

**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
November 19, 2012  
7:30 p.m.**

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. PUBLIC PARTICIPATION
- V. 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. Approve Regular Council Meeting Minutes - November 5, 2012
2. Approve Claims Ordinance 2901
3. Approve the recommendations of the Drug and Alcoholism Council of Johnson County contained in the United Community Services Fund Recommendations Report and a contribution to UCS of \$15,000 from the 2013 Parks & Community Programs Budget
4. Approve the recommendations of the United Community Services Grant Review Committee contained in the 2013 Human Service Fund Recommendation Report and a contribution to UCS of \$6,825.

**By Committee:**

5. Adopt the 2013 Joint City/County Legislative Platform

- VI. MAYOR'S REPORT
- VII. COMMITTEE REPORTS
- X. STAFF REPORTS
- X. OLD BUSINESS
  - Consider Final Plat for "Prairie Village Shopping Center"
  - Provide direction to Planning Commission regarding Special Use Permit Protest Petition language
- XI. NEW BUSINESS
- XII. ANNOUNCEMENTS
- XIII. ADJOURNMENT

If any individual requires special accommodations – for example, qualified interpreter, large print, reader, hearing assistance – in order to attend the meeting, please notify the City Clerk at 381-6464, Extension 4616, no later than 48 hours prior to the beginning of the meeting.

If you are unable to attend this meeting, comments may be received by e-mail at [cityclerk@pvkansas.com](mailto:cityclerk@pvkansas.com)

**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
November 19, 2012**

The City Council of Prairie Village, Kansas, met in regular session on Monday, November 19, 2012, at 7:30 p.m. in the Council Chambers of the Municipal Building.

**ROLL CALL**

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Dale Warman, Ruth Hopkins, Steve Noll, Michael Kelly, Andrew Wang, Laura Wassmer, Brooke Morehead, Charles Clark, David Morrison, Ted Odell and David Belz.

Also present were: Wes Jordan, Chief of Police; Bruce McNabb, Director of Public Works; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator; Lisa Santa Maria, Finance Director; Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led all those present in the Pledge of Allegiance.

**PUBLIC PARTICIPATION**

John Petersen, attorney with Polsinelli Shughart representing MVS, LLC the property owner of the Mission Valley site, addressed the Council regarding the moratorium they approved at the last City council meeting. The ownership group strenuously objects to the substance and the process followed in approving the moratorium which they feel was not proper or legal and Mr. Petersen requested the Council take action to rescind the ordinance. Mr. Petersen noted the balance between the rights of property owners and citizens, which the Council has upheld in previous applications was not afforded his client on November 5<sup>th</sup>, who

has followed the required design elements, uses and process set forth under Kansas law and Prairie Village zoning regulations. They have had pre-application meetings with the city's development staff, met with resident focus groups and have developed a site plan representative of the comments they have received for a solely residential community with no retail components. Mr. Petersen noted this project mirrors the earlier approved "Benton House" project for senior living on a former school site with R-1a zoning in a residential community. They were in the process of working through many details to meet the city's tough development standards. A two step process had been planned allowing for a work-session before the Planning Commission in December followed with a public hearing and formal presentation in January.

He was shocked to receive a telephone call at 10:30 the evening of November 5<sup>th</sup> advising him of the Council's action not included on the Council's published agenda, with no notice to the public, no notice to the property owners and with very little deliberation based on comments from a few neighboring residents.

When their staff came into City Hall to file their application for a Special Use Permit with the City Clerk for consideration by the Planning Commission, they were advised that the application could not be received due to a moratorium. He was shocked that an ordinance passed with less than forty-five minutes of discussion and no public notice was published within the next 12 hours. Unlike the earlier moratorium ordinance passed by the City, this ordinance, passed by a 7 to 5 vote, gives no purpose for the ordinance, no rationale or justification for its adoption. Mr. Petersen compared Ordinance 2245 and the process followed in its enactment to Ordinance 2265 adopted on November 5<sup>th</sup>.

Mr. Petersen believes the purpose of the moratorium was to prevent the filing of his client's application the next day and stall submittal until the rules under which the application

will be heard can be changed to provide an opportunity for the neighboring residents to protest the application's approval which is not currently present in the city's zoning regulations and would make it more difficult for the project to be approved. This action tramples on his client's property rights and he respectfully requested the moratorium be rescinded. He noted the City has the right to establish a moratorium, but that power is not unlimited and cannot be exercised on a whim stating that case law in Kansas is clear that a moratorium bear a substantial relationship to public health, safety and the general welfare of the public. Mr. Petersen continued his discussion of relative case law.

John Petersen requested Ordinance 2265 be discussed and rescinded and that his client be allowed to file their application with the Planning Commission for its review and action.

Laura Wassmer stated the comments the City Council received from the public indicated that there was no public engagement with the neighboring residents regarding their proposed development. The Council expects developers to have significant discussion with neighboring property owners. Mr. Petersen responded to Ms. Wassmer's statement noting that during the past months their design team was focused on responding to the comments that the residents made very clear during the earlier hearings on the development of this property. They have spent the past 30 days to ensure that zoning and building regulations were being met regarding the project including design, storm water management, traffic and uses. Had the moratorium not been put in place, the residents would have had two months to communicate with the developer on specific detailed plans, not on vague, conceptual scenarios for development. The moratorium was not put in place to ensure communication, but to provide the residents with more power in the approval process.

City Attorney Katie Logan responded to Mr. Petersen's challenge of the legality of the ordinance, stating that she is confident that ordinance adopted on November 5<sup>th</sup> is valid

although it was not drafted in the format of the earlier ordinance. She noted the minutes of the meeting of November 5, 2012, reflect the reasons and purpose of the ordinance and confirms that the establishment of the moratorium was for all and any special use permit applications. She stated the ordinance was drafted during the meeting based on the discussion of the City Council initiated from comments made by residents during the public participation portion of the open City Council meeting. The formal ordinance was signed and sent to the City Clerk for signature and publication on the morning of November 6<sup>th</sup> and submitted electronically by the City Clerk to the Johnson County Legal Record for publication. The City Clerk was advised that the ordinance made the cutoff for their next publication which was on Tuesday, November 6, 2012. She advised the Council that she can look more closely at case law but is confident the adopted ordinance will stand as meeting all legal requirements. Ms Logan added that Mr. Petersen has filed an extensive open records request with the City Clerk.

Quinn Bennion noted that he had attended one pre-submittal meeting with city staff and the developer's group. These meetings are common practice and are designed to interpret code, not to design a project. Staff followed its normal process of submitting ordinances for publication the day following their adoption once duly executed. Confirmation of the publication was received via e-mail prior to the applicant's submission at 4:30 on Tuesday afternoon.

John Petersen responded his client's property rights have been impacted by this action and they question the propriety of the actions taken. They believe they have a strong project to bring to Prairie Village and they will not back down from their rights to develop this property.

Dale Warman responded to Mr. Petersen's comments stating his support of the adopted moratorium was to allow for the consideration of implementing a process, which is available in

other jurisdictions, to allow Prairie Village residents a voice in the approval of special use permits as they have in the approval of rezoning of property.

Chuck Dehner, 4201 West 68<sup>th</sup> Terrace, expressed several concerns regarding the proposed improvements for the Prairie Village Shopping Center. He expressed frustration with the actions of the Lane4 and the developers for the Shopping Center. He feels they have made a mockery of the process, providing inaccurate and deceptive information to both the residents and the City, not providing required and timely notification of meetings and noted the lack of concessions made by the developer for this project. He was particularly upset with the recent approval of the construction of a drive-thru facility for the new retail area being constructed, with CID funds, where the former Waid's building was located. He felt the Planning Commission rubber stamped the application submitted removing contested conditions recommended by staff including the Council directed inclusion of an 8' trail. They have not addressed serious potential parking problems caused by the proposed expansion of Hen House and the construction of the new building, not to mention possible future changes in use at the center such as the opening of "Standeeds".

Mr. Dehner noted misrepresentations made by Lane4 regarding the movement of Starbucks from their current facility to the proposed building. He spoke with several executives from Starbucks who not only denied their movement to the proposed building, but stated they had not even had discussions about a possible move. He feels the proposed drive-thru, for an unknown entity, will destroy the existing "neighborhood feeling and culture" of the shopping center and would like to see residents have the protest process ability of conditional use permit applications as well as on the proposed special use permit applications as well as the Governing Body approving conditional use permits. He would like to see the conditional use permit approved by the Planning Commission overturned.

Mr. Dehner is opposed to the CID funds given for the development of the shopping centers. It is giving Prairie Village residents' tax money to private developer without any way for the City to recapture those funds for 22 years.

Mr. Dehner noted that the City has also been given false information on the vacation of Mission Lane stating that the bank and John Rooney who are affected by the vacation have agreed to the vacation and would be signing the plat. He spoke with Mr. Rooney who indicated that he did not agree to the vacation as indicated by Lane4.

Brian Dorr, 4000 West 86<sup>th</sup> Street, stated the moratorium is not a Mission Valley property issue. It is a due process issue, noting that Prairie Village is the only city in Johnson County that does not allow for protest petitions to be filed on Special Use Permit applications. A land use change is a land use change whether or not it is a rezoning change or a special use permit. He believes citizens deserve maximum due process. Hearing input is not sufficient when you are talking about a lasting change in land use. He stated if the Council does not direct the Planning Commission to consider the adoption of the protest petition process for special use permits, it will be making this a Mission Valley issue.

He encouraged the Council to adopt a provision for the special use permit process to include the provision for a protest petition. He believes residents need to have a say in what happens in their neighborhoods.

Mayor Shaffer closed public participation at 8:40 p.m.

## **CONSENT AGENDA**

David Morrison asked that items #1 & #4 be removed from the Consent Agenda. Charles Clark moved the approval of the Consent Agenda for November 19, 2012 containing items #2 & #3:

1. Removed
2. Approve Claims Ordinance #2901
3. Approve the recommendations of the Drug and Alcoholism Council of Johnson County contained in the United Community Services Fund Recommendations Report and approve a contribution to UCS of \$15,000 from the 2013 Parks & Community Programs Budget
4. Removed

A roll call vote was taken with the following members voting “aye”: Weaver, Warman, Hopkins, Noll, Kelly, Wang, Wassmer, Morehead, Clark, Morrison, Odell and Belz.

David Morrison asked for clarification on page 14 of the Council minutes of November 5, 2012 regarding the motion to establish a temporary moratorium which lists Michael Kelly as having seconded the motion. Mayor Shaffer asked Mr. Kelly if he seconded the motion. He replied that he did, but noted there were others who also responded to the request for a second. He stated he would have no objection if the minutes were changed to reflect Mr. Morrison making the second. Michael Kelly moved that the City Council minutes of November 5<sup>th</sup> be amended to reflect that the motion referenced on page 14 of the minutes was seconded by David Morrison. The motion was seconded by Andrew Wang and passed unanimously.

David Morrison requested that the approval of a contribution to United Community Services Fund based on their recommendation report in the amount of \$6,825 be tabled. He noted that this is a grant funding charitable organizations that are worthwhile but urged the Council to postpone action at this time and look at the impact the recommended agencies have on Prairie Village residents. He does not feel it is appropriate for government to use taxpayer dollars to fund charitable organizations. This is not the city’s role and individual residents should be free to donate as they deem appropriate.

David Morrison moved to table consideration of the recommendations of the United Community Services Grant Review Committee and contribution to UCS in the amount of \$6825. The motion was seconded by Brooke Morehead and failed by a vote of 2 to 10.



Charles Clark moved the City Council approve the recommendations of the United Community Services Grant Review Committee contained in the 2013 Human Service Fund Recommendation Report and a contribution to UCS of \$6,825. The motion was seconded by Ruth Hopkins and passed by a vote of 10 to 2 with Morrison and Morehead voting “nay”.

It was noted that item #5 on the Consent Agenda was not included in the earlier motion. Charles Clark moved the Governing Body adopt the 2013 Joint City/County Legislative Platform. The motion was seconded by Steve Noll and passed unanimously.

### **MAYOR’S REPORT**

Mayor Shaffer noted he attended several meetings and functions on behalf of the City but due to the lateness of time he would not be giving a report on his activities.

### **COMMITTEE REPORT**

There were no committee reports.

### **STAFF REPORTS**

#### **Public Works**

- Bruce McNabb reported the ceiling has been repainted in the Council Chamber and a new City Flag placed in the Chamber.
- Mr. McNabb reviewed briefly the “Operation Green Light” report included in the Council packet information noting the adjustment to the pedestrian signals at 75<sup>th</sup> Street and lengthening the timing of the traffic light at 75<sup>th</sup> & Mission Road to address dismissal times at Shawnee Mission East High School

### **OLD BUSINESS**

#### **Consider Final Plat for “Prairie Village Shopping Center”**

Dennis Enslinger stated staff needs time to work with the developer to clarify the direction given by the Governing Body and the Planning Commission regarding the trail easements on this plat.

Charles Clark moved the City Council continue action on the Final Plat for the “Prairie Village Shopping Center” until the December 3, 2012 City Council Meeting. The motion was seconded by Laura Wassmer and passed unanimously.

**Provide direction to Planning Commission regarding Special Use Permit Protest Petition Language**

At its regular meeting on November 5, 2012, the City Council discussed the issue of including protest petitions for Special Use Permits similar to the protest provision for zoning changes mandated by State Statute, which states that if 20% of the property owners within the required notification area file a protest petition against the proposed change a  $\frac{3}{4}$  vote of all members of the Governing Body (10 votes) are required to override the protest. There is no statutory requirement for protest petitions for Special Use Permits and each city can establish its own procedure.

Dennis Enslinger advised that if a protest petition is to be included, it is suggested that it be similar to the protest provision used for zoning change requests. The Governing Body should not discuss the merits or details of the language at this time, but simply request the Planning Commission hold a public hearing to consider including a protest petition process for Special Use Permits.

Mr. Enslinger noted if direction is given for the Planning Commission to hold a public hearing, it would be authorized by the Commission at their December 4<sup>th</sup> meeting with the public hearing being held at the January 8, 2013 Planning Commission meeting with the Planning Commission recommendation forwarded to the Governing Body for action on Tuesday, January 21<sup>st</sup>. Mr. Enslinger stated the public hearing would only address the revision of the zoning regulations to include a protest provision process similar to that found in the

regulations for zoning changes. He stated it would not apply to conditional use permits which are not approved by the Governing Body.

Laura Wassmer asked that consideration of similar language for conditional use permits be added to a future agenda. Mr. Enslinger stated staff will provide an outline of uses requiring a conditional use permit. He noted there would need to be substantial revisions to the zoning regulations to allow this process for conditional use permits.

Charles Clark moved the Governing Body request the Planning Commission hold a public hearing on Chapter 19.28 Special Use Permits to include a protest petition process. The motion was seconded by Ted Odell and passed by a vote of 11 to 1 with Ruth Hopkins voting in opposition.

**NEW BUSINESS**

Michael Kelly moved Charles Clark be retained as interim Council President until the next City Council meeting. The motion was seconded by Ruth Hopkins and passed unanimously.

Charles Clark moved to place on the agenda for the December 3<sup>rd</sup> City Council meeting discussion of the process for electing Council President. The motion was seconded by Andrew Wang and passed unanimously.

**ANNOUNCEMENTS**

Environment/Recycle Committee	11/28/2012	7:00 p.m.
Council Committee of the Whole	12/03/2012	6:00 p.m.
City Council	12/03/2012	7:30 p.m.

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The Prairie Village Arts Council is pleased to announce a mixed media exhibit by the Greater Kansas City Art Association in the R.G. Endres Gallery for the month of November. Save the Date for the Northeast Johnson County Chamber of Commerce 2012 Annual Gala on November 17, 2012 at the Overland Park Marriott.

City offices will be closed Thursday, November 22 and Friday, November 23 in observance of Thanksgiving. Deffenbaugh observes the holiday on Thursday only.

The Mayor's Holiday Tree lighting will be Thursday, November 29<sup>th</sup> from 5:00 to 7:00 p.m. at Corinth Square.

The Municipal Foundation will be hosting a Gingerbread House Decorating Party on Sunday, December 9<sup>th</sup> at Brighton Gardens, 7105 Mission Road. There will be two sessions.

The employee holiday luncheon will be Wednesday, December 12<sup>th</sup> from 11:30 a.m. to 1:00 p.m. in the Council Chambers.

The Mayor's Holiday Gala for Volunteers will be Friday, December 14<sup>th</sup> at Homestead Country Club.

### **EXECUTIVE SESSION**

Charles Clark moved pursuant to KSA 75-4319 (b) (2) that the Governing Body, recess into Executive Session in the Multi-Purpose Room for a period not to exceed 25 minutes for the purpose of consulting with the City Attorney on matters which are privileged in the attorney-client relationship. Present will be the Mayor, City Council, City Administrator, Chief of Police, Assistant City Administrator and City Attorney. Ruth Hopkins seconded the motion which passed unanimously. The Council Committee of the Whole reconvened at 9:15 p.m.

### **ADJOURNMENT**

With no further business to come before the City Council, the meeting was adjourned at 9:16 p.m.

Joyce Hagen Mundy  
City Clerk