governing Body or its designated representative. At such hearing, all relevant parties, interest holders, and City officials shall be allowed to present evidence concerning the status of the property and the conditions creating the nuisance. Thereafter, the Governing Body or its designated representative may rescind, modify, or uphold the Order of Abatement. In making such a determination the Governing Body or its designated representative shall describe the relevant facts and specific statute or code provisions being relied upon and state any such other stipulations, methods of removal and abatement of orders as deemed necessary. If the Order of Abatement is either modified or upheld, the property owner, owner's agent or tenant shall be given a reasonable time to remove and abate the nuisance, not to exceed ten (10) days.

(f) Notwithstanding the foregoing, the building official and the Governing Body shall grant extensions of such ten-day time period if the owner or agent of the property demonstrates that due diligence is being exercised in abating the nuisance.

8-616 ABATEMENT OF NUISANCE BY CITY; NOTICE OF COSTS; ASSESSMENT AND COLLECTION.

(a) If the recipient of the notice of abatement fails to comply with the Order of Abatement or, if appropriate, with any order after a hearing on the matter, the City shall have the right to go onto the property to remove and abate the nuisance in a reasonable manner, or as otherwise permitted under applicable law. It shall be unlawful for any person to interfere with or attempt to prevent the City or its agents from such action. The City and its agents shall not be responsible for damage to any real or personal property due to reasonable methods of gaining entrance onto the property or for damages to any real or personal property in the reasonable exercise of the removal and abatement of the nuisance. The City may use its own employees or contract for services to remove and abate the nuisance.

(b) If the City removes and abates the nuisance, the City shall give a Notice of Costs to the property owner or owner's agent, or tenant, by certified mail, return receipt requested, stating the costs of such removal and abatement incurred by the City; provided, any notice served on a tenant shall also be served on the owner or owner's agent. The costs shall include the City's cost of providing the notice, including any postage. The recipient shall have thirty (30) days from the date of receipt of such notice to make full payment. The Notice of Costs shall state:

- (1) The common or legal description of the property, or both;
- (2) The nature of the nuisance, including relevant ordinances;
- (3) The nature of the work performed to remove and abate the nuisance;
- (4) The costs incurred for the abatement of the nuisance in either a lump sum or in an itemized form (including the cost of the notice);
- (5) That payment is due and payable within thirty (30) days of receipt of the notice;

(6) That payment should be made payable to the City of Prairie Village, Kansas, by check or money order with no post-dating of the check, and submitted to the City Clerk with a written indication of the purpose of the payment and the address of the property where the nuisance occurred;

(7) That failure to pay the entire amount within the thirty (30)-day period shall allow the City to file a lien against the property or to pursue litigation for recovery of the costs, or both; and

(8) That such additional remedies to recover costs shall include additional amounts, including interest, court costs, attorney fees and administrative costs.

(c) If the costs are not paid within the 30-day period, the costs shall be collected in a manner provided by K.S.A. 12-1,115 as amended, or shall be assessed as a special assessment against the property. The City Clerk at the time of certifying other City taxes, shall certify the unpaid portion of the costs, and the County Clerk shall extend the same on the tax roll of the County against the property, and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. The City may pursue collection both by levying a special assessment, and in the manner provided by K.S.A. 12-1,115 as amended, but only until the full costs, including applicable interest, court costs, attorney's fees, and administrative costs have been paid in full.

8-617 ADDITIONAL OR ALTERNATIVE PROVISIONS REGARDING WEEDS.

(a) As an alternative to the general nuisance provisions of this article, K.S.A. 12-1617f(b), as amended, provides that the Governing Body may provide for and require, and the Governing Body hereby does provide for and require, the cutting or destruction of all weeds on lots or pieces of land within the City as provided in this section. Reference is hereby further made to the International Property Maintenance Code (IPMC), as adopted by the City, which may contain additional provisions regarding weeds and plants.

(b) Except as provided by subsection (c) below, the City Clerk shall issue a notice to the owner, occupant or agent by certified mail, return receipt requested, or by personal service to cut or destroy such weeds. If the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner. The notice shall state that before the expiration of the waiting period provided herein the recipient thereof may request a hearing before the Governing Body or its designated representative. If the occupant, owner or agent fails to request a hearing or refuses to cut or remove such weeds, after five (5) days' notice by the City Clerk, or in cases where the owner is unknown or is a nonresident, and there is no resident agent, ten (10) days after notice has been published by the City Clerk in the official city paper, the City shall cut or destroy such weeds and shall keep an account of the cost of same and report to the City Clerk. Except as provided by subsection (c) below, the City shall give notice to the owner, occupant or agent by certified mail, return receipt requested, of the total cost of such cutting or removal incurred by the City. The City also may recover the cost of providing notice, including postage, required by this section. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost of such removal or abatement is not paid within the thirty-day period, the City may levy a special assessment for such cost against the lot or piece of land in the same manner as provided in Section 8-616 above and K.S.A. 12-1671e, and amendments thereto, or the City may collect the cost in the manner provided by K.S.A. 12-1,115, and amendments thereto. The City may pursue collection both by

levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

(c) In lieu of giving notice as provided by subsection (b) above, the City may give notice as provided by this subsection. Pursuant to K.S.A. 12-1617f, the City hereby incorporates by reference the provisions of this article and the International Property Maintenance Code, as adopted by the City, as its nuisance and weed removal policy. The building official shall issue a notice of violation and order the owner, occupant, or agent of any property in the City upon which weeds exist in violation of this article; provided, however, that if a notice and order regarding weeds was previously served upon the owner, occupant, or agent of the property for a violation of the City's weed control regulations, the City may provide a one-time yearly written notification by mail or personal service to the owner, occupant or agent of such policy and regulations. Such notice shall include the same information required by subsection (b) above. In addition, such notice shall include a statement that no further notice shall be given prior to removal of weeds by the City. Notwithstanding the foregoing, if there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the City may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this section.

8-618 MOTOR VEHICLES.

The City may remove and abate from property other than public property or property open to use by the public a motor vehicle determined to be a nuisance. Notwithstanding other provisions of this article, disposition of such vehicle shall be in compliance with the procedures for impoundment, notice, and public auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amendments thereto. Reference is hereby further made to the International Property Maintenance Code (IPMC), as adopted by the City, which may contain additional provisions regarding motor vehicles.

DIVISION 5. ADDITIONAL ENFORCEMENT PROVISIONS

8-619 RIGHT OF ENTRY; UNLAWFUL INTERFERENCE; PENALTY.

(a) Any authorized officer or agent of the City, pursuant to this article, shall be allowed to enter onto any land within the City limits to investigate violations of this article or for the abatement of violations pursuant to this article.

(b) It shall be unlawful for any person to interfere with a public officer or agent of the City in performing his or her duties pursuant to this article whether investigation or abating violations.

(c) Any person who interferes with an officer or agent of the City pursuant to this article shall be punished as provided in this article.

8-620 ENFORCEMENT IN MUNICIPAL COURT.

In addition to, or as an alternative to, any enforcement of this article as provided herein, or enforcement of any other portion of the Prairie Village Municipal Code that incorporates by reference the enforcement provisions of this article, if an authorized public officer determines that a violation of this article (or other portion of the Code that incorporates by reference this article) exists, he or she may issue a notice to appear in municipal court for such violation. No other procedures are required as a prerequisite to the issuance of a notice to appear. The imposition of any removal and abatement action

described in this article shall not preclude any appropriate prosecution or penalties. Likewise, the imposition of any prosecution or penalties shall not preclude any appropriate action described in this article or otherwise provided by applicable law to remove or abate a nuisance, an unsafe or dangerous structure, abandoned property, or to collect removal and abatement costs.

8-621 PENALTIES.

Any property owner, representative, tenant or person found in violation of this article shall be subject to prosecution in municipal court. Any such person found guilty of violating the provisions of this article shall be subject to a fine of not less than \$50.00 nor more than \$500.00 and not more than ten (10) days in jail, or both. Any person found guilty of violating the provisions of this article two (2) or more times within any one-year period, or determined by the municipal court to be a perennial violator, shall be fined not less than \$250.00 nor more than \$500.00 and shall be subject to a sentence not to exceed thirty (30) days in jail, or both. Prosecution of any offender under this article does not limit the City's right to pursue assessment or collection of costs as stated in this article, or by other laws. Each day that any violation shall continue shall constitute a separate offense.

Section 2. This ordinance shall take effect upon and after its passage, approval, and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on _____, 2022.

APPROVED by the Mayor on _____, 2022.

CITY OF PRAIRIE VILLAGE, KANSAS

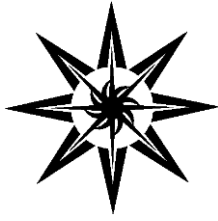
Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney



MAYOR

**Council Meeting Date: February 22, 2022
CONSENT AGENDA**

Consider appointment of committee members

RECOMMENDATION

Mayor Mikkelson requests Council ratification of the appointment/reappointment of the following individuals:

Committee	First Name	Last Name	Term	New/Reappointment
Tree Board	Beth	Held	2022-25	New
Tree Board	Karen	Hogan	2022-25	New
Insurance Committee	William (Bill)	Carlsen	2022-24	New
Environmental Committee	Rich	Dalton	2022-24	Reappointment
Environmental Committee	Laura	Lyons	2022-24	Reappointment
Environmental Committee	Nathan	Kovac	2022-23	Reappointment
Environmental Committee	Stephanie	Alger	2022-24	Reappointment
Environmental Committee	Travis	Carson	2022-24	Reappointment
Environmental Committee	McKenna	Owens	2022-23	New
Environmental Committee	Warren	Smith	2022-23	New
Environmental Committee	Johanna	Comes	2022-24	New
Environmental Committee	Rick	Wohlfarth	2022-24	New
Planning Commission	James	Breneman	2022-25	Reappointment
Planning Commission	Melissa	Brown	2022-25	Reappointment
Planning Commission	Greg	Wolf	2022-25	Reappointment

BACKGROUND

The individuals listed above have expressed interest in service on the indicated Prairie Village committees. Committee Chairs and staff have reviewed all applications, met with the individuals and desire to have these committee members appointed. New volunteer applications are attached.

ATTACHMENTS

Volunteer Applications

PREPARED BY

Adam Geffert

City Clerk

Date: February 16, 2022

* Full Name
Beth Held

* Full Address
5026 W 72nd Ter
Prairie Village KS 66208

* **Email**
bthhld@yahoo.com

* Phone
(816) 651-4578

* Select your City Ward
Ward 2

* **Please select your FIRST committee choice**
Tree Board

* **Please select your SECOND committee choice**
Environmental Committee

* **Please select your THIRD committee choice**
JazzFest Committee

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

I currently volunteer as a voting member of the environmental committee for the last few years, and concurrently serve as a non-voting liaison to the Tree Board. I am interested in becoming a formal member of the Tree Board and resign from my voting role on the environmental committee, if City policy still requires not maintaining membership on two committees. Thank you!

This application is available November 1 through December 31 or when there are specific mid-year vacancies. Appointments are typically made by the end of February.

Thank you for your interest in serving our community.

* Full Name
Ms. Karen Hogan

* Full Address
4052 W. 79th St.
Prairie Village KS 66208

* **Email**
khogan27@gmail.com

* Phone
(913) 548-8008

* Select your City Ward
Ward 4

* **Please select your FIRST committee choice**
Planning Commission

* **Please select your SECOND committee choice**
Tree Board

* **Please select your THIRD committee choice**
Environmental Committee

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

I am passionate about conserving natural resources, and preserving the beautiful trees in Prairie Village. I'm also very interested in the planning of land use in our city. I have lived in Prairie Village almost twenty years, worked for a Prairie Village bank and Continuing Care Retirement Community I have excellent communication and organizational skills.

This application is available November 1 through December 31 or when there are specific mid-year vacancies. Appointments are typically made by the end of February.

Thank you for your interest in serving our community.

* Full Name
William Carlsen

* Full Address
9121 FONTANA ST
PRAIRIE VILLAGE KS 66207

* **Email**
w.s.carlsen@gmail.com

* Phone
(913) 207-7326

* Select your City Ward
Ward 5

* **Please select your FIRST committee choice**
Insurance Committee

* **Please select your SECOND committee choice**
Insurance Committee

* **Please select your THIRD committee choice**
Insurance Committee

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

I am a 16 year resident of Prairie Village interested in supporting the community, while I currently work in the wireless industry I worked in the insurance industry for over 12 years and would like to assist the PV insurance committee if there is a need, thanks and have a great 2022

This application is available November 1 through December 31 or when there are specific mid-year vacancies. Appointments are typically made by the end of February.

Thank you for your interest in serving our community.

* Full Name
Ms. Mckenna Owens

* Full Address
7066 Granda Road
Prairie Village KS 66208

* **Email**
mckennalowens@gmail.com

* Phone
(660) 654-2200

* Select your City Ward
Ward 1

* **Please select your FIRST committee choice**
Environmental Committee

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

* **Please select your THIRD committee choice**
Diversity Committee

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

I moved to Prairie Village around two years ago and quickly fell in love with everything it has to offer. I even started working as a dental hygienist right down the road from my house. I hope to be able to contribute my skills to help continue to improve Prairie Village. During my time in school at UMKC, I spent my time serving as the class treasurer and volunteered at the Ronald McDonald House and Operation Breakthrough. Now, I serve by helping with dental screenings at elementary schools.

This application is available November 1 through December 31 or when there are specific mid-year vacancies. Appointments are typically made by the end of February.

Thank you for your interest in serving our community.

* Full Name
kw key warren smith

* Full Address
7212 High Dr
KS Prairie Village 66208

* **Email**
warren@warrensmith.com

* Phone
(913) 669-9464

* Select your City Ward
Ward 3

* **Please select your FIRST committee choice**
Environmental Committee

* **Please select your SECOND committee choice**
Environmental Committee

* **Please select your THIRD committee choice**
Environmental Committee

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

As a lifelong resident of Prairie Village, I'd like to be a part of PV setting the example of a community that is working to address climate issues at the local level. By doing this, we can help our community address climate issues and set an example for other communities to also address these serious issues. Thanks for considering me as a member of this committee & I'd be happy to answer any questions moving forward.

This application is available November 1 through December 31 or when there are specific mid-year vacancies. Appointments are typically made by the end of February.

Thank you for your interest in serving our community.

* Full Name
Ms. Johanna Comes

* Full Address
7800 Canterbury Street
Prairie Village KS 66208

* **Email**
jcfrankel@netscape.net

* Phone
(816) 510-2235

* Select your City Ward
Ward 6

* **Please select your FIRST committee choice**
Environmental Committee

* **Please select your SECOND committee choice**
Environmental Committee

* **Please select your THIRD committee choice**
Environmental Committee

* **Please tell us about yourself, listing any special skills or experiences you have.**
I have knowledge of native plants/shrubs. I am interested in working with others to decrease the carbon footprint of our community.

This application is available November 1 through December 31 or when there are specific mid-year vacancies. Appointments are typically made by the end of February.

Thank you for your interest in serving our community.

* Full Name
Richard Wohlfarth

* Full Address
8445 Juniper Ln
Prairie Village KS 66207

* **Email**
rgwohlfarth@gmail.com

* Phone
(913) 593-0574

* Select your City Ward
Ward 5

* **Please select your FIRST committee choice**
Environmental Committee

* **Please select your SECOND committee choice**
Parks & Recreation

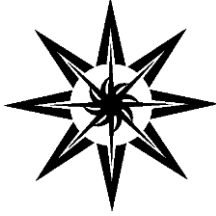
* **Please select your THIRD committee choice**
Insurance Committee

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

I am a small business owner and am self employed. my firm specializes in industrial air filtration and facility sanitation products. i have 2 young children and we have lived in PV since June '21. in years past I have served as a volunteer worker/coordinator for the American Legion Boys State of Kansas, a youth leadership and civic engagement organization. I have a B.A. of Political Science and am looking to apply my passion for government/service to my community.

This application is available November 1 through December 31 or when there are specific mid-year vacancies. Appointments are typically made by the end of February.

Thank you for your interest in serving our community.



PUBLIC WORKS DEPARTMENT

Council Committee of the Whole Date: February 7,
2022 Council Date: February 22, 2022

COU2022-15 CONSIDER CONSTRUCTION CONTRACT FOR TALIAFERRO PARK SHELTER AND RESTROOM IMPROVEMENTS (BG460001)

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Combes Construction LLC for the Taliaferro Park Shelter and Restroom Improvements (BG460001).

BACKGROUND

This bid package includes the new construction of a permanent restroom and replacement of the shelter at Taliaferro Park, 2900 W 79th Street.

The restroom is styled like the restrooms at Porter and Wassmer with a color palette to match Taliaferro Park (shown to the right).

The shelter was bid with two options, a pre-fabricated steel structure or a custom built structure (shown below). Staff recommends the custom built shelter as the final construction option for this park.



On January 21, 2022, the City Clerk opened bids for the project. Four (4) acceptable bids were received. Two (2) additional bids received were incomplete and disqualified.

Bidder	Amount
Combes	\$ 521,367.57
Herner	\$ 590,488.01
Centric	\$ 633,385.02
Gunter	\$ 704,976.00
Consultant's Est.	\$ 447,323.00

The consultant's estimate is approximately 14% below the low bid. The purpose of the consultant's estimate is the benchmark we use to reflect market pricing and serve as a baseline for bid evaluation. In compiling the estimate the consultant attempted to anticipate market conditions; however the market is changing rapidly and some were unforeseen. These changes are due to the current pandemic and its effect on transportation, supply and manufacturing. It is staff's opinion that there is no benefit to rebidding the project as the market remains in flux.

In order to evaluate for reasonableness the Engineer has contacted another park agency and vendors regarding the market. The Engineer then reviewed all bids and recommends award to the lowest responsible bidder, Combes Construction, in the amount of \$521,367.57. This cost includes the custom built shelter option that was considered.

The overall project budget is sufficient to award the project as recommended. However, the higher costs have absorbed the contingency that staff normally has in reserve for testing and any unforeseen construction costs. A transfer from the Park Infrastructure Reserve to the project in the amount of \$25,000 will re-fund the contingency.

FUNDING SOURCES

Funding is available in the CIP project BG460001 for the Shelter and Restroom Improvements.

Construction Award	BG460001	\$521,367.57
Contingency (Transfer)		\$25,000.00

ATTACHMENTS

1. Construction Agreement with Combes Construction LLC

PREPARED BY

Melissa Prenger, Senior Project Manager

February 2, 2022

CONSTRUCTION AGREEMENT



BG460001

TALIAFERRO PARK Shelter & Restroom

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

COMBES CONSTRUCTION LLC

CONSTRUCTION CONTRACT
FOR
BG460001 TALIAFERRO PARK Shelter & Restroom

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
COMBES CONSTRUCTION LLC

THIS AGREEMENT, is made and entered into this ____ day of _____, 2022, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and COMBES CONSTRUCTION LLC, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project TALIAFERRO PARK Shelter & Restroom , (the “**Project**”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

WHEREAS, the City has caused to be prepared, approved and adopted a Project Manual describing construction materials, labor, equipment and transportation necessary for, and in connection with, the construction of a public improvement, and has caused to be published an advertisement inviting sealed bid, in the manner and for the time required by law;

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bid Proposals submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construction of said public improvements, and has duly awarded to the said Contractor a contract therefore upon the terms and conditions set forth in this Agreement for the sum or sums set forth herein;

WHEREAS, the Contractor has agreed to furnish at its own cost and expense all labor, tools, equipment , materials and transportation required to construct and complete in good, first class and workmanlike manner, the Work in accordance with the Contract Documents; and

WHEREAS, this Agreement, and other Contract Documents on file with the City Clerk of Prairie Village, Kansas, all of which Contract Documents form the Contract, and are as fully a part thereof as if repeated verbatim herein; all work to be to the entire satisfaction of the City or City’s agents, and in accordance with the laws of the City, the State of Kansas and the United States of America;

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors and assigns, or its, his/her, hers or their executors and administrators, as follows:

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

ADVERSE WEATHER shall have the meaning set forth in Section 9.3 hereof.

APPLICATION FOR PAYMENT shall mean a written request for compensation for Work performed on forms approved by the City.

BID shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

BID DOCUMENTS shall mean all documents related to submitting a Bid, including, but not limited to, the Advertisement for Bids, Instruction to Bidders, Bid Form, Bid Bond, and the proposed Project Manual, including any Addenda issued prior to receipt of Bids.

BID PROPOSAL shall mean the offer or proposal of the Bidder submitted on the prescribed form set forth the prices for the Work to be performed.

BIDDER shall mean any individual: partnership, corporation, association or other entity submitting a bid for the Work.

BONDS shall mean the bid, maintenance, performance, and statutory or labor and materials payment bonds, together with such other instruments of security as may be required by the Contract Documents.

CERTIFICATE FOR PAYMENT shall mean written certification from the Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

CHANGE ORDER is a written order issued after the Agreement is executed by which the City and the Contractor agree to construct additional items of Work, to adjust the quantities of Work, to modify the Contract Time, or, in lump sum contracts, to change the character and scope of Work shown on the Project Manual.

CITY shall mean the City of Prairie Village, Kansas, acting through a duly appointed representative.

CONTRACT or **CONTRACT DOCUMENTS** shall consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Project Manager) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be carried out and the Project shall be constructed fully in accordance with the Contract Documents.

CONTRACT PRICE shall be the amount identified in the Construction Agreement between the City and the Contractor as the total amount due the Contractor for Total Completion of the Work as per the Contract Documents.

CONTRACT TIME shall be the number of calendar days stated in the Contract Documents for the completion of the Work or shall be a specific date as designated in the Construction Agreement.

CONTRACTOR shall mean the entity entering into the Contract for the performance of the Work covered by this Contract, together with his/her duly authorized agents or legal representatives.

DEFECTIVE WORK shall mean Work, which is unsatisfactorily, faulty or deficient, or not in conformity with the Project Manual.

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

FINAL ACCEPTANCE shall mean the date when the City accepts in writing that the construction of the Work is complete in accordance with the Contract Documents such that the entire Work can be utilized for the purposes for which it is intended and Contractor is entitled to final payment.

GENERAL CONDITIONS shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

INSPECTOR shall mean the engineering, technical inspector or inspectors duly authorized by the City to monitor the work and compliance tests under the direct supervision of the Project Manager.

NOTICE TO PROCEED shall mean the written notice by the City to the Contractor fixing the date on which the Contract Time is to commence and on which the Contractor shall start to perform its obligations under the Contract Documents. Without the prior express written consent of the City, the Contractor shall do no work until the date set forth in the Notice to Proceed.

PAY ESTIMATE NO. ____ or FINAL PAY ESTIMATE shall mean the form to be used by the Contractor in requesting progress and final payments, including supporting documentation required by the Contract Documents.

PLANS shall mean and include all Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT shall mean the Project identified in the first paragraph hereof.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this Contract.

PROJECT MANUAL shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

PROJECT SEGMENTS shall have the meaning set forth in Section 7.1 hereof.

PUBLIC WORKS DIRECTOR shall mean the duly appointed Director of Public Works for the City of Prairie Village or designee.

SHOP DRAWINGS shall mean all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distribution and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

SPECIFICATIONS shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to: design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work; performance specifications, e.g., performance characteristics required, if any; purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval thereof by the City.

SPECIAL CONDITIONS shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

SUBCONTRACTOR shall mean an individual, firm or corporation having a direct contract with the Contractor or with another subcontractor for the performance of a part of the Work.

SUBSTANTIAL COMPLETION shall be defined as being less than 100 percent of the Work required that will be completed by a specified date as agreed to in writing by both parties.

TOTAL COMPLETION shall mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

TOTAL PROJECT WORK shall have the meaning set forth in Section 7.1 hereof.

UNIT PRICE WORK shall mean Work quantities to be paid for based on unit prices. Each unit price shall be deemed to include the Contractor's overhead and profit for each separately identified item. It is understood and agreed that estimated quantities of times for unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of actual quantities and classifications of unit price work shall be made by the City.

UNUSUALLY SEVERE WEATHER shall have the meaning set forth in Section 9.4 hereof.

WORK shall the mean the work to be done to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor, materials, tools, equipment and transportation necessary to produce such construction in accordance with the Contract Documents.

WORK SCHEDULE shall have the meaning set forth in Section 7.2 hereof.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words “as ordered,” “as directed,” “as required”, “as permitted”, “as allowed”, or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression “it is understood and agreed”, or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words “approved”, “reasonable”, “suitable”, “acceptable”, “properly”, “satisfactorily”, or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified

- act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only

the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.

- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of **Five Hundred Twenty One Thousand, Three hundred sixty-seven and 57/100 DOLLARS (\$521,367.57)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 5.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

6. PROJECT MANAGER

- 6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.
- 6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.
- 6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities

specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

7. **WORK SCHEDULE:**

- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments.**" A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an

accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.

- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S.

Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the Work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

9. ADVERSE WEATHER:

- 9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.
- 9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 9.3 **“Adverse Weather”** is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.
- 9.4 **“Unusually Severe Weather”** is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.
- 9.5 Time Extensions for Unusually Severe Weather: In order for any request for time extension due to Unusually Severe Weather to be valid, the Contractor must document all of the following conditions:
- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.
 - The Unusually Severe Weather actually caused a delay to the completion of the Work.
 - The delay must be beyond the control and without fault or negligence by the Contractor.
- 9.6 The following schedule of monthly-anticipated Adverse Weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Work Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	8	7	6	7	7	5	5	5	4	5	9

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.
- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor

is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole

or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7)

days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic or any similar event, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and

claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.

- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas.

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor’s limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

General Aggregate:	\$2,000,000
Products / Completed Operations Aggregate:	\$2,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE AS “ADDITIONAL INSURED”

15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) -
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:
 NAME CITY OF PRAIRIE VILLAGE AS “ADDITIONAL INSURED”

15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits -

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims

for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

15.7 The City will only accept coverage from an insurance carrier who offers proof that it:

- Is authorized to do business in the State of Kansas;
- Carries a Best's policy holder rating of A- or better; and
- Carries at least a Class VIII financial rating, **or**
- Is a company mutually agreed upon by the City and Contractor.

15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:

- A. Cover all subcontractor's in its insurance policies, or
- B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.

15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.

15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.

15.11 Additional Insurance. Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Special Conditions.

15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance

security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

16.1 For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meaning set forth below:

"**The Contractor**" means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and employees; and "**Loss**" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the work required hereunder.

16.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.

16.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.

16.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

17. SUCCESSORS AND ASSIGNS

17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.

17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Project Manual.

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;

- B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. The Contractor further 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 sexual orientation or gender identity. If the City determines that the Contractor 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. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
 - D. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
 - E. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
 - F. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - G. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

[THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.
- 19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.

19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS:

20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

20.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.

20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.

20.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.

20.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

21. RIGHT OF CITY TO TERMINATE

21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion

including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

- 21.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits, consequential damages or other costs other than direct costs of demobilization.

22. MISCELLANEOUS:

- 22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.
- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and

to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.

- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed five (5) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF PRAIRIE VILLAGE

COMBES CONSTRUCTION LLC

(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

COMBES CONSTRUCTION LLC

(typed company name)

7700 Mission Road

6925 W 206TH STREET, UNIT C

(typed address)

Prairie Village, Kansas 66208

BUCYRUS, KANSAS 66013

(typed city, state, zip)

913-782-9400

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

City Attorney, David Waters

(If the Contract is not executed by the President of the Corporation, general partner of the Partnership, or manager of a limited liability company, please provide documentation, which authorizes the signatory to bind the corporation, partnership or limited liability company. If a corporation, the Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)



COU2022-16: Consider approval of Resolution 2022-01, declaring it to be the intent of the Governing Body to vacate and discontinue a public utility easement at 4415 W 89th Street

RECOMMENDATION

Make a motion to approve COU2022-16, setting the date for a public hearing and ordinance adoption to vacate a utility easement located at 4415 W 89th Street for Monday, March 21st at 6:00 p.m.

BACKGROUND

The owners of property at 4415 W 89th Street have requested a public utility easement located on their property to be vacated by the City. The City's current subdivision regulations do not currently address the process by which to vacate a utility easement on private property. After consulting with City Attorney David Waters, to vacate the easement the City must follow the state statute requirements absent our own regulations. In order to vacate the easement, the City must take the following steps:

- 1) The Governing Body must adopt a resolution (attached) to set the date for a public hearing in consideration of the easement vacation
- 2) Staff must issue public notice to the Legal Record and notify all public utilities of the date of the public hearing at least 20 days in advance.
- 3) The Governing Body must hold a public hearing and adopt an ordinance authorizing the vacation of the easement
- 4) Staff must publish the ordinance summary and send copies of the ordinance to the County for recording.

At this time, City staff does not have concerns about vacating this utility easement pending concerns brought to our attention from any utilities that may be affected. The easement was dedicated on the original plat of the land; however, the current home is built directly across the utility easement.

ATTACHMENTS

Resolution 2022-01
Written request from property owners at 4415 W 89th Street
Plot plan illustrating the easement to be vacated

PREPARED BY

Jamie Robichaud
Deputy City Administrator
Date: February 14, 2022

RESOLUTION NO. 2022-01

A RESOLUTION DECLARING IT TO BE THE INTENT OF THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, TO VACATE AND DISCONTINUE A PUBLIC UTILITY EASEMENT ESTABLISHED BY PLAT.

WHEREAS, reference is hereby made to that certain real property commonly known and numbered as 4415 W. 89th Street in Prairie Village, Johnson County, Kansas, and legally described as "Lot 1, Block 8, except the East 120 feet and the East 40 feet of the North 200 feet of Tract B, in SOMERSET ACRES WEST, a subdivision in the City of Prairie Village, Johnson County, Kansas" (the "Property");

WHEREAS, pursuant to that certain plat of SOMERSET ACRES WEST (Blocks 1, 3-10, and Tracts A & B) recorded January 4, 1955, recorded at Plat Book 17, Page 74, and as may have been subsequently amended or replatted (collectively, the "Plat"), an easement for general public utilities was granted to the City of Prairie Village, Kansas (the "City"), over, upon, and across the Property, as described and shown on Exhibit A which is attached hereto and incorporated herein by this reference (the "Easement"); and

WHEREAS, pursuant to K.S.A. 12-504 *et seq.*, cities are authorized to vacate public easements, including the Easement.

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

Section 1. It is the intention of the Governing Body of the City of Prairie Village, Kansas, to vacate the Easement as to the Property, as described on Exhibit A hereto; provided, that such vacations shall be limited to the easements granted under the Plat, and shall not include easements under separate grants.

Section 2. Notice is hereby given that a public hearing will be held by the Governing Body to consider the proposed vacation of public utility easements on March 21, 2022, 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, 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.pykansas.com, and included with the published agenda for such meeting. At the public hearing, the Governing Body will receive public comment on the foregoing matters, and may, after the conclusion of such public hearing, consider the findings necessary for vacation of the Easement.

Section 3. A copy of this resolution shall be published once in the official City newspaper not less than twenty (20) days preceding the date fixed for the public hearing.

Section 4. This resolution shall be in full force and effect from and after its adoption.

ADOPTED this 22nd day of February, 2022, by the City Council of the City of Prairie Village, Kansas.

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

EXHIBIT A

[Description of Easement to be Vacated]

PLOT PLAN

This plot plan portrays the proposed size and location of the foundation on the lot, along with the suggested elevations. The builder should verify all elevations and dimensions to insure proper position, drainage, and sewer fit, and that the suggested elevations meet the builder's expectations and requirements. This plot plan is not to be used for a boundary survey. No title information was provided for the preparation of this plot plan. The surveyor is not responsible for any easements or right-of-ways not shown on the recorded subdivision plat.

4415 W. 89th Street
 Lot 1, Block 8, Except the East 120 feet and the East 40 feet of the North 200 feet of Tract "B", in SOMERSET ACRES WEST, a subdivision in the City of Prairie Village, Johnson County, Kansas.
 ZONED R-1A

NOTE:
 The existing house, driveway, sidewalk, and patios will be removed.

Bearings are assumed, as noted on the survey.

This property is outside the 100 year flood plain according to the FEMA FIRM Map No. 20091C0054G, Revised August 3, 2009.

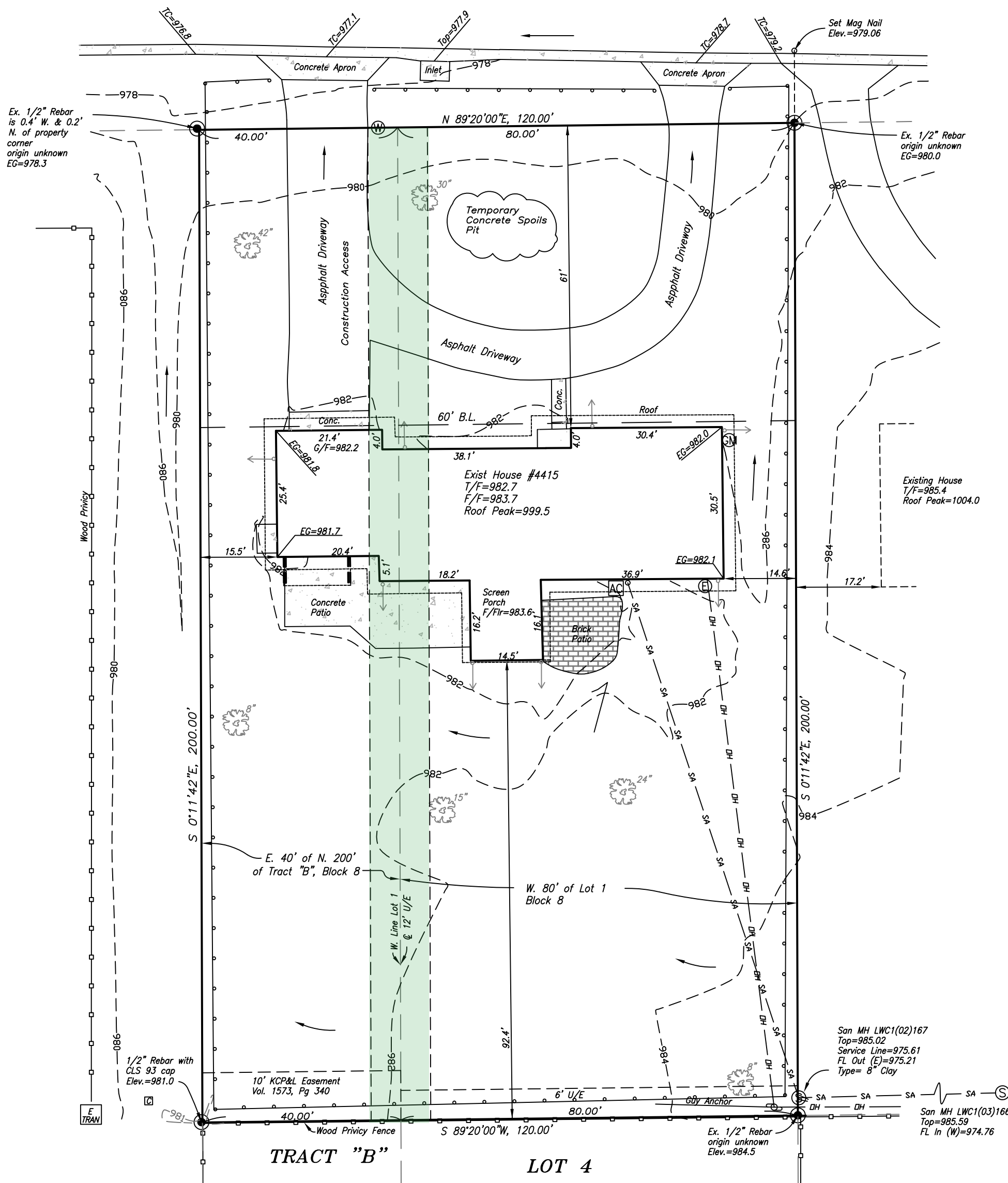
Orange construction fence along the front of the house to control site access through construction entrance

Easements are based on Title Commitment No. 21423102, issued by Continental title Company on November 2, 2021.

No easement vacation information was provided by the title company.

Easement to be vacated is green area shaded below, generally described as that certain utility easement running North/South consisting of the East six (6) feet of the East forty (40) feet of the North two hundred (200) feet of Tract "B", Block 8, SOMERSET ACRES WEST (Parcel No. OP670000 000B3), and the West six (6) feet of the West eighty (80) feet of Lot 1, Block 8, SOMERSET ACRES WEST (Parcel No. OP67000008 0001B); but excluding (not being vacated) any portion of that certain 10-foot KCP&L Easement (Vol. 1573, Pg. 340) or that certain 6-foot utility easement as shown on the below Plot Plan.

W. 89th Street



LEGEND

- ⊙ - Sanitary Sewer Manhole
- ⊕ - Electric Meter
- ⊖ - Water Meter
- ⊗ - Gas Meter
- B.L. = Building Line
- OH = Overhead Utility Line
- ← - Down Spout
- F/F = Finished Floor
- G/F = Garage Floor
- T/F = Top of Foundation
- M = Measured
- D = Described
- S = South
- N = North
- E = East
- W = West
- ⊙ - Utility Pole
- OH — Overhead Utility Lines
- Silt Fence
- - - Existing elevation contour.
- ⊙ Existing Rebar, as noted.

EXISTING LOT INFORMATION

Lot Size	24,000.0 Sq. Ft.	
Impervious Area	5,563.4 Sq.	23.1%
House Area	2,720.2 Sq. Ft.	11.3%
Hard Surface	2,843.2 Sq. Ft.	11.8%

Sewer Service Line:
 MH Stub, F/L @ Main=975.61±
 Length of 6" PVC service line to house=109 LF±
 @ 1.5% EOL=977.24±
 MSFE=981.24±
 Sanitary Sewer elevations are based on GPS observations and field observations.

Ex. House #4415
 T/F=982.7
 F/F=983.7
 G/F=982.2
 Roof Peak=999.5

I hereby certify that to the best of my knowledge and belief, this plot correctly portrays the proposed size and location of a foundation on the above described property.
 Jerald W. Pruitt, PS 814,
 December 7, 2021

Client:
 Wynne Homes
 PO Box 25645
 Overland Park, KS 66225
 Job No. 21-0413

Scale 1" = 20'



SCALE IN FEET

PRUITT AND DOOLEY SURVEYING, LLC
 10777 Barkley, Suite 220-1, Overland Park, KS 66211
 Tele. -913-652-9002
 Somerset Acres West Lot 1 Blk 8.dwg

six
twenty
one

February 09, 2022

Mitch Dringman
Building Official City of PV
7700 Mission Road,
Prairie Village, KS 66208

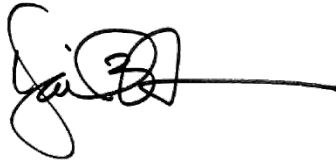
Dear Mr. Dringman,

On behalf of the property owners, William and Kali Buchanan, we would like to request to vacate the existing utility easement at the following property:

4415 W 89th Street, Lot 1, Block 8. Except the East 120 feet and the East 40 Feet of the North 200 feet of Tract "B"; in Somerset Acres West, a subdivision of Prairie Village, Johnson County, Kansas.

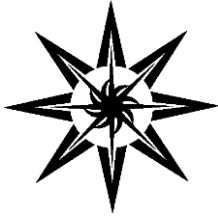
Included is a site plan highlighting the easement to be vacated. Please let us know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Brown', with a long horizontal line extending to the right.

Dan Brown, AIA
SixTwentyOne

dan@sixtwentyone.com
C| 913.669.0556



COU2022-18: Consider repealing Ordinance 2466 requiring the wearing of face coverings or masks.

BACKGROUND

The current face covering/mask ordinance expires at midnight on March 16, 2022. Consistent with prior discussions, City staff has received very few complaints directly, and the Police Department has not issued any tickets to anyone for violating the ordinance.

Several Councilmembers expressed an interest in revisiting the face covering/mask requirement at the February 22, 2022, meeting date. With the COVID-19 transmission levels dropping significantly in the community, staff prepared the attached ordinance in advance should the Council be inclined to vote to repeal the face covering/mask requirement. The repeal would take effect upon publication on March 1, 2022.

OPTIONS

1. No action and the current ordinance will expire by default on March 16th, 2022.
2. Adopt new ordinance repealing section 11-222. This would take effect on March 1, 2022.

ATTACHMENTS

Current Ordinance
New Ordinance repealing Ordinance 2466

PREPARED BY

Tim Schwartzkopf
Assistant City Administrator
February 15, 2022

ORDINANCE NO. 2466

AN ORDINANCE AMENDING AND EXTENDING SECTION 11-222(F) OF THE CODE OF THE CITY OF PRAIRIE VILLAGE TO REQUIRE THE WEARING OF MASKS OR OTHER FACE COVERINGS DURING THE COVID-19 PUBLIC HEALTH PANDEMIC AND RECOVERY.

WHEREAS, the governing body of the City of Prairie Village, Kansas, prioritizes the protection of the health, safety, welfare and economic well-being of residents and visitors of the City of Prairie Village;

WHEREAS, COVID-19 is a disease caused by a novel coronavirus, previously unknown in humans, and is presently understood to cause, among other things, upper-respiratory tract illnesses that can range from mild to severe, spread quickly, and may cause death, particularly in older adults and persons with chronic medical conditions;

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), Johnson County, Kansas, is currently an area where there is a "high" level of community transmission of COVID-19;

WHEREAS, this worrying trend of increased COVID-19 spread is a danger to the health and safety of residents and visitors to the City of Prairie Village, and also presents a serious threat to reopening and reviving the City's economy;

WHEREAS, research shows that COVID-19 and its variants are spread primarily through respiratory droplets exhaled when infected people breath, talk, cough, or sneeze;

WHEREAS, the CDC has issued certain recommendations related to the COVID-19 pandemic, such that in addition to recommending the wearing of masks for unvaccinated persons, the CDC now recommends that even fully-vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission, such as in Johnson County, Kansas;

WHEREAS, Chief Medical Officers from the region's hospital systems have advised that the regional healthcare system is currently in the throes of an unprecedented health care crisis that impacts the availability of and access to health care for all Prairie Village and regional residents, caused by the resurgence of COVID-19 patients and related hospital staff shortages;

WHEREAS, Section 11-222 of the Code of the City of Prairie Village, Kansas, currently specifies that the requirements of Section 11-222 will expire on February 16, 2022, unless further extended by ordinance of the Governing Body; and

WHEREAS, for the aforementioned and other reasons, the governing body of the City of Prairie Village is acting pursuant to its constitutional home rule authority to provide for the health, safety, welfare and economic well-being of residents and visitors of the City of Prairie Village, by requiring that masks or other face coverings be worn as described in this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1. That Section 11-222(F) of the Code of the City of Prairie Village, Kansas, is hereby deleted in its entirety and amended to read as follows:

(F) **Mask or other face covering; effective term.** The provisions of this Section 11-222 shall be in effect until 11:59 p.m. on March 16, 2022, unless further extended by ordinance of the governing body.

Section 2. Section 11-222(F) of the Prairie Village Municipal Code, in existence as of and prior to the adoption of this ordinance, is hereby repealed.

Section 3. This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas, on February 7, 2022.

APPROVED by the Mayor on _____, 2022.

CITY OF PRAIRIE VILLAGE, KANSAS

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

ORDINANCE NO. 2468

AN ORDINANCE AMENDING SECTION 11-222 (WEARING MASKS IN PUBLIC PLACES OF BUSINESS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY AND RECOVERY) OF CHAPTER XI (PUBLIC OFFENSES & TRAFFIC), ARTICLE 2 (LOCAL REGULATIONS), OF THE CODE OF THE CITY OF PRAIRIE VILLAGE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1. That Section 11-222 of the Code of the City of Prairie Village, Kansas, is hereby amended to read as follows:

11-222 Reserved.

Section 2. Section 11-222 of the Prairie Village Municipal Code, in existence as of and prior to the adoption of this ordinance, is hereby repealed.

Section 3. This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas, on _____, 2022.

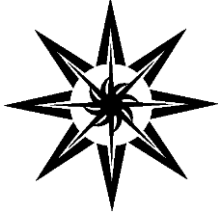
APPROVED by the Mayor on _____, 2022.

CITY OF PRAIRIE VILLAGE, KANSAS

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk



ADMINISTRATION

Committee of the Whole Meeting Date: February 22, 2022

COU2022-17

2023 Budget Calendar

SUGGESTED MOTION

Move that the Council approve the 2023 Budget Calendar.

BACKGROUND

Staff creates a Budget Planning Calendar every year to schedule activities that must be completed to create and develop the annual budget. The 2023 budget calendar is similar to the 2022 budget calendar, other than the Finance Committee meetings and initial Council discussion shifted back a few weeks due to the timing of budget adoption.

This will be the first full year implementing all requirements of Senate Bill 13, including a notification to residents from the County Clerk in August regarding the Revenue Neutral Rate, if applicable. The calendar includes two separate scenarios: one scenario exceeding the Revenue Neutral Rate and one which does not exceed the Revenue Neutral Rate. As a reminder, 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. Johnson County will provide the City with the Revenue Neutral Rate in June 2022. The 2022 budget did exceed the Revenue Neutral Rate.

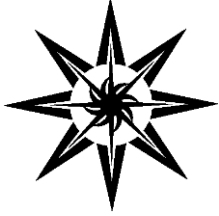
ATTACHMENTS:

- 2023 Budget Calendar
-

Prepared by: Nickie Lee, Finance Director
Date: February 14, 2022

City of Prairie Village 2023 Budget Calendar (Proposed)

Month	Date	Action Item
February	2/22/22	Council Meeting - Handout 2023 Budget Calendar Outline
March	3/3/22	Meet with Johnson County Appraiser - Beau Boisvert
	3/7/22	Council Meeting - (1) 2023 Budget Goals and Objectives (2) Mill Rate Handout (3) Decision Packages (<i>send to Nickie by 4/8/2022</i>)
	3/21/22	4th Quarter 2021 Financial Report
April	4/4/22	Council Meeting - (1) Worker's Compensation and Insurance Cost Assumptions (2) Committee 2023 Budget and Funding requests (Village Fest, Arts Council, Environmental, Diversity and Jazz Fest)
	4/8/22	Department budget requests due
	4/11 - 4/15/22	Budget review process with individual departments
	4/18/22	Council Meeting - (1) Decision Package Discussion (2) Preliminary Revenue Estimate
	4/18/22	Council Meeting - (1) Decision Package Discussion (2) Preliminary Revenue Estimate
May	5/2/22	Council Meeting - (1) CIP Discussion and Annual Road Condition Report
	5/4/22	Finance Committee Meeting - Preliminary 2023 Budget Established and Decision Packages
	5/10/22	Finance Committee Meeting - Preliminary 2023 Budget Established and Decision Packages (Continued)
	5/16/22	Council Meeting
	5/30/22	HOLIDAY
June	6/6/22	Council Meeting
	6/15/22	SB 13: County Clerk will calculate and notify taxing entities of revenue neutral rate
	6/21/22	Council Meeting - 2023 Budget Discussion and Approval of Preliminary Budget
July	7/4/22	HOLIDAY
	7/5/22	Council Meeting - SB 13 Resolution Stating Intent to Exceed Revenue Neutral Rate and Set the Public Hearing Date
	7/18/22	Council Meeting - Request Permission to Publish 2023 Budget & Set Budget Adoption Public Hearing Date
	7/20/22	SB 13: Governing Bodies notify County Clerk of intent to exceed revenue neutral rate w/ date, time and location of hearing
August	8/1/22	Council Meeting
	8/10/22	Notification sent to taxpayers, if exceeding revenue neutral rate
	8/15/22	Council Meeting
	8/23/22	Latest date for notice to be published in the Legal Record for RNR and Budget hearing
	8/25/22	Submit budget forms to County Clerk (due August 25th) <i>If not exceeding revenue neutral rate</i>
September	9/6/22	Council Meeting - SB 13 Public Hearing (Must be no later than September 20) and Budget Hearing/Adoption
October	10/1/22	Submit budget forms to County Clerk if Exceeding Revenue Neutral Rate (due October 1st)
	10/1-10/31/22	Finalize Budget Book; Submit to GFOA Award Program



ADMINISTRATION

Council Meeting Date: February 22, 2022

COMMITTEE OF THE WHOLE AGENDA - Transient Guest Tax Discussion

RECOMMENDATION

Discuss potential uses of the Transient Guest Tax funds in preparation for the 2023 budget.

BACKGROUND

The City Council passed Charter Ordinance 27 in November 2015, creating a 9% Transient Guest Tax. Charter Ordinance 29 later replaced Charter Ordinance 27. A transient guest tax is “a levy upon the gross receipts derived from or paid directly or through an accommodations broker by transient guests for sleeping accommodations.”

The original intent was for the City to keep \$25,000 of collections for City use as allowed under State Statute, and any excess funds to go back to the Developer as part of the overall Development Agreement for Meadowbrook Park. The Meadowbrook Inn opened in 2020 and has been charging the Transient Guest Tax and remitting to the City as outlined.

In December 2021 the City restructured the Meadowbrook bonds, and in doing so amended the Development Agreement to direct all Transient Guest Tax collections to the City for allowable uses. The current balance in the fund is \$112,831, with an estimated annual collection of \$280,000.

Per the Charter Ordinance, “Revenues received by the City from the transient guest tax shall be expended for all, or any portion of, community, economic development and cultural activities which encourage or which are deemed to result in increased economic development, visitors and tourism for the City, and to the payments of principal and interest on bonds issued by the City, including bonds issued pursuant to K.S.A. 12-1774.”

It is recommended the City Council discuss use of the transient guest tax funds for both the 2022 and 2023 budgets.

Staff ideas for use of the funds and estimated amounts include:

- Funding the City's annual allocation to the Arts Council (\$14,500)
- Funding the City's annual allocation to the VillageFest Committee (\$20,000)
- Funding additional VillageFest event expenses (\$15,000)
- Funding the City's annual allocation to the JazzFest Committee (\$10,000)
- Funding additional JazzFest event expenses to replace sponsorship dollars (\$25,000)
- Funding the Holiday Tree Lighting/other holiday expenses (\$3,000)
- Funding potential partnerships for future events
- Funding Vantrust's request to consider of an event at/near Meadowbrook Park
- Transferring 2% of collections to the General Fund for administration of the program allowable by the Charter Ordinance (\$5,600)
- Maintain a minimum fund balance of 10% due to fluctuations in collections (\$28,000)

Total (*excluding unspecified amounts*): \$121,100

Approximate Remaining Balance Available (*If spend \$0 in 2022 with balance allowed to accumulate*): \$271,731

ATTACHMENTS:

- **Charter Ordinance 29**
-

Prepared by: Nickie Lee, Finance Director

Date: February 15, 2022

CHARTER ORDINANCE NO. 29

A CHARTER ORDINANCE OF THE CITY OF PRAIRIE VILLAGE, KANSAS, KANSAS, RELATING TO TRANSIENT GUEST TAX LEVY, EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 12-1696 THROUGH 12-1698a, INCLUSIVE, PROVIDING FOR ADDITIONAL AND SUBSTITUTE PROVISIONS ON THE SAME SUBJECT, AND REPEALING CHARTER ORDINANCE NO. 27.

WHEREAS, the City of Prairie Village, Kansas has heretofore adopted Charter Ordinance No. 27 pursuant to the provisions of Section 5(c) of Article 12 of the Constitution of the State of Kansas exempting itself and making inapplicable to it provisions of subparagraphs (b) and (f) of K.S.A. 12-1696, subparagraph (a) of K.S.A. 12-1697, and subparagraph (e) of K.S.A. 12-1698, all related to transient guest taxes, and providing substitute provisions on the same subject; and

WHEREAS, Section 5(c)(4) of Article 12 of the Constitution of the State of Kansas provides that a Charter Ordinance may be repealed or amended by charter ordinance.

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

SECTION 1. That pursuant to the provisions of Section 5(c) of Article Twelve (12) of the Constitution of the State of Kansas, the City of Prairie Village, Kansas, hereby exempts itself from the provisions of K.S.A. 12-1696 through 12-1698a, inclusive, and adopts the following additional and substitute provisions:

- a. As used in this Charter Ordinance, the following words and phrases shall have the meanings respectively ascribed to them herein:
 - i. "Person" means an individual, firm, partnership, corporation, joint venture or other association of persons;
 - ii. "Hotel, motel or tourist court" means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having six or more bedrooms furnished for the accommodation of such guests. The terms shall not include group homes (as defined by K.S.A. 12-736, as amended).
 - iii. "Transient guest" means a person who occupies a room in a hotel, motel or tourist court for not more than 28 consecutive days;
 - iv. "Business" means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court;
 - v. "Accommodations broker" means any business which maintains an inventory of six or more rooms in one or more locations which are offered for pay to a person

or persons for not more than 28 consecutive days.

- b. In order to provide revenues to promote tourism and conventions, the governing body of the City of Prairie Village, Kansas (City) is hereby authorized to levy, and the City hereby does levy, a transient guest tax at not to exceed the rate of nine percent (9%) upon the gross receipts derived from or paid directly or through an accommodations broker by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court located within the City of Prairie Village. The percentage of such transient guest tax may hereafter be determined by the Governing body by ordinary ordinance.
- c. Any transient guest tax levied pursuant to this section shall be based on the gross rental receipts collected by any business or accommodations broker.
- d. The transient guest taxes levied pursuant to this section shall be paid by the consumer or user to the business and it shall be the duty of each and every business to collect from the consumer or user the full amount of any such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each business collecting any of the taxes levied hereunder shall be responsible for paying over the same to the City, and the City shall administer and enforce the collection of such taxes. To the extent the City timely and actually receives transient guest taxes from a third-party provider or platform (whether pursuant to a voluntary collection agreement or otherwise), then a business shall not be responsible for payment of transient guest taxes; provided, that to the extent transient guest taxes are not so timely or actually received, the business will remain responsible for payment of transient guest taxes.
- e. The collection of any City transient guest tax authorized to be levied pursuant to this section has previously commenced under previous Charter Ordinance No. 27, and shall continue as of the effective date of this Charter Ordinance.
- f. Any tax levied and collected shall become due and payable by the business monthly, on or before the 25th day of the month immediately succeeding the month in which it is collected, with the first payment due and payable on or before the 25th day of the month specified in the resolution of the governing body which levies the tax. Each business shall make a true report to the City, on a form prescribed by the City Clerk, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross rental receipts for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross rental receipts shall be kept separate and apart from the records of other retail sales made by a business in order to facilitate the examination of books and records as provided herein.
- g. The City Clerk or the City's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a business as may be necessary to determine the accuracy of such reports.
- h. The City Clerk is hereby authorized to administer and collect any transient guest tax levied pursuant to this Charter Ordinance and to adopt such procedures as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any business liable to pay any transient guest tax refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the transient guest tax by the Code of Ordinances and amendments thereto. All of the taxes collected under the provisions of this Charter Ordinance shall be remitted

by the City to the City Clerk in accordance with the provisions of the Code of Ordinances, and amendments thereto. Upon receipt of each such remittance, the City Clerk shall deposit the entire amount in the City treasury, and the city treasurer shall credit 2% of all taxes so collected to the City general fund to defray the expenses of the department in administration and enforcement of the collection thereof. The remainder of such taxes shall be credited to the City transient guest tax fund, which fund is hereby established.

- i. Revenues received by the City from the transient guest tax shall be expended for all, or any portion of, community, economic development and cultural activities which encourage or which are deemed to result in increased economic development, visitors and tourism for the City, and to the payments of principal and interest on bonds issued by the City, including bonds issued pursuant to K.S.A. 12-1774.
- j. Interest and penalties for failure to pay or untimely payment of transient guest tax shall be as follows:
 - i. If any taxpayer shall fail to pay the tax levied pursuant to this Charter Ordinance, and amendments thereto, there shall be added to the unpaid balance of the tax, interest at the rate per month prescribed by the Code of Ordinances, and amendments thereto, from the date the tax was due until paid.
 - ii. If any taxpayer due to negligence or intentional disregard fails to pay the tax due at the time required by or under the provisions of this Charter Ordinance, and amendments thereto, there shall be added to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.
 - iii. If any person fails to pay any tax, within sixty (60) days from the date the return or tax was due, except in the case of an extension of time granted by the city manager, there shall be added to the tax due a penalty equal to 25% of the amount of such tax.
 - iv. If any taxpayer, with fraudulent intent, fails to pay any tax or make, render or sign any return, or to supply any information, within the time required by or under the provisions of this Charter Ordinance, and amendments thereto, there shall be added to the tax a penalty in an amount equal to 50% of the unpaid balance of tax due.
 - v. Penalty or interest applied under the provisions of subsections j.i and j.iv shall be in addition to the penalty added under any other provisions of this section, but the provisions of subsections j.ii and j.iii shall be mutually exclusive of each other.
 - vi. The failure of the taxpayer to comply with the provisions of subsections j.ii and j.iii was due to reasonable causes and not willful neglect; the city administrator may waive or reduce any of the penalties upon making a record of the reasons therefor.
 - vii. For serious or repeated and/or continuous violations of any of the requirements of this Charter Ordinance, or for interference with the City staff performance of duties, any license to operate or conduct business as a hotel, motel, or tourist court may be suspended and/or permanently revoked after an opportunity for a hearing before the City Council has been provided. Prior to such action, the City Clerk shall notify the license holder in writing, stating the reasons for which the license is subject to suspension and advising that the license shall be temporarily

suspended at the end of thirty (30) days following service of such a notice, unless a request for a hearing is filed with the City Clerk, by the license holder, within ten (10) days.

viii. Hearings provided for in this Charter Ordinance shall be conducted by the City Council at a time and place designated by the City Council. Based upon the record of such hearing, the City Council shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the license holder by the City Clerk.

ix. In addition to all other penalties provided by this section, any person who willfully fails to pay any tax imposed under this Charter Ordinance, and amendments thereto, or who makes a false or fraudulent return, or fails to keep any books or records necessary to determine the accuracy of the person's reports, or who willfully violates any regulations of the City, for the enforcement and administration of the provisions of this Charter Ordinance, inclusive, and amendments thereto, or who aids and abets another in attempting to evade the payment of any tax imposed or who violates any other provision of this Charter Ordinance, inclusive, and amendments thereto, shall, upon conviction thereof, be fined not less than \$100.00 nor more than \$1,000.00, or be imprisoned in the city / county jail not less than one (1) month nor more than six (6) months, or be both so fined and imprisoned, in the discretion of the court.

SECTION 2. Charter Ordinance No. 27 is hereby deleted and repealed in its entirety.

SECTION 3. This Charter Ordinance shall be published once a week for two (2) consecutive weeks in the official city newspaper.

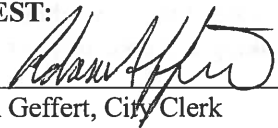
SECTION 4. This Charter Ordinance shall take effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed and a referendum held on this Charter Ordinance as provided in Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED AND APPROVED by the Governing Body, not less than two-thirds (2/3) of the members elect voting in favor thereof, this 20th day of JULY, 2020.



Eric Mikkelson, Mayor

ATTEST:



Adam Geffert, City Clerk

DATES OF PUBLICATION:

JULY 21, 2020.
JULY 28, 2020.

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

MAYOR'S ANNOUNCEMENTS

Tuesday February 22, 2022

Environmental Committee	02/23/2022	5:30 p.m.
JazzFest Committee	02/23/2022	5:30 p.m.
VillageFest Committee	02/24/2022	5:30 p.m.
Tree Board	03/02/2022	6:00 p.m.
City Council	03/07/2022	6:00 p.m.

INFORMATIONAL ITEMS
February 22, 2022

1. Tree Board meeting minutes – November 3, 2021
2. Parks and Recreation meeting minutes – January 12, 2022
3. JazzFest meeting minutes – January 26, 2022
4. VillageFest meeting minutes – January 27, 2021

TREE BOARD
City of Prairie Village, Kansas

Minutes

Wednesday – November 3, 2021 6:00 PM Meeting
ZOOM Video Conference Meeting

Board Members: Chad Herring, Deborah Nixon, Deborah Brown, Frank Riott, Mark Morgan, Kevin Dunn, , Kim Biagioli, Tricia Suellentrop

Other Attendees: Beth Held, Justin Norman

1. Review and approve minutes from September 1, 2021 meeting

Deb Nixon moved for approval. Frank seconded. Minutes were approved by the committee unanimously.

2. Fall Seminar October 13th takeaways

-Kevin shared that Deb Nixon was so informative. Kevin filled in for David Beals, Lead Gardener at Powell Gardens. Mark Morgan and Frank Riott also presented. The Prairie Village Tree Board's annual fall seminar was held October 13 via Zoom and the board had some discussion that even with these limitations it was a successful seminar. The seminar is on the city website and accessed via the Tree Board Link.

3. Fall Tree Planting Project

-Friday, November 12th, 2021. 9-12 meet at 4306 Homestead Drive. Small Corporate Groups will be there to help the Tree Board members who are able to attend. Kevin Dunn to take pictures, Frank will not be there. All Trees are in the Indian Fields neighborhood.

-The Fall Tree Planting Project that we do with Heartland Tree Alliance should probably be revisited to continue to receive City Council approval for funding the Fall Tree Planting Project. This may be necessary to ensure that this is a city budget item. Kevin Dunn will ask James and Suzanne as well as cc Justin about this project and budgeting the fall tree planting project for the next city budget process.

-Deb Nixon mentioned the issue of Oak Wilt and that 80% of our trees are Oak so continuing to plant new trees is important.

-An idea was presented that next year we could possibly see about getting some community involvement for the day.

-Chad Herring queried if there are grants for this outside of city funds. Board could check with Tree City Alliances; how do other cities obtain funds? Possibly contact Whitney Wilson – utility companies.

-Tricia asked if we have given a presentation to the City Council about the project. Chad Herring agreed this would be a good idea if funding is a question as this would be a powerful point for the council.

Chad also said it would be good to continue to maximize our presence and what the Tree Board is doing.

4. Social Media Calendar

Kim Biagioli and Tricia Suellentrop reported to the board. Our website has much more information and our social media presence is increasing. Ideas to add might be

Council members favorite tree

Tips from Public Works about Trees

Post tree board related activities on our social media platforms.

Images from Poster Content.

<https://www.pvkansas.com/governing-body/city-committees/tree-board>

-Mark Morgan suggested elongating the intro on the seminar tab website.

- Mark also reminded the board to remember Village voice deadlines. We can collaborate with Facebook Page. Arbor Day nominations link to the web page. Photos to link to the city Facebook page.

5. Tree City USA annual application for recertification.

Line item asks for our volunteer time.

Each board member please send Kevin the time you have spent on Tree Board activities to Kevin.

Kevin will write application essay and Suzanne Lownes will submit application before Jan. 1.

6. Looking Back on 2021

-Mark Morgan shared our website improvement was important. Great improvements. Information and photos. Tabs make navigating the Tree Board site easy.

-Kim and Tricia have done a great job on our social media presence.

-Kevin asked Tricia her thoughts about tree board as she finished up month 4 on the board. She says she has learned a lot more about trees.

-Work done on the Tree Protection Ordinance

7. Looking Ahead to 2022

- Deb Nixon is leaving the board. Kevin spoke to her accomplishments in her 20 years serving Prairie Village and the tree board. It is Deb Nixon that emphasized our need for a strategic plan. She will continue her work with Master Gardner's and Wassmer Park. Deb Nixon gave the board kudos for the energy, growth and the traditions that are ongoing. Continue to have a strategic plan and continue to understand the importance of trees.

-Frank Riott is also leaving the board. Frank has been on the Tree Board for the past 6 years. Kevin spoke to Frank's legacy of his efforts on the PV Tree Protection Ordinance, establishing the Fall Tree Planting Project.

-Frank spoke to the board about continuing our approach of having a strategic plan and a formal document as trees are a critical factor in our city and elsewhere. He suggested a document that

address in particular our canopy How large is the canopy? How can we manage the canopy as it needs to be protected? How do we track the health of our trees?

-Frank also said that on June 1, 2022, a year after implementation, it would be good to check the “pulse” on the tree protection ordinance to see if something needs to be tweaked. How effective has it been in protecting our trees.

-Deb Nixon added that is so important to take an accurate inventory of our trees in order to address their impact.

-Chad Herring may also be leaving the tree board pending ongoing City Council appointments. To be determined. Chad reminded the board that climate change and the environment will continue to be a pressing issue.

8. New Business

Kevin reminded the board that we will not meet until February

-Deb Brown said that she will send information and photos for the tree board to help select the Arbor Day poster contest winner sometime in January before the winner is due to be sent on to Kim Bomberger. Deb clarified with Chad that this would not be a violation of KOMA.

Kevin asked board members to once again assist in taking minutes. Below is the schedule.

February = Tricia

March= Beth

April = Mark

May = Kevin

June = Kim

July = no meeting

August =Deb Brown?

September = Kellen

October = no meeting Tree Seminar

November = New Board Member.

Kevin thanked all Tree Board members for a great year. Expressed to our members who are leaving how grateful we are for all that they have done.

Next Tree Board Meeting is Wednesday, February 2, 2022 at 6pm.

Kevin adjourned the meeting at 7:15 p.m.

Minutes respectfully submitted by Deb Brown

PARKS AND RECREATION COMMITTEE
5:30 p.m., January 12, 2022
Zoom

Minutes

Attendance:

Chairman Terrence Gallagher, Vice-Chair Lauren Wolf, Diane Mares, Matt Moeder, Matthew Geary, Carey Bickford, Randy Knight, Lauren Ozburn,
Staff: Meghan Boom, Melissa Prenger

Public Participation

None

Reports

1. Chairperson's Report – Terrence Gallagher was appointed by the Mayor to serve as the committee chair in 2022, with Lauren Wolf serving as the Vice Chair. With Ms. Wolf's move from her ward seat, the committee has four vacancies. Mr. Gallagher reported that he and Ms. Wolf would be working to fill those open positions before the next meeting.
2. Recreation Report – Meghan Boom reported that Suzanne McCullough would be returning as the Pool Manager for 2022, and hiring for the season is underway. All other items would be covered in New Business.
3. Public Works Report – Ms. Boom reported on behalf of James Carney. Shade awnings, benches, and trash cans have arrived after delays and installation is in process. Public Works is continuing to install no smoking signs in the parks. Decorative grasses are being trimmed City-wide. Holiday tree drop off will continue in the parks through this week. Residents are welcome to take the chippings for mulch.

Melissa Prenger reported that that the bids for the Taliaferro Park shelter and restroom will be opened the following week. Based on the proposals, they will then determine whether to move forward with a custom or prefabricated shelter.

Consent Agenda

1. Carey Bickford moved to approve the minutes from November 10, 2021. Diane Mares seconded the motion and they passed unanimously.

Old Business

New Business

1. Meghan Boom presented the 2022 summer recreation program agreements. There were no significant changes to the programs .
 - a. Diane Mares moved to approve agreements with JCPRD for day camp, swim lessons, and tennis. Lauren Ozburn seconded the motion and it passed

unanimously.

- b. Randy Knight moved to approve the SuperPass Interlocal Agreement. The motion was seconded by Carey Bickford and passed unanimously.
 - c. Randy Knight moved to approve the Swim Meet Letter of Understanding. The motion was seconded by Diane Mares and passed unanimously.
2. Meghan Buum presented revisions to CP509 – Swimming Pool schedule, establishing new hours for the regular season, and clarifying current practice for reduced and special hours.

In 2021, in an effort to hire more lifeguards, city staff recommended a noon opening for all pools within the pool complex as a way to capture 15-year-old lifeguards. Children under the age of 16 may not work more than eight hours in one day, nor more than 40 hours in one week. Previously, the city only hired 16 year old guards to account for the longer work day with an 11 a.m. opening time. That effort proved successful and one third of the lifeguard staff hired was age 15, and played a large part in running a complete operation in 2021. Due to the successes in hiring, as well as a more streamlined operation, city staff recommends formally adopting the noon opening time moving forward.

Additionally, the Council Policy was in need of general updates, as outlined:

Current practices that were not in written policy, including:

- Reduced hours beginning in August
- Slide/diving area closure during dive meets
- 6 p.m. closure on Fourth of July.

New changes to the special pool hours, including:

- Adjustment of pool closure for swim meets to begin at 4 p.m. from 4:30 p.m.
- 5 p.m. closure on Labor Day to allow pool staff more time for closing operations (currently closes at 6 p.m.)

The committee discussed a desire to see a “toddler time” program implemented to allow young families the ability to visit the pool earlier in the day. Ms. Buum responded that it is something that could be considered if enough lifeguards are hired.

Lauren Ozburn moved to approve the revised Council Policy 509. Diane Mares seconded the motion and it passed unanimously.

3. Meghan Buum presented an updated recreation fee schedule based on discussion from the November 2021 meeting, the Parks & Recreation Committee discussed the following changes to the fee schedule in 2022:

- Removal of the pool rental fee – The previous fee of \$350 does not cover the staffing costs for after-hours rentals of approximately \$600. Additionally, these rentals are increasingly burdensome on a limited staff. In 2018 and 2019, two outside rentals took place each year.
- Addition of commercial use tennis court rental fee – When the commercial use fee was added for field rental, a comparable fee wasn't set for tennis courts. City staff has noticed an increasing number of commercial types of use.

Ms. Buum stated that the fees are scheduled to undergo a more comprehensive review for 2023.

Lauren Ozburn moved to approve the revised fee schedule. Diane Mares seconded the motion and it passed unanimously.

4. Parks Master Plan/5 Year Priorities

Mr. Gallagher outlined the process for the development of the 2023-2028 Capital Improvement Program for the parks. The committee park reviews have been sorted into general maintenance, Capital Improvement projects, and items that are already scheduled to be completed. At the next meeting, Melissa Prenger will outline costs for the items, and the committee will designate as high, medium, and low priority items. Those recommendations will be presented to Council and included in the budget process.

Information Items

Meeting Schedule

- February 16, 2022 (tentative special meeting to discuss 5 year plan)
- March 9, 2022
- May 11, 2022

Adjournment

Prairie Village Jazz Fest 2022
Committee Meeting
Wednesday January 26, 5:30 p.m.
Via Zoom

Attendees

Jim Barnes	Stage and Technical Chair
Dave Hassett	Food and Beverage Chair
Amanda Hassett	VIP Services Chair
Mike Poelich	Infrastructure Chair
J.D. Kinney	Special Events Coordinator, Committee Chair
Dave Robinson	Prairie Village City Council, Council Liaison
John Wilinski	Backstage and Artist Hospitality Chair

Committee Chair's Report

JD Kinney welcomed the members of the Prairie Village Jazz Fest Committee.

The official date and location for the 2022 Prairie Village Jazz Festival is Saturday September 10, 2022, at Harmon Park, Prairie Village, Kansas.

It is the intent of the Committee to produce a live event with attendees in person.

Fundraising and Sponsorships

Most sponsorships received for the 2021 Jazz Fests were refunded after the event was canceled in August 2021. At that time, those donors expressed willingness to participate in 2022. The Inn at Meadowbrook, Dial Senior Living (Meadowbrook), Lathrop, Humana and Renewal by Andersen will be contacted to renew their participation for 2022.

Talent

Talent Chair Alex Toepfer has proposed that the 2021 lineup be re-contracted for 2022. JD proposed that an additional act either before or after Back Alley Brass Band be added so that the lineup of acts be 5 as it was in 2019. It is still the intent that the final act finish their performance before 10:00 pm. The 2021 lineup was as follows:

SME Blue Knights	
Back Alley Brass Band	
Eddie Moore: We the People	
The Adam Larson Band featuring special guests Fabian Almazan and Jaleel Shaw	

F&B

The City of Prairie Village secured a permanent special event liquor license for Jazz Fest in 2021 so we do not have to look for a local vendor to "donate" a liquor license.

The 2021 food truck lineup was Burg and Barrel, Nikki G's, Taste of Brazil, Done Deal BBQ, CoffeeCake KC and ButterFluff Popcorn. Dave Hassett will contact these vendors to assess their availability and interest.

The cost of ice, delivery and the truck to store it for 2021 had gone from \$464.00 to \$707.00. Additional research for other ice options should be pursued.

VIP Services

Determination of VIP seating/reception/food and beverage options TBD

Stage, Lighting and Technical Services

Now that the Skate Park is completed, JD, Jim Barnes, and Shawn from SECT should meet on site as soon as weather and schedules permit to discuss the changes to the Jazz Fest stage and backstage areas. Changes regarding move-in, move-out and assembly of the stage and stage canopy, and securing of the canopy, location and access of electric power, backstage storage and access, and artist ready "green room" location and access need to be discussed and the layout determined.

Artist contracts specifying technical and instrument requirements should not be issued until the stage details are settled.

Jim will contact Aching Backline and Jones Piano to secure their participation.

Rented Infrastructure

Marquee Event Rentals had been confirmed as the tent vendor in 2021 but did not offer carryover credit when the 2021 event was canceled. AAA Rental also provided a bid for 2021. JD to discuss with PV Public Works if a Monday pickup of rented items would be possible and forward contacts to Mike.

Marketing

The Inn at Meadowbrook had confirmed their interest in the back of the lineup fan 2021, and if they still have interest it should be our intent to produce the fans in time to distribute a portion of them at VillageFest on the 4th of July as a "save the date" marketing effort.

Elissa Andre to determine whether any marketing cost carryovers are available from 2021 for 2022. Target media include KCUR, Bridge FM and Shawnee Mission Post

Shawnee Mission Post has expanded their coverage area to include the Blue Valley area. We would be interested to expand our marketing reach to that area as well.

JD to coordinate with Public Works to change the date to September 10 and the ending time to 10:00 pm on the Porter Park, Founders Park, Franklin Park and Municipal Campus signs.

A sign highlighting Prairie Village committees that members of the public may volunteer for will be created and placed on Sponsors row. (Requested by Council Member Terrance Gallagher)

An updated sign for the main entrance recognizing 2022 Jazz Fest sponsors will be created.

Backstage/Artist Hospitality

Pending their sponsorship, The Inn at Meadowbrook will be our official hotel for guest artists.

John Wilinski will budget and organize food and refreshments for the backstage and sound crew, Kyle and those supporting him in his MC duties, the artists and their guests, and members of the PVPD and Public Works working the event. Breakfast, lunch and dinner should be budgeted and scheduled for

Jazz Fest/PV staff. Snacks/meals/beverages for artists and their guests will be at John's discretion. Budget and schedule for these are due TBD

Diversity Committee

Inga Selders to advise whether the American Jazz Museum has interest to participate as a content/exhibit provider with the PV Diversity Committee .

Arts Council

Bonnie Limbird to advise who will be the Arts Council liaison to Jazz Fest and whether the Arts Council plans an exhibit of PV-owned fine art as in years past

The next Jazz Fest Committee meeting was scheduled for Wednesday February 23, 2022, at 5:30 pm. In person or Zoom TBD.

The meeting concluded at 6:25 p.m.

Respectfully submitted: JD Kinney

VillageFest Jan 27, 2022

Attendance: Amber Fletcher, Alex Fletcher, Tobias Fritz, Courtney McFadden, JD Kinney, Lissa Haag, Steve, Teresa Stewart

VillageFest Minutes

- Intend to produce a live event with attendees in person
- Monday July 4, 2022
- Patty Jordan will step back from her role coordinating Children's Craft area
 - Arts Council to be asked to sponsor children's crafts
- Chris Cakes is secured for Pancake Breakfast
 - Teresa gets Starbucks coffee
 - Masons provide 5-6 volunteers
- Spirit Award Ceremony
 - Christy Lambert sing national anthem
 - Margo Mikkeleson - Wife of mayor volunteered to sing anthem if C. Lambert is unavailable
 - Boy Scouts to do Pledge of Allegiance
 - Spirit Award
 - Balloon Arches
 - Janie Next Door sings
- Attractions/Rides we have a \$2,780.00 credit
- Face Painters/Crazy Hair Artist - secured from Sister Act, invoice received
 - Lissa recommended "bubble guy"
- Inflatables
- Petting Zoo
- Human Hamster Balls
- Little Village - for kids 3 and under
- Pony Rides - Petting Zoo Vendor - More ponies, add shade if possible
- Slip and Slide - recommend again - Need Volunteer to coordinate - maybe scouts to operate
- Balloon sculptor - Amazing Alex did previously
- Yard Games - trash cans, corn hole - PW
- DJ - previous ones still look available
 - Steve has a contact if needed
- Live music - Corbin might manage day of
 - Mr. Stinky Feet
 - Janie Next Door
- Mr. Bones
 - Tedd can reach out to him
- Puppet Theater - not necessary
- KC Wolf - Lodge member
- Pie Contest
 - Asked for additional judging team

- How to handle it in a covid safe way?
- Make public samples and winner announcement outside and more exciting, Mayor to make announcement?
- Set a time
- Revenue Booths
 - Sponsors
 - Politicians
 - Banners
 - \$750 per booth for all but City Committees
 - Lodge will donate \$1,000
- Non Revenue Booths
 - City committees
- Food Vendors
 - Look at Prairie Village vendors first
 - KC Coffee Cakes/The JitterBuggy
 - Water Wagon
 - Shatto Milk
 - HyVee Grill
 - Nothing Bundt Cakes
 - Rex Nolen Funnel Cakes
 - Polar Oasis
 - Ice Cream: Look into Chill in the Village or Fairway Creamery or Summersalt
- Craft Vendors
 - Discontinue this year to make room or move children's craft area there
- Fire Station
 - Will be open at firehouse
- Bring over public works vehicles -Touch a Truck
- Kansas National Guard - Fritzes to look into availability
- Historic Display inside City Hall - Fritzes to coordinate
- First Aid at information booth
 - Lost and found
- Port a Potties and handwash stations # to depend on access to Community Center
- Think of activities for adults/teens
- Think of a Wow event
- New t-shirts
- Volunteers - activity by activity
- Social Media
 - Village Voice, Facebook, PV Website, Mission Road banners
- Pop Up Sign for photos
- Lodge at 75th and Nall offered for us to place signage
- Next Meeting Thursday Feb 24, 2022 5:30 pm