

# CITY OF PRAIRIE VILLAGE

September 15, 2014

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.



**COUNCIL COMMITTEE OF THE WHOLE**  
**Council Chambers**  
**September 15, 2014**  
**6:00 PM**

**AGENDA**

**ASHLEY WEAVER, COUNCIL PRESIDENT**

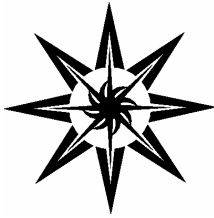
**AGENDA ITEMS FOR DISCUSSION**

- \*COU2014-35 Consider Adoption of the 2014 Standard Traffic Ordinance for Kansas Cities and the 2014 Uniform Public Offense Code for Kansas Cities, with certain changes, additions and deletions  
Katie Logan
- \*COU2014-36 Consider Pool Painting Bid Award  
Keith Bredehoeft
- \*COU2014-37 Consider Construction Administration Agreement with TranSystems for the 2014 CDBG Project  
Keith Bredehoeft
- \*COU2014-38 Consider Interlocal Agreement with the City of Leawood, Kansas for Project SODR0004: Belinder Avenue to State Line Road  
Keith Bredehoeft

**EXECUTIVE SESSION**

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**\*Council Action Requested the same night**



## Municipal Court/Police Department

Council Committee Date: September 15, 2014

Council Meeting Date: September 15, 2014

**\*COU2014-35: Consider adoption of the 2014 Standard Traffic Ordinance for Kansas Cities and the 2014 Uniform Public Offense Code for Kansas Cities, with certain changes, additions and deletions**

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### **RECOMMENDATION**

Staff recommends that Governing Body adopt Ordinance No. 2315 adopting the Uniform Public Offense Code edition of 2014 (UPOC) and Ordinance No. 2316 adopting the Standard Traffic Ordinance edition of 2014 (STO) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

\*City Council action is requested at the September 15, 2014 meeting.

### **MOTION**

Governing Body adopt Ordinance No. 2315 adopting the Uniform Public Offense Code edition of 2014 (UPOC) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

Governing Body adopt Ordinance No. 2316 adopting the Standard Traffic Ordinance edition of 2014 (STO) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

### **BACKGROUND**

On an annual basis, the City receives the latest edition of the UPOC and the STO from the League of Kansas Municipalities. The 2014 UPOC and 2014 STO were reviewed against current City ordinances for any discrepancies. Any deletions or additions were reviewed and approved by the City Attorney and City Prosecutor in consultation with the Police Department. The following addresses changes to the 2014 UPOC and STO made by the attached ordinances.

#### **UPOC Ordinance No 2315:**

The Uniform Public Offence Code ("UPOC"), which is published annually by the League of Kansas Municipalities, includes about 100 public offenses which may be prosecuted in municipal courts. Some UPOC provisions have parallel provisions under state law (prosecuted by the District Attorney in state court) and some are local violations only. Prairie Village and Mission Hills have historically adopted the current annual version of the UPOC, with amendments. In 2013, both cities retained the 2012 version of the UPOC in order to retain certain provisions regulating knives and firearms, including prohibiting open carry.

On July 1, 2014, HB 2578, approved by the Kansas legislature and signed by the Governor in the 2014 Session, became effective.

HB 2578 preempts the City's ability to regulate knives and open carry, and accordingly on June 16, 2014 the Governing Body approved Ordinance 2311 which became effective July 1, 2014, repealing certain sections of the 2013 UPOC as amended by the City. The amendments, all covered in an agenda memo at the June 16 meeting, are summarized below.

**KNIVES:**

HB 2578, Section 8, amends K.S.A. 2013 Supp. 12-16,134 by prohibiting municipalities from enacting and *enforcing* any ordinance relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife making components. The term "municipalities" does not include unified school districts, jails and juvenile correction facilities. The addition of the term "enforcing" closed a loophole relied on the City last year when it retained the 2012 version of UPOC including certain provisions regulating knives.

Assuming HB 2578 remains effective and enforceable, practical effects for Prairie Village:

- Prairie Village may not enact or enforce local ordinances which make the possession of knives a criminal offense.
- Prairie Village may not prohibit persons from carrying knives on public property, including into public buildings, other than jails or juvenile correctional facilities.

**The provisions in the 2014 UPOC governing knives are consistent with the HB 2578.**

**FIREARMS:**

HB 2578, Section 5, allows open carry to be prohibited in buildings, including city buildings, according to regulations and signage to be adopted by the Kansas Attorney General. As of June 11, 2014, no regulations have been adopted. It is expected that the ability to prohibit open carry in city buildings will be the same as the ability to prohibit conceal carry, or be broader.

HB 2578, Section 6, enacted a new state statute which prohibits the possession of loaded firearms (concealed or unconcealed) on or about the person or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs or both, to such a degree as to render such person incapable of safely operating a firearm.

HB 2578, Section 7, amends K.S.A. 2013 Supp. 12-16,124 by prohibiting cities from adopting or *enforcing* any ordinances governing the purchase, transfer, ownership, storage, *carrying* or transporting of firearms or ammunitions, and by eliminating certain exceptions which allowed cities to regulate certain aspects of firearms, including the “manner” of open carry and loaded firearms in vehicles. However, Section 7 does allow cities to adopt employment policies, consistent with the Personal and Family Protection Act (K.S.A. 2013 Supp. 75c01 *et seq.*) regarding the carrying of firearms by employees.

HB 2578, Section 16, allows a corrections facility, a jail facility or a law enforcement agency to prohibit the carrying of handgun or other firearm, concealed or unconcealed, by any person into any secure area of a building.

Assuming HB 2578 remains effective and enforceable, practical effects for Prairie Village:

- Prairie Village may not enact or enforce local ordinances which make the open carry of a firearm a criminal offense.
- Except as noted below, Prairie Village may not enact or enforce ordinances or other regulations relating to the transportation or possession of firearms in vehicles.
- Possession of a loaded firearm on or about the person or within a person’s immediate access and control while in a vehicle, while under the influence, may be charged by Prairie Village police as a state law violation.
- Except as noted below, Prairie Village may not prohibit open or conceal carry of firearms on public property.
- Prairie Village may prohibit open carry of firearms in city buildings in accordance with regulations to be adopted by the Kansas Attorney General.
- Prairie Village may prohibit open carry of firearms by employees in the work place, including in city vehicles. This does not appear to be conditioned upon a four year exemption or adequate security measure requirements of 2013 HB 2052.
- By virtue of the 4 year exemption period (expires January 1, 2018) adopted by Prairie Village in 2013 in response to 2013 HB 2052, Prairie Village may prohibit conceal carry (public and employees) in all buildings which are covered by the 4 year exemption.
- After the 4 year exemption period expires, Prairie Village may only prohibit employees from conceal carrying in city buildings if (i) the building has “adequate security measures” (electronic equipment and personnel at

public entrances to detect and restrict the carrying of any weapons into a building, including, but not limited to, metal detectors and metal detector wands), and (ii) the employee does not have restricted access to the building.

- After the 4 year exemption period expires, Prairie Village may only prohibit persons other than employees from conceal carrying in buildings if the building has adequate security measures.
- Prairie Village may not prohibit employees from conceal carrying in their personal vehicles and in city parking lots.
- Prairie Village may prohibit the carrying of any firearm in the secure area of the police department.

**The provisions in the 2014 UPOC governing firearms are consistent with the HB 2578.**

#### **EXPLANATION OF CHANGES TO THE 2014 UPOC PROPOSED IN ORDINANCE NO. 2315**

SECTION TWO increases the maximum fine for minor tobacco violations from \$25 to \$100. This change was made by PV to prior versions of the UPOC.

SECTION THREE restates Section 6.2 of the published 2014 UPOC to delete certain typos which were contained in the published version of that Section.

SECTIONS FOUR AND FIVE add offenses which are not included in the UPOC. These changes were made by PV to prior versions of the UPOC.

SECTION SIX adds the offense of possession of firearms while under the influence as a City offense, incorporating the elements of the same offense under state law. The actions described in SECTION SIX can be charged as either a state violation, prosecuted by the District Attorney, or a municipal court violation, prosecuted by the City Prosecutor. The LKM did not include this offense in the UPOC because it felt that it should be up to individual cities to include or not include as a municipal court violation by amending the UPOC.

SECTION SEVEN modifies the 2014 UPOC version of the offense of unlawful discharge of firearms. A “marked” version of difference between the proposed City version of 10.5 and the 2014 UPOC version of 10.5 is:

#### **10.5 UNLAWFUL DISCHARGE OF FIREARMS.**

- (a) Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city.
- (b) This section shall not be construed to apply:

- (1) If the firearm is discharged in the lawful defense of one's person, another person or one's property;
- (2) If the firearm is discharged at a private or public shooting range;
- (3) To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;
- (4) To the discharge of firearms in any licensed shooting gallery; or
- (5) To firing squads for ceremonials.

Unlawful discharge of firearms is a Class B violation. (KSA 21-6308a)

After input from the PD, the PV version of Section 10.5 of the UPOC is preferred because it does not make an exception for allowing discharge of firearms in PV to take wildlife, to defend against an animal attack, or to allow discharge using blanks (except as noted for ceremonial purposes). Chief Jordan can discuss further.

SECTION EIGHT deletes certain UPOC smoking offenses, covered elsewhere in the PV Code, and adds certain offenses not included in the UPOC. These changes have been made by PV to prior versions of the UPOC.

GENERAL. Certain changes to the UPOC made by PV in prior years are not included this year. The primary ones relate to firearms. But there were a few others which were made in prior years because certain offenses in prior versions of the UPOC were not consistent with other state statutes and therefore had to be amended locally. The 2014 UPOC cleans up those inconsistencies.

### **STO Ordinance No. 2316:**

SECTION ONE: Incorporates 2014 Standard Traffic Ordinance for Kansas Cities and adds language from Prairie Village Municipal Code Ordinance 11-705, DEFINITIONS, PEDESTRIANS to the 2014 Standard Traffic Ordinance for Kansas Cities, Definition of Pedestrians. The definition addition carries over same provision from 2013.

SECTION TWO: Establishes Prairie Village Municipal Code 11-602, SAME; TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES, which defines traffic offenses and infractions under the Prairie Village Municipal Code. Carries over same provision from 2013.

SECTION THREE: Establishes Prairie Village Municipal Code 11-603, PENALTY FOR SCHEDULED FINES, which establishes fines for offenses or infractions which do not have a penalty section under the 2014 Standard Traffic Ordinance for Kansas Cities or the Prairie Village Municipal Code. Carries over same provision from 2013.

SECTION FOUR: Modifies Article 4, Section 13.1(c) of the STO by allowing Public Works vehicles during snow to possess a traffic control signal device. Carries over same provision from 2013.

SECTION FIVE: Modifies Article 13, Section 107 of the STO by adding language allowing for remote control starts of vehicles. Carries over same provision from 2013.

SECTION SIX: Adds a Sec. 193(1) to Article 19 of the STO which requires driver's license holder to notify the Kansas Department of revenue- motor vehicles of a name or address change within 10 days of such change. Carries over same provision from 2013.

SECTION SEVEN: This amendment correct a typo in the published 2014 UPOC.

Other Changes to 2014 STO made by the League were reviewed by the PVPD, considered minor and not to require amendments by PV.

**FUNDING SOURCE**

N/A

**ATTACHMENTS**

Ordinance 2315

Ordinance 2316

**PREPARED BY**

Catherine P. Logan

City Attorney

September 15, 2014



## ORDINANCE NO. 2315

AN ORDINANCE REGULATING PUBLIC OFFENSES WITH THE CITY OF PRAIRIE VILLAGE, KANSAS; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES" EDITION OF 2014, WITH CERTAIN AMENDMENTS, DELETIONS AND ADDITIONS; AMENDING AND REPEALING EXISTING SECTIONS 11-101 THROUGH 11-109 OF ARTICLE 1 OF CHAPTER XI OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, 2003, ENTITLED "PUBLIC OFFENSES & TRAFFIC".

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

**SECTION ONE** Article 1 of Chapter XI, Section 11-101 of the Code of the City of Prairie Village is hereby amended to read as follows:

11-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Prairie Village, Kansas, that certain code known as the "Uniform Public Offense Code," edition of 2014, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such sections as are deleted, modified or supplemented hereby. No fewer than two copies of said Uniform Public Offense Code shall be marked or stamped, "Official Copy as Incorporated by the Code of the City of Prairie Village, Kansas" with such additional sections clearly marked and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

### **SECTION TWO**

Article 1 of Chapter XI, Section 11-102 of the Code of the City of Prairie Village is hereby amended to read as follows:

11.102. Article 5 of the Uniform Public Offense Code, edition of 2014 is hereby amended by deleting existing Section 5.6 and by inserting in place thereof the following:

#### **Section 5.6 Purchase or Possession of Cigarettes or Tobacco Products by a Minor**

It shall be unlawful for any person:

- (a) Who is under 18 years of age to purchase or attempt to purchase cigarettes, electronic cigarettes or tobacco products; or
- (b) Who is under 18 years of age to possess or attempt to possess cigarettes, electronic cigarettes or tobacco products. (K.S.A. 79-3321:3322, as amended)

Violation of this section shall be an ordinance cigarette or tobacco infraction for which the fine shall be a minimum of \$25 and a maximum of \$100. In addition, the judge may require the juvenile to appear in court with a parent or legal guardian.

## **SECTION THREE**

Article 1 of Chapter XI, Section 11-103 of the Code of the City of Prarie Village is hereby amended to read as follows:

11.103. Article 6 of the Uniform Public Offense Code is hereby amended by deleting existing Section 6.2 and by inserting in place thereof the following:

### **6.2 INTENT; PERMANENTLY DEPRIVE.**

(a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) The failure of a person who leases or rents personal property and fails to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;

(5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:

(A) The time and place to return the vehicle; and

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of

the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into appropriate state and local computer system listing stolen motor vehicles;

(7) Removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) Under the provisions of subsection (e) of section 6.1 the failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) In prosecution for theft as defined in Section 6.1, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.

(d) As used in this section:

(1) "Notice" means notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last know address; and

(2) "Tampering" includes, but is not limited to:

(A) Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;

(B) Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(C) Preventing any such meters from properly measuring or registering;

(D) Knowingly taking, receiving, using or converting to such person's own use, or the use of another, any electricity, water or natural gas which has not been measured; or any telephone or cable television service which has not been authorized; or

- (E) Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts. (K.S.A. Supp. 21-5804)

## **SECTION FOUR**

Article 1 of Chapter XI, Section 11-104 of the Code of the City of Prarie Village is hereby amended to read as follows:

11.104. Article 6 of the Uniform Public Offense Code is hereby supplemented to add the following provisions:

### **Section 6.26 Unlawful Posting of Pictures and Advertisements**

- (a) Unlawful posting of pictures and advertisements is:
  - (1) The putting up, affixing or fastening of either or both to a traffic control device or traffic control standard or telegraph, telephone, electric light, power or other utility pole, but it is not unlawful to affix official traffic control devices to such poles; or
  - (2) The placement of either or both on public property other than as prescribed in subdivision 3 of this subsection;
  - (3) The placement of either or both on right-of-way without the consent of the landowner or the person in possession whose land lies along the right-of-way where such picture or advertisement is placed; or
  - (4) The placement of either on private property without the consent of the landowner or the person in possession of such property.
- (b) It is unlawful for any person within the city limits to tack, paste, paint, hang or place in any manner whatsoever, or cause to be tacked, posted, hung, or placed in any manner whatsoever, any handbills, dodgers, signs, or advertisements, written or unwritten, or printed matter, to or upon any telephone or telephone pole, sidewalk, or building in the city, or to throw, scatter or cause to be thrown or scattered, any handbills, dodgers or other advertisements or propaganda, or of written or printed matter or paper of any kind upon any street, alley, sidewalk, vacant lot, city property, or yard within the city limits.

Unlawful posting of pictures and advertisements is a Class C violation.

### **Section 6.27 Opening, Damaging or Removing Coin-Operated Machines**

Opening, damaging or removing coin-operated machines is willfully and knowingly opening, removing or damaging any parking meter, coin telephone, vending machine dispensing goods or services, money changer or any other device designed to receive money in the sale, use or enjoyment of property or services or any part thereof, with intent to commit theft.

Violation of this section is a Class A violation.

### **Section 6.28 Possession of Tools for Opening, Damaging or Removing Coin-Operated Machines**

Possession of tools for opening, damaging or removing coin-operated machines is the possession of any key, tool, instrument or other device, or any drawing, print or mold of a key or other device or any explosive specifically designed for or suitable for the use in opening or breaking into any parking meter, coin telephone, vending machine dispensing goods or services, money changer or any other device designed to receive money in the sale, use or enjoyment of property or services with intent to commit theft.

Violation of this section is a Class B violation.

## **SECTION FIVE**

Article 1 of Chapter XI, Section 11-105 of the Code of the City of Prairie Village is hereby amended to read as follows:

11.105. Article 9 of the Uniform Public Offense Code is hereby supplemented to add the following provisions:

### **Section 9.14 Loitering**

(a) Loitering is loafing, wandering, standing or remaining idle, either alone or in concert with others, in a public place in such manner so as to:

(1) Obstruct any public street, public highway, public sidewalk or public building or any other place of public access by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;

(2) Committing in or upon any public street, public highway, public sidewalk or public building or any other place of public access any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or public building or any other place of public access, all of which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.

(b) When any person causes or commits any of the conditions enumerated in this section, a law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such order is guilty of a violation of this section.

Violation of this section is a Class C violation.

### **Section 9.15 Unsolicited Publications -- Penalty**

(a) No person shall either directly or indirectly place or deposit or cause to be placed or deposited, upon any building or structures used for human abode, including the lot or lots upon which the structure is located or upon any right-of-way or city property within the city, any newspaper, magazine, publication or any other printed material if the owner or occupant of the structure has previously requested in writing

that the publisher or deliverer of the material not place or deposit the material on the structure or lot.

(b) Exceptions. The provisions of this section shall not apply to distributions made through the U.S. Postal Service or any other private postal service.

(c) Penalties. Any person who violates the provisions of this section shall, upon conviction thereof, be punished for each such violation by a fine not exceeding \$100 for each such violation.

### **Section 9.16 Residential Picketing**

It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the city or before or about any church in the city.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not more than \$2,500 or by both such fine and imprisonment, provided that any person convicted of a second or subsequent conviction shall be required to be confined to not less than five consecutive days in the county jail in addition to any penalty assessed, which period of imprisonment shall not be suspended nor the defendant placed on probation until the five consecutive days are served.

## **SECTION SIX**

Article 1 of Chapter XI, Section 11-106 of the Code of the City of Prairie Village is hereby amended to read as follows:

11-106. Article 10 of the Uniform Public Offense Code, edition of 2014 is hereby supplemented to add the following:

### **10.3.1. Possession of a Firearm While Under the Influence**

(a) Possession of a firearm under the influence is knowingly possessing or carrying a loaded firearm on or about such person, or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm.

(b) Possession of a firearm under the influence is a class A nonperson misdemeanor.

(c) This section shall not apply to:

(1) A person who possesses or carries a firearm while in such person's own dwelling or place of business or on land owned or possessed by such person;  
or

(2) the transitory possession or use of a firearm during an act committed in self-defense or in defense of another person or any other act committed if legally justified or excused, provided such possession or use lasts no longer than is immediately necessary.

(d) If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm under the influence of alcohol or drugs, or both, such law enforcement officer shall request such person submit to one or more tests of the

person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The selection of the test or tests shall be made by the officer.

(e) (1) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:

(A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

(B) a registered nurse or a licensed practical nurse;

(C) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate/defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or

(D) a phlebotomist.

(2) A law enforcement officer may direct a medical professional described in this subsection to draw a sample of blood from a person if the person has given consent or upon meeting the requirements of subsection (d).

(3) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

(4) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(5) If a sample is to be taken under authority of a search warrant, and the person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(6) A law enforcement officer may request a urine sample upon meeting the requirements of subsection (d).

- (7) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by:
- (A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;
  - (B) a registered nurse or a licensed practical nurse; or
  - (C) a law enforcement officer of the same sex as the person being tested.

The collection of the urine sample shall be conducted out of the view of any person other than the persons super-ising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in para-graphs (2) and (3) shall apply to the collection of a urine sample.

(8) The person performing or assisting in the performance of any such test and the law enforcement officer requesting any such test who is acting in accordance with this section shall not be liable in any civil and criminal proceeding involving the action.

(f) (1) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of possession of a firearm under the influence of alcohol or drugs, or both.

(2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(3) In any criminal prosecution for a violation of this section, if the court finds that a person refused to submit to testing when requested pursuant to this section, the county or district attorney, upon petition to the court, may recover on behalf of the state, in addition to the criminal penalties provided in this section, a civil penalty not exceeding \$ 1,000 for each violation.

(g) If a person who holds a valid license to carry a concealed handgun issued pursuant to K.S.A. 2013 Supp. 75-7c01 et seq., and amendments thereto, is convicted of a violation of this section, such person's license to carry a concealed handgun shall be revoked for a minimum of one year for a first offense and three years for a second or sub-sequent offense.

(h) In any criminal prosecution for possession of a firearm under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(1) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol or drugs, or both.



(2) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol.

(3) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapacitated, that fact may be considered to determine if the defendant was under the influence of alcohol or drugs, or both.

(i) The provisions of subsection (h) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or drugs, or both.

(j) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person. (2013 HB 2578, Section 6)

## **SECTION SEVEN**

Article 1 of Chapter XI, Section 11-107 of the Code of the City of Prarie Village is hereby amended to read as follows:

11.107. Article 10 of the Uniform Public Offense Code, edition of 2014 is hereby amended by deleting existing Section 10.5 and by inserting in place thereof the following:

### **10.5 UNLAWFUL DISCHARGE OF FIREARMS.**

(a) Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city.

(b) This section shall not be construed to apply:

(1) If the firearm is discharged in the lawful defense of one's person, another person or one's property;

(2) If the firearm is discharged at a private or public shooting range;

(3) To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;

(4) To the discharge of firearms in any licensed shooting gallery; or

(5) To firing squads for ceremonials.

Unlawful discharge of firearms is a Class B violation. (KSA 21-6308a)

## **SECTION EIGHT**

Article 1 of Chapter XI, Section 11-108 of the Code of the City of Prarie Village is hereby amended to read as follows:

11-108. Article 10 of the Uniform Public Offense Code is hereby amended to delete sections 10.24, Smoking Prohibited, 10.25, Smoking-Posted Premises and 10.26, Smoking Prohibited-Penalties and supplemented to add the following provisions:

### **Section 10.27 Intoxicating Liquor and Cereal Malt Beverage -- Consumption and Possession of Open Containers Prohibited at Certain Places**

It is unlawful for any person to drink, consume, or possess an open container of alcoholic liquor or cereal malt beverage upon the public streets, alleys, roads or highways, or upon property owned by the City.

(a) The provisions of this section shall not apply to the consumption or possession of alcoholic liquor or cereal malt beverage upon property owned by the city and operated as the Prairie Village Community Center; provided further, that no person shall possess or consume any alcoholic liquor or cereal malt beverage at the Prairie Village Community Center unless:

(1) That person is in attendance at an event or a function for which permit authorizing the serving and consumption of liquor and beer has been previously issued by the city, and

(2) The liquor or beer being consumed has been provided by the individual, person, or organization to which the permit has been issued.

Violation of this section is a Class C violation.

### **Section 10.28 Drunkenness**

It is unlawful for any person to be drunk on any highway, street or in any public place or building in the city.

Violation of this section is a Class B violation.

### **Section 10.29 Impersonating an Officer**

It is unlawful for any person to exercise or to assume to exercise any of the powers conferred upon any police officer, or to represent himself or herself to be any such officer, or to possess the power and authority thereof, unless such person is a duly authorized officer of the law.

Violation of this section is a Class B violation.

### **Section 10.30 Vehicles in City Parks**

It is unlawful to run, stand or park any motor vehicle or motorized bicycle through or across or over any part of any city park, other than roadways or parking areas so designated.

Violation of this section is a Class C violation.

### **Section 10.31 Smoking on Common Carrier Buses -- Penalty**

(a) No person shall smoke or carry in his or her hand a lighted cigar, cigarette or pipe, while in or upon any motorbus operated in common carrier passenger service upon the streets or public ways of the city.

(b) Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$5 nor more than \$100.

### **Section 10.32 Public Urination or Defecation**

No person shall urinate or defecate in any place open to the public or while exposed to public view, except while using appropriate fixtures in a restroom or other facility designed for the sanitary disposal of human waste.

Violation of this section is a Class C violation.

**Section 10.33 Public Nudity**

No person shall knowingly or intentionally appear in a state of nudity in a public place. Nudity is defined as the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual arousal.

Violation of this section is a Class A violation.

**SECTION NINE**

Article 1 of Chapter XI, Section 11-109 of the Code of the City of Prarie Village is hereby added to read as follows:

**11-109.** Article 11 of the Uniform Public Offense Code is hereby supplemented to add the following provisions:

**Section 11.13 Window Peeping**

Window peeping is the going upon property owned or occupied by another without such person's consent for the purpose of looking into any window, door, skylight or other opening into a house, room or building.

Violation of this section is a Class A violation.

**SECTION TEN**

Article 1 of Chapter XI, Sections 11-101 through 11-109 of the Code of the City of Prarie Village are hereby repealed.

**SECTION ELEVEN**

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

**PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014**

\_\_\_\_\_  
RONALD L. SHAFFER, MAYOR

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_

JOYCE HAGEN MUNDY, CITY CLERK CATHERINE P. LOGAN, CITY ATTORNEY

## ORDINANCE NO. 2316

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CITY OF PRAIRIE VILLAGE, KANSAS; INCORPORATING BY REFERENCE THE "STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES," EDITION OF 2014; WITH CERTAIN AMENDMENTS, DELETIONS AND ADDITIONS; AMENDING AND REPEALING EXISTING SECTIONS 11-601 THROUGH 11-605 OF ARTICLE 6 OF CHAPTER XI OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, 2003, ENTITLED "STANDARD TRAFFIC ORDINANCE"; AND ADDING A NEW SECTION 11-1607 TO ARTICLE 6 OF CHAPTER XI.

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

### SECTION ONE

Article 6 of Chapter XI, Section 11-601 of the Code of the City of Prairie Village is hereby amended to read as follows:

#### **11-601. INCORPORATING STANDARD TRAFFIC ORDINANCE AND ADDING A SUBSECTION TO THE DEFINITION OF PEDESTRIAN**

A. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Prairie Village, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 2014, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. Not less than two copies of said standard ordinance shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Prairie Village, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The Police Department, municipal judges and all administrative departments of the city charged with the enforcement of the ordinances shall be supplied, at the cost of the city, such number of official copies of such "Standard Traffic Ordinance" similarly marked, deleted and changed as may be deemed expedient.

B. Article 1, Section 1, DEFINITIONS, "Pedestrian" of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended by adding the following subsection (d) to the definition of "Pedestrian":

(d) The term pedestrian includes individuals who are walking, jogging or running within the city limits of Prairie Village, Kansas. When this article requires that pedestrians walk in a certain fashion, the term walk shall be defined to include the acts of running and jogging.

## **SECTION TWO**

Article 6 of Chapter XI, Section 11-602 of the Code of the City of Prarie Village is hereby adopted to read as follows:

### **11-602. SAME; TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.**

(a) An ordinance traffic infraction is a violation of any section of this article that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. Supp. 8-2118.

(b) All traffic violations which are included within this article, and which are not ordinance traffic infractions as defined in subsection (a) of this section, shall be considered traffic offenses.

## **SECTION THREE**

Article 6 of Chapter XI, Section 11-603 of the Code of the City of Prarie Village is hereby adopted to read as follows:

### **11-603. PENALTY FOR SCHEDULED FINES.**

(a) The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judges establish a fine in a fine schedule shall not be more than \$500. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed \$500.

(b) Every person convicted of a violation of any of the provisions of this ordinance for which another penalty is not provided by this ordinance or by the schedule of fines established by the judge of the municipal court shall be punished for first conviction thereof by a fine of not more than \$500 or by imprisonment for not more than one month or by both such fine and imprisonment; for a second such conviction within one year thereafter that person shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or both such fine and imprisonment; upon a third or subsequent conviction within one year after the first conviction such person shall be punished by a fine of not more than \$2,500 or by imprisonment for not more than one year or by both such fine and imprisonment. (K.S.A. 8-2116; K.S.A. 21-4503; K.S.A. 21-4503a).

## **SECTION FOUR**

Article 6 of Chapter XI, Section 11-604 of the Code of the City of Prarie Village is hereby adopted to read as follows:

**11-604. TRAFFIC CONTROL SIGNAL PREEMPTION DEVICES**

Article 4, Section 13.1(c) of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended by deleting and replacing subsection (c) with the following:

“(c) The provisions of this section shall not apply to the operator, passenger, or owner of any of the following authorized emergency or public works vehicles, in the course of such person’s emergency or public safety duties:

- (1) Publicly owned fire department vehicles
- (2) Publicly owned police vehicles
- (3) Motor vehicles operated by ambulance services permitted by the emergency medical services board; or
- (4) Publicly owned public works vehicles during snow removal operations.”

**SECTION FIVE**

Article 6 of Chapter XI, Section 11-605 of the Code of the City of Prarie Village is hereby amended to read as follows:

**11-605. UNATTENDED MOTOR VEHICLE.**

Article 13, Section 107 of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended to read as follows:

“**Sec. 107. Unattended Vehicles.** No person either operating or in charge of a motor vehicle shall leave the vehicle unattended and unlocked on either a public or private area within the City unless the ignition of such vehicle is in the locked position, the keys are removed from the ignition and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway. These provisions shall not apply if the windows are closed and the doors locked or the vehicle is in a closed and secure building or when an engine has been activated by a remote starter system when the keys are not in the motor vehicle. A vehicle shall be presumed unattended if the owner or person in charge of the vehicle is not in the vehicle or is not in the immediate vicinity so as to have direct control or access to the vehicle.”

**SECTION SIX**

Article 6 of Chapter XI, Section 11-606 of the Code of the City of Prarie Village is hereby amended to read as follows:

**11-606. DRIVER’S LICENSE NOTICE OF CHANGE OF ADDRESS OR NAME:**

Article 19, Sec. 193 of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended by adding Sec. 193(1) to read as follows:

**“Sec. 193(1) Driver’s License Notice of Change of Address or Name.**

Whenever

any person, after applying for or receiving a driver’s license shall move from the mailing address or residence address named in such application or in the driver’s license issued to such person, or when the name of the licensee is changed by marriage or otherwise, such person, within ten (10) days thereafter, shall notify the Kansas Department of Revenue motor vehicles division in writing of such person’s old and new mailing and / or residence address and / or of such former and new name(s) and the driver’s license number of such person.”

**SECTION SEVEN**

Article 6 of Chapter XI, Section 11-607 is added to the Code of the City of Prairie Village to read as follows:

**11-607. MOTOR VEHICLE LIABILITY INSURANCE**

Article 19, Section 200(a) (4) of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended by deleting and replacing subsection (4) with the following:

(4) is expressly exempted from the provisions of the Kansas Automobile Injury Reparations Act, K.S.A. 40-3101 *et seq.*

**SECTION EIGHT**

Article 1 of Chapter XI, Sections 11-601 through 11-606 of the Code of the City of Prairie Village are hereby repealed.

**SECTION NINE**

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

**PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

\_\_\_\_\_  
Ronald L. Shaffer, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

\_\_\_\_\_  
Catherine P. Logan, City Attorney





## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 10, 2014  
Council Meeting Date: September 10, 2014

### COU2014-36 CONSIDER POOL PAINTING BIDS.

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#### RECOMMENDATION

Staff recommends the City Council approve the bid from Northeast Painting Associates, LLC for pool painting in the amount of \$57,570.00.

#### BACKGROUND

The 2014 Public Works Operating Budget provides for the painting of the lap and adult pools. The project will include sandblasting the pools and applying new paint.

A request for qualifications was publically advertised on August 12, 2014. Below are the three companies who have submitted bids.

Northeast Painting Associates, LLC	\$57,570.00
Commercial Waterproofing, Inc.	\$60,468.00
Sunshine Sandblasting	\$59,250.00

Northeast Painting Associates, LLC is currently has the City's three year painting contract and Public Works is comfortable with them providing this service. Under the City's current contract with Northeast Painting Associates, LLC any project over \$10,000 must be bid. This work will be performed under their current contract with the City.

#### FUNDING SOURCE

The 2014 Public Works Operating Budget includes this work.

#### ATTACHMENTS

None

#### PREPARED BY

Keith Bredehoeft, Director of Public Works

September 10, 2014



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 15, 2014  
Council Meeting Date: September 15, 2014

### COU2014-37 CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TRANSYSTEMS FOR THE 2014 CDBG PROJECT.

#### RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for the 2014 CDBG project for \$5,500.

#### BACKGROUND

In 2012 TranSystems was selected to be the City's construction administration consultant for 2012, 2013 and 2014.

This contract will include construction administration services for the 2014 CDBG Project.

The total construction cost for the above project will be about \$140,000. The fee was negotiated with TranSystems to be approximately 4% of construction costs. This percentage is reasonable given the short construction timeline of this project.

#### FUNDING SOURCE

Funding is available is the CIP project RADR0001.

#### RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

#### ATTACHMENTS

1. Construction Administration Agreement with TranSystems.

#### PREPARED BY

Melissa Prenger, Sr. Project Manager

September 9, 2014

# AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

## CONSTRUCTION ADMINISTRATION

For

## PROJECT 2014 CDBG PROJECT RADR0001

***THIS AGREEMENT***, made at the Prairie Village, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and TranSystems, a Missouri corporation with offices at 2400 Pershing Road, Suite 400, Kansas City, MO, 64108, hereinafter called the “**Consultant**”.

***WITNESSED, THAT WHEREAS***, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project 2014 CDBG Project RADR0001, hereinafter called the “**Project**”,

***AND WHEREAS***, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

***AND WHEREAS***, the City has the necessary funds for payment of such services,

***NOW THEREFORE***, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

### **ARTICLE I - RESPONSIBILITIES OF THE CITY**

The CITY designates Melissa Prenger, Project Manager of Engineering Services as CITY representative with respect to this Agreement. Ms. Prenger shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

1. Make available to the CONSULTANT all existing data and records relevant to the Project, including but not limited to, maps, plans, correspondence, data and previous reports and studies possessed by the CITY.
2. Approve all criteria and information as to the requirements of the CITY for the Project, including objectives and constraints, performance requirements, and budgetary limitations.
3. Review and approve all correspondence transmitted and forms used by the CONSULTANT relative to this Project.
4. Review for approval all submittals such as change orders and payment requests by the CONSULTANT.

### **ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT**

The CONSULTANT designates Mr. Michael Thomas as Construction Manager, who shall direct the related construction inspection and administration services in all phases of the Project to which this Agreement applies. The Construction Manager shall serve as the prime professional on this Project and shall be the prime contact with the Manager of Engineering Services.

The standard of care for all professional consulting services and related construction inspection and administration services either performed for or furnished by the CONSULTANT under this Agreement will be the care and skill ordinarily used by members of the CONSULTANT profession, practicing under similar conditions at the same time and in the same locality.

The Construction Manager shall act as CITY representative to the extent and limitations of the duties, responsibilities and authority as assigned herein and shall not be modified, except as CONSULTANT may otherwise agree in writing. All of CITY instructions to Contractor will be issued through Construction Manager, who shall have authority to act on behalf of CITY in dealings with Contractor to the extent provided in this Agreement, except as otherwise provided in writing.

The Construction Manager shall conduct a pre-construction meeting, which will include the Manager of Engineering Services, Contractor, utility companies and any appropriate government agency partied with the CITY prior to commencement of Work at the Site.

The Construction Manager shall coordinate with the Contractor on the taking of digital, pre-construction pictures.

The Construction Manager shall make visits to the site at intervals appropriate to the various stages of construction, as Construction Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Construction Manager are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Construction Manager herein, but rather are to be limited to selective checking, selective sampling, and similar methods of observation of the Work based on Construction Manager's exercise of professional judgment. Based on information obtained during such visits and such observations, Construction Manager will determine if Contractor's work is proceeding in accordance with the Project Manual, and Construction Manager shall keep CITY informed of the progress of the Work.

The purpose of Construction Manager visits to the Site of the Project will be to enable Construction Manager to carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase. By the exercise of Construction Manager's efforts as an experienced and qualified construction professional, the Construction Manager will provide for CITY a greater degree of confidence that the completed Work will conform in general to the Project Manual and that the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual has been implemented and preserved by Contractor. Construction Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Construction Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Construction Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Project Manual.

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not produce a completed project that conforms generally to the Project Manual or that it will prejudice the

integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

The Construction Manager shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. Construction Manager may issue Field Orders authorizing minor variations of work that neither increase the Time for Completion nor have a value of more than \$1,000 from the requirements of the Project Manual.

The Construction Manager shall recommend Change Orders and Field Orders to Manager of Engineering Services, as appropriate, and prepare Change Orders and Field Orders as required.

The Construction Manager shall review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Project Manual and compatibility with the design concept of the completed project as a functioning whole as indicated in the Project Manual. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Construction Manager has an obligation to meet any Contractors submittal schedule that has earlier been acceptable to Construction Manager.

The Construction Manager and Manager of Engineering Services shall evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor.

The Construction Manager shall require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Project Manual. The Construction Manager's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Project Manual and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Project Manual. The Construction Manager shall be entitled to rely on the results of such tests.

The Construction Manager shall render formal written recommendations on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work.

The Construction Manager shall:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. Construction Manager will provide recommendation for payment to the Manager of Engineering Services. Such recommendations of payment will be in writing and will constitute Construction Manager representation to the CITY, based on such observations and review, that, to the best of Construction Manager knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager responsibility to observe the Work. In the case of unit price work, the Construction Manager recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

2. By recommending any payment, it will also not impose responsibility on Construction Manager to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price. However, the Construction Manager shall obtain from the Contractor documentation in approved form with the payment request to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The Construction Manager shall receive and review maintenance and operating instructions, schedules, and guarantees that will be given to the Manager of Engineering Services.

The Construction Manager shall receive and deliver to the Manager of Engineering Services bonds, certificates, or other evidence of insurance not previously submitted and required by the Project Manual, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided herein, and the annotated record documents which are to be assembled by Contractor in accordance with the Project Manual to obtain final payment.

Construction Manager shall transmit to Manager of Engineering Services promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use. In company with Manager of Engineering Services and Contractor, the Construction Manager shall conduct an inspection to determine if the Work is Complete. If after considering any objections, the Construction Manager shall deliver a certificate of Completion to Manager of Engineering Services and Contractor.

Accompanying the recommendation for final payment, Construction Manager shall provide proper notice that the Work is acceptable to the best of the Construction Manager knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Construction Manager for final payment to Contractors.

The Construction Manager shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Construction Manager shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Project Manual.

Construction Manager shall furnish assistants, and other field staff to assist Construction Manager to provide more extensive observation of Contractor's work by observing progress and quality of the Work. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the assistants and other field staff, Construction Manager shall provide protection against defects and deficiencies in the Work.

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.

- 4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.
- 5 Record date of receipt of Samples and approved Shop Drawings.
- 6 Receive and examine Samples, which are furnished at the Site by Contractor.
- 7 Review material test reports and inform Manager of Engineering Services and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.
- 8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.
- 10 Conduct on-Site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.
- 16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- 17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Manager of Engineering Services.

- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all Project documentation to Manager of Engineering Services.
- 21 Furnish to Manager of Engineering Services periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to Manager of Engineering Services proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish copies of all inspection, test, and system start-up reports.
- 24 Immediately notify Manager of Engineering Services of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Manager of Engineering Services, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to Manager of Engineering Services for review prior to payment for that part of the Work.
- 27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of Manager of Engineering Services, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

- 1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.



- 4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.
- 5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.
- 6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 7 Authorize CITY to occupy the Project in whole or in part.

The Construction Manager is expected to conduct himself/herself at all times in such a manner as to reflect credit upon himself/herself and the CITY they represent. It is expected that the Construction Manager will be suitably dressed for the work, and he/she will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The Construction Manager will be pleasant, courteous and business-like in meeting the public. He/She is helpful and considerate to answer questions asked by the public. If the Construction Manager cannot clearly answer the question, the Construction Manager should refer the questioner to the Manager of Engineering Services.

The Construction Manager will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Manager of Engineering Services.

Keeping accurate records and reports is a very important function of the Construction Manager. These records are necessary for a number of reasons. Some of the most common reasons for these records and their use as references are as follows:

1. Accounting for quantities for periodic progress payments and extra work under cost plus change order procedures
2. Verify actions and decisions of the Construction Manager
3. Report job status and site conditions of an accident or liability claim
4. Clarify the continuity of project contract time, such as working days, delays, and weather.
5. Responses to inquiries and complaints
6. Evidence in legal action

The basic reporting medium is the Daily Report. It is a continuing report of the job progress and provides an adequate record of each day's progress and activities. The record of activities should be reported in the sequence that they take place. Each report should be brief but at the same time be complete, clear and factual and include all work accomplished by the Contractor, as well as pertinent related information. The report should answer "who did what, when, where, how and how much". Abbreviations are acceptable as long as their meanings are not confusing and have a common acceptance.

A checklist of items contained in the Daily Report is as follows:

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the Construction Manager hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"
5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor

8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Manager of Engineering Services

Typical entries for subgrade work -

1. Name of Contractor doing the work
2. Location and results of compaction tests completed and name of the testing laboratory
3. Limits of rough grade, cuts and fills
4. Thickness and type of material placed and compacted
5. Conformance with final grade specifications

Typical entries for curb, gutter, sidewalk and driveway work -

1. Name of Contractor doing the work
2. Station to station limits of forms placed when concrete is not placed the same day
3. Station to station limits of concrete placed, type of concrete and additives, number of cubic yards placed, source of concrete and copy of delivery ticket
4. Type and size of curb and gutter
5. Width and thickness of sidewalk
6. Width and thickness of driveways
7. Number and location of concrete tests for slump, cylinders taken, and name of testing laboratory

Typical entries for paving work -

1. Name of Contractor doing the work
2. Identification of milling, paving and roller equipment used
3. Source and type of material
4. Station to station and width limits of pavement placed, method of laying, material type,, thickness, and weight of material laid based on delivery tickets
5. Number and location of temperature of material at delivery tests, density tests and name of testing laboratory

Typical entries for storm drains -

1. Station to station limits of excavation, pipe laid (including size and type), bedding material, backfill material and compaction method
2. Number and location of structure by type, backfill material and compaction method
3. Location of utility conflicts and resolution
4. Method of restoration, , compaction method and density test
5. Method of restoration, sidewalks, lawns
6. Televised inspection, dates and results

A primary responsibility of the Construction Manager is to have a working knowledge of the controlling regulations, codes and directives dealing with the public convenience, public safety and construction safety. Though jobsite safety is contractually the Contractor's responsibility, the Construction Manager should immediately report all unsafe conditions or practices to the proper authority. However, if in the opinion of the Construction Manager, the precautions taken by the Contractor are found to be

insufficient or inadequate in providing job or public safety at any time, the Construction Manager shall notify the Manager of Engineering Services.

The Construction Manager is expected to wear suitable clothing and protective gear on the jobsite. Hard hats must be worn at all times there is a danger of falling and flying material. Approved reflective vests must be worn for high visibility in close proximity to traffic and moving equipment. Clothing and protective gear should clearly identify the Construction Manager.

Good housekeeping and sanitary provisions are the responsibility of the Contractor. The Contractor is responsible for public and private property and shall take every reasonable precaution to avoid damage by the construction activities. Throughout all phases of construction, the rubbish and debris on a project shall be held to a minimum and confined to organized disposal and storage areas. Dust nuisance is to be held to a minimum. The Contractor's equipment and construction activities shall not contribute to air pollution by excessively discharging smoke, exhaust and other contaminants in such quantities to be a nuisance and violation of contract. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The responsibility of safe and proper handling of traffic rests with the Contractor. The Construction Manager shall see that the Contractor provides proper handling of traffic as required by the contract and shall notify the Contractor to correct any potentially dangerous situation that exists. The section of the Manual of Uniform Traffic Control Devices (MUTCD) titled *Work Area Traffic Control Handbook* sets forth the principle and standards in order to provide safe and effective work areas and to warn, control, protect and expedite vehicular and pedestrian traffic through the construction project. The MUTCD by reference is part of the Contractor's construction documents. The Construction Manager shall refer to this document when monitoring and coordinating traffic handling with the Contractor. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The Construction Manager are directed to avail themselves of the *Public Works Inspector' Manual*, latest edition published by the BNi Building News and available through the American Public Works Association. The manual is a complete operational and technical guidebook for inspecting all types of public works construction. The manual is the standard by which the CITY expects the Construction Manager to meet and is part of this Agreement.

### **ARTICLE III - COMPENSATION**

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$ 5,500.00 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibits A and B.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.05. Reimbursable items shall be as follows:

- a. Final plots and printing for construction or as requested by the CITY except as outlined in the scope of services (printing and plotting for the CONSULTANT in-house use is not a reimbursable expense)
- b. Project Mileage
- c. Delivery Charges

All billings must be submitted by the fifteenth day of the month for all services rendered in the previous month. The CONSULTANT will invoice the CITY on forms approved by the CITY. All properly prepared invoices will include a documented breakdown of expenses incurred.

Both parties may submit an Engineering Change Order for major changes in scope, character, delays or complexity of Services. The Engineering Change Order may provide for changes in compensation and schedule, either upward or downward. The Engineering Change Order shall be signed by the CITY and the CONSULTANT prior to the CONSULTANT proceeding with any work covered by this Agreement.

#### **ARTICLE IV - GENERAL PROVISIONS**

**Times for Rendering Services:** The CONSULTANT services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

**Opinions of Probable Cost:** In providing opinions of probable cost, the CITY understands that the CONSULTANT has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs, if included herein, are to be made based on the CONSULTANT qualifications and experience. The CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

**Change in Scope:** The scope of work described in Article I Scope of Services, shall be subject to modification or supplement upon the signing of an Engineering Change Order by the CITY and the CONSULTANT. At the time of such modification of scope, equitable adjustments, agreeable to both parties, shall be made in the time of performance and the compensation to be paid for the services.

In event the CITY consents to, allows, authorizes or approves of changes to the construction documents prepared by the CONSULTANT, and these changes are not approved in writing by the CONSULTANT, the CITY recognizes that such changes and the results thereof are not the responsibility of the CONSULTANT. Therefore, the CITY agrees to release the CONSULTANT from any liability arising from the construction, use, or result of such changes. In addition, the CITY agrees to indemnify and hold the CONSULTANT harmless from any damage, liability or cost arising from such changes.

**Reuse of Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement ("Plans") shall become the property of City. City agrees that if such Plans are ever used in connection with another project in which the Consultant is not providing civil engineering services or for completion of the Project by others, all references to the Consultant or any subconsultant, including seals, shall be removed from the Plans before use on said project. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the CITY sole risk and without liability to the Consultant. To the extent permitted by law, the City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the Plans. In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

**Insurance:** The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$500,000

each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$50,000 in General Liability and \$100,000 in Professional Liability unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

CONSULTANT'S insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled or coverage reduced until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and CITY Agent shall be waived. CONSULTANT insurance policies shall be endorsed to indicate that CONSULTANT insurance coverage is primary and any insurance maintained by City or CITY Agent is non-contributing.

Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, CITY agent, and other specified interests as additional insureds thereunder.

If due to the CONSULTANT'S negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the CONSULTANT liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.

**6.4 Termination:** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).

**6.5 Termination for Convenience:** The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant 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. Consultant shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization

**Controlling Law:** This Agreement is to be governed by the laws of the State of Kansas.

**Indemnity:** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for CITY reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

**Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**Notices:** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

**Successors and Assigns:** The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

**IN WITNESS WHEREOF:** the parties hereto have executed this Agreement to be effective as of the date first above written.

**CITY:**

CITY OF PRAIRIE VILLAGE, KS

**CONSULTANT:**

TRANSYSTEMS

By: \_\_\_\_\_

Ronald L. Shaffer

Mayor

By: Thomas L. Swenson

Thomas Swenson

Principal

Address for giving notices:

CITY of Prairie Village  
7700 Mission Road  
Prairie Village, Kansas, 66208  
913-381-6464

ATTEST:

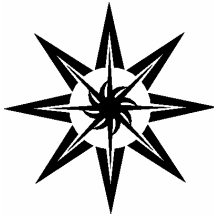
\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

Address for giving notices:

TranSystems  
2400 Pershing Road, Suite 400  
Kansas City, MO 64108  
816-329-8762

APPROVED BY:

\_\_\_\_\_  
Catherine Logan, City Attorney



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 15, 2014

Council Meeting Date: September 15, 2014

### COU2014-38 CONSIDER INTERLOCAL AGREEMENT WITH THE CITY OF LEAWOOD, KANSAS FOR PROJECT SODR0004: SOMERSET DRIVE- BELINDER AVENUE TO STATE LINE ROAD

#### RECOMMENDATION

Move to approve the interlocal agreement with the City of Leawood, Kansas for Project SODR0004: Somerset Drive- Belinder Avenue to State Line Road.

#### BACKGROUND

Project SODR0004: Somerset Drive- Belinder Avenue to State Line Road rehabilitation project in which about 25% of the project is in Leawood, Kansas. An Interlocal Agreement is necessary with Leawood to document the details and financial obligations of each City. This project is funded at 50% by Johnson County's CARS program. This project will be fully administered by Prairie Village. After the County's CARS funding the cost breakdown will be approximately \$107,500 Leawood and \$322,500 Prairie Village.

This project is a part of the 2014 CIP and is currently beginning construction.

#### FUNDING SOURCE

Funding is available under the Capital Infrastructure Program, Project SORD0004: Somerset Drive- Belinder Avenue to State Line Road for the City's portion of the project.

#### RELATION TO VILLAGE VISION

- CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.*
- TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.*
- TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.*

#### ATTACHMENTS

1. Interlocal Agreement with Leawood.

#### PREPARED BY

Keith Bredehoeft

September 10, 2014



**STREET CONSTRUCTION AGREEMENT  
BETWEEN THE CITY OF LEAWOOD, KANSAS  
AND THE CITY OF PRAIRIE VILLAGE, KANSAS**

**FOR PUBLIC IMPROVEMENTS TO SOMERSET DRIVE (BELINDER AVENUE TO  
STATE LINE ROAD)**

THIS STREET CONSTRUCTION AGREEMENT ("Agreement") is made and entered into effective as of the last date of signature indicated below, by and between the **City of Leawood, Kansas**, a Kansas municipal corporation ("Leawood"), and the **City of Prairie Village, Kansas**, a Kansas municipal corporation ("Prairie Village").

WITNESSETH:

WHEREAS, the parties hereto have determined it is in their best interest to make certain public improvements to Somerset Drive, between Belinder Avenue and State Line Road, as described more fully in this Agreement;

WHEREAS, K.S.A. 12-2908 and K.S.A. 68-169 authorize the parties hereto to cooperate in making the public improvements;

WHEREAS, the governing body of Leawood did approve and authorize its mayor to execute this Agreement by official vote of the body on the \_\_\_\_ day of \_\_\_\_\_, 2014; and

WHEREAS, the governing body of Prairie Village did approve and authorize its mayor to execute this Agreement by official vote of the body on the \_\_\_\_ day of \_\_\_\_\_, 2014.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto agree as follows:

1. Purpose of Agreement. The parties hereto enter into this Agreement for the purpose of constructing the following public improvements to Somerset Drive, between Belinder Avenue and State Line Road:

- (a) Asphalt overlay, curb replacement, sidewalk replacement, driveway replacement, and new pavement markings; and
- (b) Such other incidental items associated and integral with the above referenced construction.

2. Estimated Cost of Project.

- (a) The estimated cost of design and construction for the public improvements covered by this Agreement is \$430,000.00 after County CARS funding.
- (b) The cost of making the public improvement shall include:

- (1) The cost of all design and construction contracts for the public improvements;
- (2) Labor and material used in the making of the public improvements; and
- (3) Such other expenses which are necessary in making the public improvements, including but not limited to project administration, construction, construction inspection and material testing, but excluding the cost of acquiring real property and any improvements thereon for the location of the public improvements.

3. Financing. Leawood and Prairie Village shall pay their respective portions of the above-described costs with monies budgeted and appropriated funds. The costs for the local share of the cost of making the public improvements will be based on final field measured quantities and shall be distributed between Leawood and Prairie Village as follows:

- (a) Leawood shall pay approximately 25% of the cost of said public improvements (estimated to be \$107,500);
- (b) Prairie Village shall pay approximately 75% of the cost of said public improvements (estimated to be \$322,500).

4. Administration of the Project. It is acknowledged and understood between the parties that since there are two separate cities included within the proposed improvements, one of the cities should be designated as being "in charge" of the project to provide for its orderly design and construction. However, both cities shall have the right of review and comment on project decisions at any time throughout duration of this Agreement, and any subsequent agreements hereto. The public improvement shall be designed, constructed and the job administered by the t Senior Project Manager, acting by and through the Director of Public Works for Prairie Village, Kansas, who shall be the principal public official designated to administer the public improvement; provided, that the Director of Public Works shall, among his/her several duties and responsibilities, assume and perform the following:

- (a) Upon completion of the public improvements, the Director of Public Works shall submit to Leawood a final invoice and project accounting of all costs incurred in making the public improvements for the purpose of apportioning the same among the parties as provided herein.
- (b) Prairie Village shall be named as additional insured on all applicable certificates of insurance issued by the contractor for this project.
- (c) Prairie Village shall require payment, performance, and required statutory bonds for the improvements from all contractors and require that all contractors discharge and satisfy any mechanics or materialman's liens that may be filed.
- (d) Prairie Village shall require that any contractor provide at least a two-year performance and maintenance bond for the improvements. As Administrator Prairie Village will, upon request of the Leawood, make any claims upon such

bonds and require that the contractors fully perform all obligations under the contract for construction and under such bonds.

- (e) Prairie Village shall include in contracts for design and construction a requirement that the contractor defend, indemnify and save Leawood and Prairie Village harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit or action for injuries or damages sustained to persons or property by reason of the act or omissions of the contractor and the performance of its contract.

5. Duration and Termination of Agreement. The parties hereto agree that this Agreement shall be effective until the completion of the aforesaid public improvements, which shall be deemed completed upon certification to each of the parties hereto by the Director of Public Works advising that the public improvements have been accepted by him as constructed; provided, that the parties' respective payment obligations and rights and obligations related to bonds and warranties shall survive expiration of this Agreement.

6. Placing Agreement in Force. This Agreement shall be executed in quadruplicate. Each party hereto shall receive two (2) duly executed originals of this Agreement for their official records.

7. Amendments. This Agreement cannot be modified or changed by any verbal statement, promise or agreement, and no modification, change nor amendment shall be binding on the parties unless it shall have been agreed to in writing and signed by both parties.

8. Governing Law. This Agreement shall be construed according to the laws of the State of Kansas and may be enforced in any court of competent jurisdiction.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed effective as of the date and year last below written.

**CITY OF LEAWOOD, KANSAS**

**CITY OF PRAIRIE VILLAGE,  
KANSAS**

By: \_\_\_\_\_  
Peggy J. Dunn  
Mayor

By: \_\_\_\_\_  
Ronald L. Shaffer  
Mayor

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_  
Deb Harper  
City Clerk

By: \_\_\_\_\_  
Joyce Hagen Mundy  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Patricia A. Bennett  
City Attorney

By: \_\_\_\_\_  
Catherine C. Logan  
City Attorney

**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Council Chambers  
September 15, 2014  
7:30 PM**

- 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 City Council Minutes - August 18, 2014
- 2. Approve Claims Ordinance #2921
- 3. Approve Agreement for Building Inspection Services with Johnson County
- 4. Authorize the Mayor to execute Proclamation celebrating the 50th anniversary of Tiffany Town in the Prairie Village Shopping Center and proclaiming October 6 - 10, 2014 as Peanut Butter Week

- VI. **MAYOR'S REPORT**
- VII. **COMMITTEE REPORTS**

**Council Committee of the Whole**

- COU2014-35 Consider Adoption of the 2014 Uniform Public Offense Code for Kansas Cities with certain changes, additions and deletions
- COU2014-35 Consider adoption of the 2014 Standard Traffic Ordinance for Kansas Cities with certain changes, additions and deletions
- COU2014-36 Consider Award of Pool Painting Contract
- COU2014-37 Consider Agreement with TranSystems for CDBG Project
- COU2014-38 Consider Interlocal Agreement with City of Leawood for 2014 CARS Project

**JazzFest Committee**

Report on the 2014 Prairie Village Jazz Festival

- VIII. STAFF REPORTS
- IX. OLD BUSINESS
- X. NEW BUSINESS
- XI. ANNOUNCEMENTS
- XII. 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 385-4616, no later than 48 hours prior to the beginning of the meeting.  
If you are unable to attend this meeting, comments may be received by e-mail at [cityclerk@pvkansas.com](mailto:cityclerk@pvkansas.com)

**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
August 18, 2014**

The City Council of Prairie Village, Kansas, met in regular session on Monday, August 18, 2014 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

**ROLL CALL**

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Also present were: Wes Jordan, Chief of Police; Melissa Prenger, Public Works Senior Project Manager; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Kate Gunja, Assistant City Administrator; Lisa Santa Maria, Finance Director; Eric Schumacher, Intern; Ron Williamson, City Planning Consultant and Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led those present in the Pledge of Allegiance.

**PUBLIC HEARING**

**Adoption of the 2015 Budget for the City of Prairie Village**

Finance Director Lisa Santa Maria noted this is the second public hearing on the budget and that she would present the highlights of her full presentation given at the August 4<sup>th</sup> City Council meeting. The proposed budget of \$28,127,241 reflects an increase of 2.1%.

The 2015 budget is balanced with the existing mill levy rate of 19.490 and maintains the same level of services with enhancements to 1) Capital Infrastructure Program to \$3.1 million; 2) Increased Parks & Grounds fund by \$10,000 for tree removal and maintenance; 3) Increased funding to address Emerald Ash Borer infestation to \$100,000 and 4) Added part-time Codes Enforcement Officer. There is a nominal overall increase in the 2015 General Fund department budgets of 2.1%.

The stormwater utility fee rate remains at the current rate of \$0.040/square foot of impervious area and the annual household assessment for Solid Waste Management services remain the same at \$174.00. A 10% increase for health insurance has been budgeted as well as a 0.9% increase in the city's required contribution to KPERS and a 3.5% employee merit pool. The anticipated ending fund balance is 25% with a general contingency fund of \$500,000.

The 2015 budget includes a transfer of \$3.1 million from the General Fund to the Capital Improvement Program (CIP). The total CIP budget for 2015 is \$7,958,386.

Mayor Shaffer opened the public hearing for comments. No one was present to address the Council on the proposed 2015 budget. Mayor Shaffer closed the public hearing at 7:35 p.m.

Steve Noll moved the 2015 budget for the City of Prairie Village be adopted as presented. The motion was seconded by Andrew Wang and passed unanimously.

## **PUBLIC PARTICIPATION**

John Anderson, 4402 West 63<sup>rd</sup> Terrace, followed up on the concerns he expressed at the August 4<sup>th</sup> City Council meeting regarding the lack of attendance and participation by residents at city council meetings. He suggested that each council



member invite three people to attend the next council meeting with those people also inviting a friend. Mr. Anderson noted the important information that can be obtained by attending. He suggested posting reminders on the PV Post, posting a sign outside City Hall with meeting dates and times and council participation at community events such as Villagefest, JazzFest as well as at school events. He expressed his support of the Teen Council being proposed by Jori Nelson and being implemented by the city and suggested possibly having special evenings when Middle School and High School Students were invited to meetings.

With no one else present to address the City Council public participation was closed at 7:42.

### **CONSENT AGENDA**

Eric Mikkelson asked that item #3 be removed. Ashley Weaver moved the approval of the Consent Agenda for Monday, August 18, 2014, except for item #3:

1. Approve Regular Council Meeting Minutes - August 4, 2014
2. Approve Claims Ordinance #2920
3. Removed
4. Adopt an ordinance approving the Prairie Village Jazz Festival as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public areas of the event
5. Approve a waiver to allow the serving of alcoholic beverages at Harmon Park on Saturday, September 6, 2014 in conjunction with the Prairie Jazz Festival
6. Authorize the Mayor to execute the following proclamations: Ukrainian Independence Day, SME Class of 1964 - 50<sup>th</sup> Year Reunion, Diaper Need Awareness and Constitution Week
7. Approve an agreement with Fun Services of Kansas City for the 2015 Villagefest in an amount of \$3,245.00

A roll call vote was taken with the following members voting "aye": Weaver, Nelson, Hopkins, Noll, Mikkelson, Wang, Morehead, McFadden, Odell and Gallagher.

Eric Mikkelson noted the proposed agreement with the City of Mission Hills did not include approval of the city attorney included in the document. He values the review of contracts by our city attorney and would like to see their approval as to form noted on the agreement signature page. Chief Jordan and the city attorney agreed with the proposed change.

Eric Mikkelson moved the City Council approve the 2015 Mission Hills Public Safety Contract and the 2015 Mission Hills budget as amended to include the city attorney's approval as to form included in the agreement. The motion was seconded by Courtney McFadden and passed unanimously.

## **MAYOR'S REPORT**

Mayor Shaffer reported he represented the City at several events during the past weeks including the Northeast Johnson County Chamber event, reception for former Building Official Jim Brown, Art Gallery reception for Randy Kronblad's show, the Prairie Ridge Homes Association Ice Cream Social and the Northeast Johnson County Mayor's meeting hosted by the City of Merriam featuring the IKEA Project.

## **COMMITTEE REPORTS**

### **Council Committee of the Whole**

COU2014-33 Consider Interlocal Agreement with Johnson County and the City of Leawood, Kansas for Project SODR0004: Somerset Drive - Belinder Avenue to State Line Road

On behalf of the Council Committee of the Whole, Council President Ashley Weaver moved the City Council approve an Interlocal Agreement with Johnson County and the City of Leawood, Kansas for Project SODR0004: Somerset Drive - Belinder

Avenue to State Line Road. The motion was seconded by Ruth Hopkins and passed unanimously.

COU2014-31 Consider Award of Construction Contract for Project RAD0001: 2014 CDBG Project

On behalf of the Council Committee of the Whole, Council President Ashley Weaver moved the City Council authorize the Mayor to execute the Construction Contract with O'Donnell & Sons Construction for the 2014 CDBG Project in the amount of \$139,657.00. The motion was seconded by Ruth Hopkins and passed unanimously.

Consider Teen Council Program

On behalf of the Council Committee of the Whole, Council President Ashley Weaver moved the City Council approve the implementation of the Teen Council Program and authorize the allocation of \$500 from the Council budget for costs related to the program. The motion was seconded by Jori Nelson and passed unanimously.

**Planning Commission**

PC2014-04 Consider amendments to Chapter 33 of the Zoning Ordinances related to Improvements to Existing Wireless Communication Facilities

Ron Williamson noted that recently there have been several minor facility changes to wireless communications installations as they upgrade to meet the level of competitors. In May, the Planning Commission heard applications for four antenna changes. He has been advised by applicants for AT&T that four more changes are forthcoming for the fire district monopole; one change on the 9011 Roe installation, two changes to the 7700 Mission Road tower and one change to the 63rd & Mission Road monopole.

Most of these have been very minor changes, but the Wireless Communications Ordinance Section 19.33.055 Existing Site Improvements Section C, Additional Antennae states, “additional antennae or replacement of current antennae may be added through an application for a revised site plan and will require submission to and approval by the Planning Commission.” The proposed revisions authorize staff to approve these changes and will decrease the time needed for permitting the work.

Mr. Williamson reviewed some the recent applications that were heard by the Planning Commission, but could have been addressed administratively under the proposed revisions. They included a reduction in the number of antenna on the steeple at St. Ann’s Church and the removal of equipment boxes; three new panels by Sprint with the fiber optic cable installed inside the tower and the removal of equipment boxes; and at 9011 Roe the replacement of three antennas and replacing three existing equipment boxes with two boxes. Mr. Williamson stated all these changes improved the existing facility in a manner that made the facility less obtrusive. However, under the current code they are required to go to the Planning Commission for site plan approval. The site plan approval process does not require a public hearing or public notice, which occurred when the initial special use permit was issued or renewed.

Dan Runion expressed concern with the shift of approval from the Planning Commission to a staff function. He is concerned with the lack of a clear definition of a “minor” change that would be handled administratively. He would like to see clearly identified in the code what applications can be handled by staff.

Mr. Williamson responded the primary concern is the structural capacity of the facility. None of the examples given resulted in a less intrusive wireless facility that provided better service. Mr. Runion replied that “less obtrusive” is a subjective

qualification. Mr. Williamson noted that staff has the ability to send an application to the Planning Commission if they have any questions or concerns with the proposed change.

Jori Nelson asked what staff would be involved in the approval process. Mr. Williamson answered the review would be done by the Planning Consultant, Assistant City Administrator and the Building Official.

Ms. Nelson expressed concern the process was taking away the opportunity for public input and asked where these facilities were located. Mr. Williamson stated the public was provided opportunity for input when the Special Use Permit was approved. They are generally not involved in the site plan approval process.

Among the locations for facilities are 7700 Mission Road, the Fire Station at 63<sup>rd</sup> & Mission, the fire station at 9011 Roe, St Ann's Church steeple, the roof of the Cap Fed building at 1900 West 75<sup>th</sup> Street and the roof of the office building at 5000 West 95<sup>th</sup> Street.

Ms. Nelson stated she is not comfortable with the subjectivity of the language. She is concerned the change removes the opportunity for citizen participation and transparency.

Eric Mikkelson asked if the procedure allowed for changes without amending the special use permit. Mr. Williamson responded that when the special use is approved it is approved for a designated number of providers. When the additional providers are ready to locate on the facility, they are required to go before the Planning Commission for site plan approval. Mr. Mikkelson stated that process is a major concern for him and he is surprised there have not been problems as there are potentially controversial issues related to wireless communication facilities. Mr. Williamson responded those are all addressed in the conditions of approval attached to the initial approval of the special

use permit. Mr. Mikkelson stated he would like to see the language “provided it meets all the conditions of the special use permit and structural capacity.”

Ted Odell confirmed the equipment structure is addressed in the initial special use permit and cannot be changed.

Courtney McFadden stated she is supportive of the proposed changes, but will be abstaining from voting due to a professional conflict of interest.

Dan Runion stated any change to the physical envelope is not minor and should not be done administratively.

Mr. Williamson stated language could be added requiring the review and approval of the Planning Commission chairman for an application to be handled administratively. He stated it would be difficult to create a definition that would cover the variety of potential improvements. He believes staff has the experience and expertise to recognize potential problems.

Eric Mikkelson asked what would happen if staff and the applicant disagreed on what was or wasn't a “minor” change. Mr. Williamson stated the determination would be made by the Board of Zoning Appeals and would require a public hearing.

Andrew Wang felt that when you make something less public, you have to be specific on where the line is drawn moving it from a public process to an administrative function. He would like to see more quantitative language.

Jori Nelson stated she doesn't see anything wrong with the current process.

Mayor Shaffer noted the current process is more time consuming and costly for both the applicant and the city.

Jori Nelson asked if these multiple changes were expected to continue.

Mr. Williamson replied that technology will continue to change in this competitive market and the different providers will continue to compete. The current changes are to address the need for more data coverage and capabilities.

Terrence Gallagher stated that if an antenna or mounting bracket was going to increase in size he would like to have it reviewed by the Planning Commission.

Mr. Mikkelson stated that physical size was important, but just as important were other concerns such as noise, heat, radiation etc.

Mr. Williamson noted the larger antennas at the Roe location were totally enclosed inside the tower. He cannot be sure all the changes will be with smaller antenna or units.

Dan Runion moved the ordinance be returned to the Planning Commission for further consideration. The motion was seconded by Brooke Morehead.

Eric Mikkelson noted the Council needed to provide direction to the Commission.

Mr. Runion stated his concern is the lack of a definitive direction on what types of applications would be handled administratively. He is concerned that the change takes away the voice from residents and wants to be certain changes that are not minor continue to go before the Planning Commission.

The motion was voted on and passed by 10 to 1 vote with 1 abstention.

#### JazzFest Committee.

Brooke Morehead noted the upcoming Prairie Village Jazz Festival on Saturday, September 6<sup>th</sup>. The event is described in Jazz Ambassador Magazine (JAM) as "Prairie Village Fest Lineup: Stellar!" There will be a \$5 admission charge for adults with students and children free. Mrs. Morehead asked Council members to let her know if they will be attending so they could get the necessary credentials. The committee is still

seeking volunteers for the event. There will also be a major retailer broadcasting live from the festival.

### **STAFF REPORTS**

Mayor Shaffer stated that staff reports were given at the earlier Council Committee of the Whole meeting.

### **OLD BUSINESS**

The Citizen's Police Academy will begin September 10<sup>th</sup> at 6:30 p.m. There are still openings for the academy.

### **NEW BUSINESS**

Jori Nelson asked if it would be possible to receive Council packets earlier than Friday afternoon. She would like to receive them on Wednesday or Thursday in order to have time to research issues or contact staff with questions.

Quinn Bennion stated staff generally has packets online by noon on Friday. He noted the Friday delivery allows staff the flexibility to consider late items. An earlier deadline would require those items to wait two weeks to the next council meeting or require amending the agenda. Currently staff meets Wednesday morning to discuss the agenda.

Brooke Morehead stated she would like to have packet information by 4 o'clock on Thursday and that late business could be discussed under "New Business".

Chief Jordan stated the earlier date would create difficulty for Publics Works. Melissa Prenger stated it would be difficult to secure the necessary paperwork from contractors; but deadlines could be adjusted.



Courtney McFadden noted that sometimes this would result in a three week delay.

Mayor Shaffer asked council members if they were satisfied with the Friday delivery and a majority of the members responded that Friday delivery was acceptable.

Quinn Bennion said he would discuss the possibility of an earlier delivery with staff.

Jori Nelson asked if it would be possible to have audio recordings of Council meetings that could be placed on the website noting this would provide greater transparency.

Lisa Santa Maria stated it would be possible to get a video recording with our current sound system.

Ms. Nelson noted that the Shawnee Mission School Board does a video feed of their meetings. Mayor Shaffer stated that for several years City Council meetings were broadcast live. Mayor Shaffer assigned this idea to the communications committee.

**ANNOUNCEMENTS**

**Committee meetings scheduled for the next two weeks include:**

Prairie Village Arts Council	08/20/2014	7:00 p.m.
JazzFest Committee	08/26/2014	7:00 p.m.
Environmental/Recycle Committee	08/27/2014	7:00 p.m.
Council Committee of the Whole (Tuesday)	09/02/2014	6:00 p.m.
City Council (Tuesday)	09/02/2014	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to a pastel exhibit by Randy Kronblad Council as the August exhibit in the R. G. Endres Gallery.

The pool is now on evening hours only during the weekdays. The pool closes for the season on Monday, September 1<sup>st</sup> at 6:00 p.m.

City offices will be closed on Monday, September 1<sup>st</sup> in observance of the Labor Day holiday. Deffenbaugh also observes this holiday so trash and recycling services will be delayed one day.

The Prairie Village Jazz Festival is Saturday, September 6<sup>th</sup> beginning at 2 p.m. with the Shawnee Mission East Blue Knights and concluding at 10:30 p.m. with Deborah Brown.

**ADJOURNMENT**

With no further business to come before the City Council the meeting was adjourned at 9:40 p.m.

Joyce Hagen Mundy  
City Clerk

**CITY TREASURER'S WARRANT REGISTER**

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

September 15, 2014

**Copy of Ordinance  
2921**

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	WARRANT NUMBER	AMOUNT	TOTAL
<b>EXPENDITURES:</b>			
Accounts Payable			
7972-8057	8/1/2014	561,830.25	
8058-8062	8/8/2014	20,456.78	
8063-8164	8/15/2014	539,789.12	
8165-8167	8/22/2014	1,464.60	
8168-8169	8/25/2014	2,575.77	
8170-8269	8/29/2014	386,271.72	
Payroll Expenditures			
8/8/2014		278,102.14	
8/22/2014		289,129.66	
Electronic Payments			
Electronic Pmnts	8/1/2014	14,728.44	
Electronic Pmnts	8/12/2014	20,382.39	
Electronic Pmnts	8/15/2014	1,275.49	
Electronic Pmnts	8/19/2014	1,552.22	
Electronic Pmnts	8/25/2014	1,793.40	
Electronic Pmnts	8/26/2014	21,465.60	
Electronic Pmnts	8/31/2014	1,934,501.25	
<b>TOTAL EXPENDITURES:</b>			<b>4,075,318.83</b>
Voided Checks			
Commenco Inc	Check # 7988	(106.00)	
HROI LLC	8019	(650.00)	
Spex Criminalistics LLC	8044	(178.40)	
Water Dist #1 Johnson County	8054	(9,875.48)	
<b>TOTAL VOIDED CHECKS:</b>			<b>(10,809.88)</b>
<b>GRAND TOTAL CLAIMS ORDINANCE</b>			<b>4,064,508.95</b>

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

Passed this 15th day of September 2014.

Signed or Approved this 15th day of September 2014.

(SEAL)

ATTEST: \_\_\_\_\_  
*City Treasurer*
*Mayor*

ATTEST: \_\_\_\_\_  
*Finance Director*



**Consider Agreement for Services with Johnson County for Building Inspection and Plan Review services**

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**BACKGROUND:**

The City is currently in the process of hiring a new Building Official. In the interim, the City's Building Inspector is able to manage a good portion of the plan review and building inspection that the prior Building Official was handling through prioritizing projects and incurring minimal overtime. However, there are some larger commercial projects that may require additional resources and time to conduct plan review and inspection. Johnson County is able to serve as a back-up to our current Building Inspector on an as-needed basis to provide these services. Staff intends to continue to do as much plan review and inspection in-house as possible, however, may need to call upon the resources of the County on occasion.

**Recommendation:**

Staff recommends approval of the Agreement. The Agreement has been reviewed by the City Attorney.

**Attachment:**

Agreement for Services

**PREPARED BY:**

Kate Gunja

Assistant City Administrator

Date: September 10, 2014

## **AGREEMENT FOR SERVICES**

This Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the Board of County Commissioners of Johnson County, Kansas (“County”) and the City of Prairie Village, Kansas (“City”).

### Recitals

- A. The City desires to obtain certain plan review, code inspection, and code interpretation services from the County in connection with the City’s enforcement of its building codes (“Services”).
- B. The County, through the Department of Planning and Zoning, Building Code Division, has the ability to provide the requested Services to the City and is willing to do so according to the terms and conditions of this Agreement.
- C. The cooperative effort between the County and the City will benefit the residents of Johnson County, in general, and the residents of Prairie Village, in particular.
- D. For the public benefit, the City and the County hereby desire to enter into this Agreement regarding the Services.

### Agreement

- 1. The City and the County agree that from and after the effective date of this Agreement, the County shall provide on an as needed basis Services for the City including commercial building code-required inspections.
- 2. The County agrees that it shall provide the Services through County employees who shall remain County employees, and not City employees, while providing the Services.
- 3. The County agrees to provide the Services in a timely manner and without unreasonable delay. However, the parties acknowledge that from time-to-time scheduling conflicts may arise between the duties to be performed by County employees for County-related matters and that the County’s employees shall not be required to perform the Services if doing so would hinder or prevent performance of their duties to the County.
- 4. In consideration for providing the Services, the County shall receive from the City an amount of \$75 per hour for each Service requested by the City. The City shall remit payment once each month to the County for the prior month’s fees charged. No deduction shall be allowed for the City’s failure or inability to collect payment for Services.
- 6. This Agreement shall remain in effect unless terminated, in writing, by either party. However, absent of an uncured breach of this Agreement, the County shall use

reasonable efforts to give the City not less than 10 (ten) days notice of such termination to allow the City to replace the County or find some other method to provide the Services contemplated by this Agreement.

7. For purposes of enforcing the City’s building codes, the County employee’s performing the Services under this Agreement shall be deemed City code enforcement officers (but not City employees). Any violations of the City’s building codes shall be prosecuted by the City in the City’s municipal court.

8. The City shall be responsible for responding to and defending any claim arising out of the Services or the County’s performance under this Agreement, including any claim of negligent inspection by County employees. At the County’s option, the City shall retain legal counsel, at the City’s expense, to defend the County if the County is named in any lawsuit arising out of such claim. It is the party’s intent that the City, and not the County, be responsible for any liability arising out of the Services provided by the County and the City agrees to and shall indemnify and hold the County harmless from any such liability. Nothing in this Agreement shall be deemed to waive any protections from liability afforded to either party by the Kansas Tort Claims Act or other statute or law.

9. The City shall maintain general liability insurance covering the Services and naming the County and its employees as additional insureds with respect to the Services. The City shall provide the County with a certificate of insurance evidencing same.

IN WITNESS WHEREOF, City and the County have executed this Agreement effective as of the date and year first above written.

BOARD OF COUNTY COMMISSIONERS  
OF JOHNSON COUNTY, KANSAS

CITY OF PRAIRIE VILLAGE, KS

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Mayor

Attest:

Attest:

\_\_\_\_\_  
Clerk to the Board

\_\_\_\_\_  
City Clerk

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Robert A. Ford

\_\_\_\_\_  
Catherine P. Logan, City Attorney



**MAYOR**

**Council Meeting Date: September 15, 2014  
CONSENT AGENDA**

**Consent Agenda: Consider Proclamations**

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**RECOMMENDATION**

Recommend the City Council authorize the Mayor to execute the following proclamations:

**Tiffany Town 50<sup>th</sup> Anniversary  
Peanut Butter Week - October 6 - 10, 2014**

**BACKGROUND**

Congratulations to Bob Harsh on the 50<sup>th</sup> Anniversary of the Tiffany Town Hallmark in the Prairie Village Shopping Center.

The City is pleased to sponsor the 30<sup>th</sup> annual Peanut Butter Week food drive for the benefit of Harvesters Food Network.

**ATTACHMENT**

Proclamations

**PREPARED BY**

Joyce Hagen Mundy, City Clerk

Date: September 10, 2014



# CITY OF PRAIRIE VILLAGE PROCLAMATION

**WHEREAS,** fifty years ago, Bob Harsh opened Tiffany Town Hallmark in the Prairie Village Shopping Center; and

**WHEREAS,** shopping at the Tiffany Town Hallmark has become a holiday tradition for many Prairie Village residents; and

**WHEREAS,** stores such as Tiffany Town make the Prairie Village Shopping Center a unique shopping experience catering to young and old; families and individuals alike; and

**WHEREAS,** Tiffany Town has demonstrated its commitment to the City and its residents over these past 50 years and is the key to the continued growth of this community;

**WHEREAS,** the people of Prairie Village are grateful to Bob Harsh and Tiffany Town Hallmark for their generous contributions to the quality of life we all enjoy.

**NOW, THEREFORE,** I, Ronald L. Shaffer, Mayor of The City of Prairie Village, do hereby congratulate Bob Harsh and “Tiffany Town Hallmark” on its 50<sup>th</sup> anniversary and look forward to its continued success and service to the residents of Prairie Village and Johnson County.

**IN WITNESS THEREOF,** I hereunto set my hand and cause the Seal of the City of Prairie Village, Kansas to be affixed this 15th day of September, 2014.

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**Ronald L. Shaffer, Mayor**

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**City Clerk**

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**Date**





# **CITY OF PRAIRIE VILLAGE PROCLAMATION**

**WHEREAS**, the citizens of Prairie Village take great civic pride in their community and the good deeds performed therein; and

**WHEREAS**, the citizens of Prairie Village strive to maintain the high quality of life now enjoyed by most citizens and also recognize there are less fortunate in the Greater Kansas City area; and

**WHEREAS**, Prairie Village has a unique opportunity to lend its support to Harvesters in their efforts to lessen some of the hunger of the people in the Greater Kansas City area (including Johnson and Wyandotte Counties) by supporting them in their goal of distributing the high protein food, peanut butter, to social and charitable agencies, serving over 22,000 households; and

**NOW, THEREFORE, BE IT RESOLVED**, that I, Ronald L. Shaffer, Mayor of the City of Prairie Village, do hereby designate October 6 – 10, 2014 as

## **PEANUT BUTTER WEEK**

in the City of Prairie Village, Kansas, and call upon all citizens to support this worthwhile cause by donating jars of peanut butter or by providing a cash donation for the purchase of peanut butter.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City to be affixed this 15th day of September, 2014.

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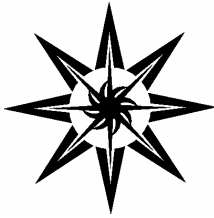
**Mayor Ronald L. Shaffer**

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**City Clerk**

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**Date**



## Municipal Court/Police Department

Council Committee Date: September 15, 2014

Council Meeting Date: September 15, 2014

**\*COU2014-35: Consider adoption of the 2014 Standard Traffic Ordinance for Kansas Cities and the 2014 Uniform Public Offense Code for Kansas Cities, with certain changes, additions and deletions**

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### **RECOMMENDATION**

Staff recommends that Governing Body adopt Ordinance No. 2315 adopting the Uniform Public Offense Code edition of 2014 (UPOC) and Ordinance No. 2316 adopting the Standard Traffic Ordinance edition of 2014 (STO) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

\*City Council action is requested at the September 15, 2014 meeting.

### **MOTION**

Governing Body adopt Ordinance No. 2315 adopting the Uniform Public Offense Code edition of 2014 (UPOC) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

Governing Body adopt Ordinance No. 2316 adopting the Standard Traffic Ordinance edition of 2014 (STO) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

### **BACKGROUND**

On an annual basis, the City receives the latest edition of the UPOC and the STO from the League of Kansas Municipalities. The 2014 UPOC and 2014 STO were reviewed against current City ordinances for any discrepancies. Any deletions or additions were reviewed and approved by the City Attorney and City Prosecutor in consultation with the Police Department. The following addresses changes to the 2014 UPOC and STO made by the attached ordinances.

#### **UPOC Ordinance No 2315:**

The Uniform Public Offence Code ("UPOC"), which is published annually by the League of Kansas Municipalities, includes about 100 public offenses which may be prosecuted in municipal courts. Some UPOC provisions have parallel provisions under state law (prosecuted by the District Attorney in state court) and some are local violations only. Prairie Village and Mission Hills have historically adopted the current annual version of the UPOC, with amendments. In 2013, both cities retained the 2012 version of the UPOC in order to retain certain provisions regulating knives and firearms, including prohibiting open carry.

On July 1, 2014, HB 2578, approved by the Kansas legislature and signed by the Governor in the 2014 Session, became effective.

HB 2578 preempts the City's ability to regulate knives and open carry, and accordingly on June 16, 2014 the Governing Body approved Ordinance 2311 which became effective July 1, 2014, repealing certain sections of the 2013 UPOC as amended by the City. The amendments, all covered in an agenda memo at the June 16 meeting, are summarized below.

**KNIVES:**

HB 2578, Section 8, amends K.S.A. 2013 Supp. 12-16,134 by prohibiting municipalities from enacting and *enforcing* any ordinance relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife making components. The term "municipalities" does not include unified school districts, jails and juvenile correction facilities. The addition of the term "enforcing" closed a loophole relied on the City last year when it retained the 2012 version of UPOC including certain provisions regulating knives.

Assuming HB 2578 remains effective and enforceable, practical effects for Prairie Village:

- Prairie Village may not enact or enforce local ordinances which make the possession of knives a criminal offense.
- Prairie Village may not prohibit persons from carrying knives on public property, including into public buildings, other than jails or juvenile correctional facilities.

**The provisions in the 2014 UPOC governing knives are consistent with the HB 2578.**

**FIREARMS:**

HB 2578, Section 5, allows open carry to be prohibited in buildings, including city buildings, according to regulations and signage to be adopted by the Kansas Attorney General. As of June 11, 2014, no regulations have been adopted. It is expected that the ability to prohibit open carry in city buildings will be the same as the ability to prohibit conceal carry, or be broader.

HB 2578, Section 6, enacted a new state statute which prohibits the possession of loaded firearms (concealed or unconcealed) on or about the person or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs or both, to such a degree as to render such person incapable of safely operating a firearm.

HB 2578, Section 7, amends K.S.A. 2013 Supp. 12-16,124 by prohibiting cities from adopting or *enforcing* any ordinances governing the purchase, transfer, ownership, storage, *carrying* or transporting of firearms or ammunitions, and by eliminating certain exceptions which allowed cities to regulate certain aspects of firearms, including the “manner” of open carry and loaded firearms in vehicles. However, Section 7 does allow cities to adopt employment policies, consistent with the Personal and Family Protection Act (K.S.A. 2013 Supp. 75c01 *et seq.*) regarding the carrying of firearms by employees.

HB 2578, Section 16, allows a corrections facility, a jail facility or a law enforcement agency to prohibit the carrying of handgun or other firearm, concealed or unconcealed, by any person into any secure area of a building.

Assuming HB 2578 remains effective and enforceable, practical effects for Prairie Village:

- Prairie Village may not enact or enforce local ordinances which make the open carry of a firearm a criminal offense.
- Except as noted below, Prairie Village may not enact or enforce ordinances or other regulations relating to the transportation or possession of firearms in vehicles.
- Possession of a loaded firearm on or about the person or within a person’s immediate access and control while in a vehicle, while under the influence, may be charged by Prairie Village police as a state law violation.
- Except as noted below, Prairie Village may not prohibit open or conceal carry of firearms on public property.
- Prairie Village may prohibit open carry of firearms in city buildings in accordance with regulations to be adopted by the Kansas Attorney General.
- Prairie Village may prohibit open carry of firearms by employees in the work place, including in city vehicles. This does not appear to be conditioned upon a four year exemption or adequate security measure requirements of 2013 HB 2052.
- By virtue of the 4 year exemption period (expires January 1, 2018) adopted by Prairie Village in 2013 in response to 2013 HB 2052, Prairie Village may prohibit conceal carry (public and employees) in all buildings which are covered by the 4 year exemption.
- After the 4 year exemption period expires, Prairie Village may only prohibit employees from conceal carrying in city buildings if (i) the building has “adequate security measures” (electronic equipment and personnel at

public entrances to detect and restrict the carrying of any weapons into a building, including, but not limited to, metal detectors and metal detector wands), and (ii) the employee does not have restricted access to the building.

- After the 4 year exemption period expires, Prairie Village may only prohibit persons other than employees from conceal carrying in buildings if the building has adequate security measures.
- Prairie Village may not prohibit employees from conceal carrying in their personal vehicles and in city parking lots.
- Prairie Village may prohibit the carrying of any firearm in the secure area of the police department.

**The provisions in the 2014 UPOC governing firearms are consistent with the HB 2578.**

#### **EXPLANATION OF CHANGES TO THE 2014 UPOC PROPOSED IN ORDINANCE NO. 2315**

SECTION TWO increases the maximum fine for minor tobacco violations from \$25 to \$100. This change was made by PV to prior versions of the UPOC.

SECTION THREE restates Section 6.2 of the published 2014 UPOC to delete certain typos which were contained in the published version of that Section.

SECTIONS FOUR AND FIVE add offenses which are not included in the UPOC. These changes were made by PV to prior versions of the UPOC.

SECTION SIX adds the offense of possession of firearms while under the influence as a City offense, incorporating the elements of the same offense under state law. The actions described in SECTION SIX can be charged as either a state violation, prosecuted by the District Attorney, or a municipal court violation, prosecuted by the City Prosecutor. The LKM did not include this offense in the UPOC because it felt that it should be up to individual cities to include or not include as a municipal court violation by amending the UPOC.

SECTION SEVEN modifies the 2014 UPOC version of the offense of unlawful discharge of firearms. A “marked” version of difference between the proposed City version of 10.5 and the 2014 UPOC version of 10.5 is:

#### **10.5 UNLAWFUL DISCHARGE OF FIREARMS.**

- (a) Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city.
- (b) This section shall not be construed to apply:

- (1) If the firearm is discharged in the lawful defense of one's person, another person or one's property;
- (2) If the firearm is discharged at a private or public shooting range;
- (3) To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;
- (4) To the discharge of firearms in any licensed shooting gallery; or
- (5) To firing squads for ceremonials.

Unlawful discharge of firearms is a Class B violation. (KSA 21-6308a)

After input from the PD, the PV version of Section 10.5 of the UPOC is preferred because it does not make an exception for allowing discharge of firearms in PV to take wildlife, to defend against an animal attack, or to allow discharge using blanks (except as noted for ceremonial purposes). Chief Jordan can discuss further.

SECTION EIGHT deletes certain UPOC smoking offenses, covered elsewhere in the PV Code, and adds certain offenses not included in the UPOC. These changes have been made by PV to prior versions of the UPOC.

GENERAL. Certain changes to the UPOC made by PV in prior years are not included this year. The primary ones relate to firearms. But there were a few others which were made in prior years because certain offenses in prior versions of the UPOC were not consistent with other state statutes and therefore had to be amended locally. The 2014 UPOC cleans up those inconsistencies.

### **STO Ordinance No. 2316:**

SECTION ONE: Incorporates 2014 Standard Traffic Ordinance for Kansas Cities and adds language from Prairie Village Municipal Code Ordinance 11-705, DEFINITIONS, PEDESTRIANS to the 2014 Standard Traffic Ordinance for Kansas Cities, Definition of Pedestrians. The definition addition carries over same provision from 2013.

SECTION TWO: Establishes Prairie Village Municipal Code 11-602, SAME; TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES, which defines traffic offenses and infractions under the Prairie Village Municipal Code. Carries over same provision from 2013.

SECTION THREE: Establishes Prairie Village Municipal Code 11-603, PENALTY FOR SCHEDULED FINES, which establishes fines for offenses or infractions which do not have a penalty section under the 2014 Standard Traffic Ordinance for Kansas Cities or the Prairie Village Municipal Code. Carries over same provision from 2013.

SECTION FOUR: Modifies Article 4, Section 13.1(c) of the STO by allowing Public Works vehicles during snow to possess a traffic control signal device. Carries over same provision from 2013.

SECTION FIVE: Modifies Article 13, Section 107 of the STO by adding language allowing for remote control starts of vehicles. Carries over same provision from 2013.

SECTION SIX: Adds a Sec. 193(1) to Article 19 of the STO which requires driver's license holder to notify the Kansas Department of revenue- motor vehicles of a name or address change within 10 days of such change. Carries over same provision from 2013.

SECTION SEVEN: This amendment correct a typo in the published 2014 UPOC.

Other Changes to 2014 STO made by the League were reviewed by the PVPD, considered minor and not to require amendments by PV.

**FUNDING SOURCE**

N/A

**ATTACHMENTS**

Ordinance 2315

Ordinance 2316

**PREPARED BY**

Catherine P. Logan

City Attorney

September 15, 2014

**ORDINANCE NO. 2315**

**AN ORDINANCE REGULATING PUBLIC OFFENSES WITH THE CITY OF PRAIRIE VILLAGE, KANSAS; INCORPORATING BY REFERENCE THE “UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES” EDITION OF 2014, WITH CERTAIN AMENDMENTS, DELETIONS AND ADDITIONS; AMENDING AND REPEALING EXISTING SECTIONS 11-101 THROUGH 11-109 OF ARTICLE 1 OF CHAPTER XI OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, 2003, ENTITLED “PUBLIC OFFENSES & TRAFFIC”.**

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

**SECTION ONE** Article 1 of Chapter XI, Section 11-101 of the Code of the City of Prairie Village is hereby amended to read as follows:

11-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Prairie Village, Kansas, that certain code known as the “Uniform Public Offense Code,” edition of 2014, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such sections as are deleted, modified or supplemented hereby. No fewer than two copies of said Uniform Public Offense Code shall be marked or stamped, “Official Copy as Incorporated by the Code of the City of Prairie Village, Kansas” with such additional sections clearly marked and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

**SECTION TWO**

Article 1 of Chapter XI, Section 11-102 of the Code of the City of Prairie Village is hereby amended to read as follows:

11.102. Article 5 of the Uniform Public Offense Code, edition of 2014 is hereby amended by deleting existing Section 5.6 and by inserting in place thereof the following:

**Section 5.6 Purchase or Possession of Cigarettes or Tobacco Products by a Minor**

It shall be unlawful for any person:

- (a) Who is under 18 years of age to purchase or attempt to purchase cigarettes, electronic cigarettes or tobacco products; or
- (b) Who is under 18 years of age to possess or attempt to possess cigarettes, electronic cigarettes or tobacco products. (K.S.A. 79-3321:3322, as amended)

Violation of this section shall be an ordinance cigarette or tobacco infraction for which the fine shall be a minimum of \$25 and a maximum of \$100. In addition, the judge may require the juvenile to appear in court with a parent or legal guardian.



### **SECTION THREE**

Article 1 of Chapter XI, Section 11-103 of the Code of the City of Prairie Village is hereby amended to read as follows:

11.103. Article 6 of the Uniform Public Offense Code is hereby amended by deleting existing Section 6.2 and by inserting in place thereof the following:

#### **6.2 INTENT; PERMANENTLY DEPRIVE.**

(a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

- (1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;
- (2) The failure of a person who leases or rents personal property and fails to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;
- (3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;
- (4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;
- (5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;
- (6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:
  - (A) The time and place to return the vehicle; and
  - (B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into appropriate state and local computer system listing stolen motor vehicles;
- (7) Removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) Under the provisions of subsection (e) of section 6.1 the failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) In prosecution for theft as defined in Section 6.1, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.

(d) As used in this section:

(1) "Notice" means notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last know address; and

(2) "Tampering" includes, but is not limited to:

(A) Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;

(B) Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(C) Preventing any such meters from properly measuring or registering;

(D) Knowingly taking, receiving, using or converting to such person's own use, or the use of another, any electricity, water or natural gas which has not been measured; or any telephone or cable television service which has not been authorized; or

(E) Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts. (K.S.A. Supp. 21-5804)

#### **SECTION FOUR**

Article 1 of Chapter XI, Section 11-104 of the Code of the City of Prairie Village is hereby amended to read as follows:

11.104. Article 6 of the Uniform Public Offense Code is hereby supplemented to add the following provisions:

**Section 6.26 Unlawful Posting of Pictures and Advertisements**

- (a) Unlawful posting of pictures and advertisements is:
  - (1) The putting up, affixing or fastening of either or both to a traffic control device or traffic control standard or telegraph, telephone, electric light, power or other utility pole, but it is not unlawful to affix official traffic control devices to such poles; or
  - (2) The placement of either or both on public property other than as prescribed in subdivision 3 of this subsection;
  - (3) The placement of either or both on right-of-way without the consent of the landowner or the person in possession whose land lies along the right-of-way where such picture or advertisement is placed; or
  - (4) The placement of either on private property without the consent of the landowner or the person in possession of such property.
- (b) It is unlawful for any person within the city limits to tack, paste, paint, hang or place in any manner whatsoever, or cause to be tacked, posted, hung, or placed in any manner whatsoever, any handbills, dodgers, signs, or advertisements, written or unwritten, or printed matter, to or upon any telephone or telephone pole, sidewalk, or building in the city, or to throw, scatter or cause to be thrown or scattered, any handbills, dodgers or other advertisements or propaganda, or of written or printed matter or paper of any kind upon any street, alley, sidewalk, vacant lot, city property, or yard within the city limits.

Unlawful posting of pictures and advertisements is a Class C violation.

**Section 6.27 Opening, Damaging or Removing Coin-Operated Machines**

Opening, damaging or removing coin-operated machines is willfully and knowingly opening, removing or damaging any parking meter, coin telephone, vending machine dispensing goods or services, money changer or any other device designed to receive money in the sale, use or enjoyment of property or services or any part thereof, with intent to commit theft.

Violation of this section is a Class A violation.

**Section 6.28 Possession of Tools for Opening, Damaging or Removing Coin-Operated Machines**

Possession of tools for opening, damaging or removing coin-operated machines is the possession of any key, tool, instrument or other device, or any drawing, print or mold of a key or other device or any explosive specifically designed for or suitable for the use in opening or breaking into any parking meter, coin telephone, vending machine dispensing goods or services, money changer or any other device designed to receive money in the sale, use or enjoyment of property or services with intent to commit theft.

Violation of this section is a Class B violation.

## **SECTION FIVE**

Article 1 of Chapter XI, Section 11-105 of the Code of the City of Prarie Village is hereby amended to read as follows:

11.105. Article 9 of the Uniform Public Offense Code is hereby supplemented to add the following provisions:

### **Section 9.14 Loitering**

(a) Loitering is loafing, wandering, standing or remaining idle, either alone or in concert with others, in a public place in such manner so as to:

(1) Obstruct any public street, public highway, public sidewalk or public building or any other place of public access by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;

(2) Committing in or upon any public street, public highway, public sidewalk or public building or any other place of public access any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or public building or any other place of public access, all of which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.

(b) When any person causes or commits any of the conditions enumerated in this section, a law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such order is guilty of a violation of this section.

Violation of this section is a Class C violation.

### **Section 9.15 Unsolicited Publications -- Penalty**

(a) No person shall either directly or indirectly place or deposit or cause to be placed or deposited, upon any building or structures used for human abode, including the lot or lots upon which the structure is located or upon any right-of-way or city property within the city, any newspaper, magazine, publication or any other printed material if the owner or occupant of the structure has previously requested in writing that the publisher or deliverer of the material not place or deposit the material on the structure or lot.

(b) Exceptions. The provisions of this section shall not apply to distributions made through the U.S. Postal Service or any other private postal service.

(c) Penalties. Any person who violates the provisions of this section shall, upon conviction thereof, be punished for each such violation by a fine not exceeding \$100 for each such violation.

### **Section 9.16 Residential Picketing**

It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the city or before or about any church in the city.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not more than \$2,500 or by both such fine and imprisonment, provided that any person convicted of a second or subsequent conviction shall be required to be confined to not less than five consecutive days in the county jail in addition to any penalty assessed, which period of imprisonment shall not be suspended nor the defendant placed on probation until the five consecutive days are served.

## **SECTION SIX**

Article 1 of Chapter XI, Section 11-106 of the Code of the City of Prairie Village is hereby amended to read as follows:

11-106. Article 10 of the Uniform Public Offense Code, edition of 2014 is hereby supplemented to add the following:

### **10.3.1. Possession of a Firearm While Under the Influence**

- (a) Possession of a firearm under the influence is knowingly possessing or carrying a loaded firearm on or about such person, or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm.
- (b) Possession of a firearm under the influence is a class A nonperson misdemeanor.
- (c) This section shall not apply to:
  - (1) A person who possesses or carries a firearm while in such person's own dwelling or place of business or on land owned or possessed by such person; or
  - (2) the transitory possession or use of a firearm during an act committed in self-defense or in defense of another person or any other act committed if legally justified or excused, provided such possession or use lasts no longer than is immediately necessary.
- (d) If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm under the influence of alcohol or drugs, or both, such law enforcement officer shall request such person submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The selection of the test or tests shall be made by the officer.
- (e) (1) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:
  - (A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;
  - (B) a registered nurse or a licensed practical nurse;
  - (C) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate/defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or
  - (D) a phlebotomist.

(2) A law enforcement officer may direct a medical professional described in this subsection to draw a sample of blood from a person if the person has given consent or upon meeting the requirements of subsection (d).

(3) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

(4) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(5) If a sample is to be taken under authority of a search warrant, and the person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(6) A law enforcement officer may request a urine sample upon meeting the requirements of subsection (d).

(7) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by:

(A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

(B) a registered nurse or a licensed practical nurse; or

(C) a law enforcement officer of the same sex as the person being tested.

The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in para-graphs (2) and (3) shall apply to the collection of a urine sample.

- (8) The person performing or assisting in the performance of any such test and the law enforcement officer requesting any such test who is acting in accordance with this section shall not be liable in any civil and criminal proceeding involving the action.
- (f) (1) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of possession of a firearm under the influence of alcohol or drugs, or both.
- (2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.
- (3) In any criminal prosecution for a violation of this section, if the court finds that a person refused to submit to testing when requested pursuant to this section, the county or district attorney, upon petition to the court, may recover on behalf of the state, in addition to the criminal penalties provided in this section, a civil penalty not exceeding \$ 1,000 for each violation.
- (g) If a person who holds a valid license to carry a concealed handgun issued pursuant to K.S.A. 2013 Supp. 75-7c01 et seq., and amendments thereto, is convicted of a violation of this section, such person's license to carry a concealed handgun shall be revoked for a minimum of one year for a first offense and three years for a second or sub-sequent offense.
- (h) In any criminal prosecution for possession of a firearm under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:
- (1) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol or drugs, or both.
- (2) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol.
- (3) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapacitated, that fact may be considered to determine if the defendant was under the influence of alcohol or drugs, or both.
- (i) The provisions of subsection (h) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or drugs, or both.
- (j) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person. (2013 HB 2578, Section 6)

## **SECTION SEVEN**

Article 1 of Chapter XI, Section 11-107 of the Code of the City of Prairie Village is hereby amended to read as follows:

11.107. Article 10 of the Uniform Public Offense Code, edition of 2014 is hereby amended by deleting existing Section 10.5 and by inserting in place thereof the following:

### **10.5 UNLAWFUL DISCHARGE OF FIREARMS.**

- (a) Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city.
- (b) This section shall not be construed to apply:
  - (1) If the firearm is discharged in the lawful defense of one's person, another person or one's property;
  - (2) If the firearm is discharged at a private or public shooting range;
  - (3) To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;
  - (4) To the discharge of firearms in any licensed shooting gallery; or
  - (5) To firing squads for ceremonials.

Unlawful discharge of firearms is a Class B violation. (KSA 21-6308a)

## **SECTION EIGHT**

Article 1 of Chapter XI, Section 11-108 of the Code of the City of Prairie Village is hereby amended to read as follows:

11-108. Article 10 of the Uniform Public Offense Code is hereby amended to delete sections 10.24, Smoking Prohibited, 10.25, Smoking-Posted Premises and 10.26, Smoking Prohibited-Penalties and supplemented to add the following provisions:

### **Section 10.27 Intoxicating Liquor and Cereal Malt Beverage -- Consumption and Possession of Open Containers Prohibited at Certain Places**

It is unlawful for any person to drink, consume, or possess an open container of alcoholic liquor or cereal malt beverage upon the public streets, alleys, roads or highways, or upon property owned by the City.

(a) The provisions of this section shall not apply to the consumption or possession of alcoholic liquor or cereal malt beverage upon property owned by the city and operated as the Prairie Village Community Center; provided further, that no person shall possess or consume any alcoholic liquor or cereal malt beverage at the Prairie Village Community Center unless:

- (1) That person is in attendance at an event or a function for which permit authorizing the serving and consumption of liquor and beer has been previously issued by the city, and
- (2) The liquor or beer being consumed has been provided by the individual, person, or organization to which the permit has been issued.

Violation of this section is a Class C violation.

### **Section 10.28 Drunkenness**

It is unlawful for any person to be drunk on any highway, street or in any public place or building in the city.

Violation of this section is a Class B violation.

### **Section 10.29 Impersonating an Officer**



It is unlawful for any person to exercise or to assume to exercise any of the powers conferred upon any police officer, or to represent himself or herself to be any such officer, or to possess the power and authority thereof, unless such person is a duly authorized officer of the law.

Violation of this section is a Class B violation.

**Section 10.30 Vehicles in City Parks**

It is unlawful to run, stand or park any motor vehicle or motorized bicycle through or across or over any part of any city park, other than roadways or parking areas so designated.

Violation of this section is a Class C violation.

**Section 10.31 Smoking on Common Carrier Buses -- Penalty**

- (a) No person shall smoke or carry in his or her hand a lighted cigar, cigarette or pipe, while in or upon any motorbus operated in common carrier passenger service upon the streets or public ways of the city.
- (b) Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$5 nor more than \$100.

**Section 10.32 Public Urination or Defecation**

No person shall urinate or defecate in any place open to the public or while exposed to public view, except while using appropriate fixtures in a restroom or other facility designed for the sanitary disposal of human waste.

Violation of this section is a Class C violation.

**Section 10.33 Public Nudity**

No person shall knowingly or intentionally appear in a state of nudity in a public place. Nudity is defined as the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual arousal.

Violation of this section is a Class A violation.

**SECTION NINE**

Article 1 of Chapter XI, Section 11-109 of the Code of the City of Prairie Village is hereby added to read as follows:

**11-109.** Article 11 of the Uniform Public Offense Code is hereby supplemented to add the following provisions:

**Section 11.13 Window Peeping**

Window peeping is the going upon property owned or occupied by another without such person’s consent for the purpose of looking into any window, door, skylight or other opening into a house, room or building.

Violation of this section is a Class A violation.

**SECTION TEN**

Article 1 of Chapter XI, Sections 11-101 through 11-109 of the Code of the City of Prarie Village are hereby repealed.

**SECTION ELEVEN**

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

**PASSED AND APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_, 2014**

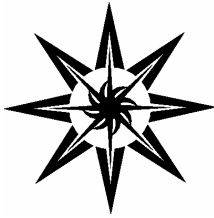
\_\_\_\_\_  
RONALD L. SHAFFER, MAYOR

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
JOYCE HAGEN MUNDY, CITY CLERK

\_\_\_\_\_  
CATHERINE P. LOGAN, CITY ATTORNEY



## Municipal Court/Police Department

Council Committee Date: September 15, 2014

Council Meeting Date: September 15, 2014

**\*COU2014-35: Consider adoption of the 2014 Standard Traffic Ordinance for Kansas Cities and the 2014 Uniform Public Offense Code for Kansas Cities, with certain changes, additions and deletions**

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### **RECOMMENDATION**

Staff recommends that Governing Body adopt Ordinance No. 2315 adopting the Uniform Public Offense Code edition of 2014 (UPOC) and Ordinance No. 2316 adopting the Standard Traffic Ordinance edition of 2014 (STO) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

\*City Council action is requested at the September 15, 2014 meeting.

### **MOTION**

Governing Body adopt Ordinance No. 2315 adopting the Uniform Public Offense Code edition of 2014 (UPOC) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

Governing Body adopt Ordinance No. 2316 adopting the Standard Traffic Ordinance edition of 2014 (STO) prepared and published by the League of Kansas Municipalities with certain sections amended, deleted and with additional and supplemental sections.

### **BACKGROUND**

On an annual basis, the City receives the latest edition of the UPOC and the STO from the League of Kansas Municipalities. The 2014 UPOC and 2014 STO were reviewed against current City ordinances for any discrepancies. Any deletions or additions were reviewed and approved by the City Attorney and City Prosecutor in consultation with the Police Department. The following addresses changes to the 2014 UPOC and STO made by the attached ordinances.

#### **UPOC Ordinance No 2315:**

The Uniform Public Offence Code ("UPOC"), which is published annually by the League of Kansas Municipalities, includes about 100 public offenses which may be prosecuted in municipal courts. Some UPOC provisions have parallel provisions under state law (prosecuted by the District Attorney in state court) and some are local violations only. Prairie Village and Mission Hills have historically adopted the current annual version of the UPOC, with amendments. In 2013, both cities retained the 2012 version of the UPOC in order to retain certain provisions regulating knives and firearms, including prohibiting open carry.

On July 1, 2014, HB 2578, approved by the Kansas legislature and signed by the Governor in the 2014 Session, became effective.

HB 2578 preempts the City's ability to regulate knives and open carry, and accordingly on June 16, 2014 the Governing Body approved Ordinance 2311 which became effective July 1, 2014, repealing certain sections of the 2013 UPOC as amended by the City. The amendments, all covered in an agenda memo at the June 16 meeting, are summarized below.

**KNIVES:**

HB 2578, Section 8, amends K.S.A. 2013 Supp. 12-16,134 by prohibiting municipalities from enacting and *enforcing* any ordinance relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife making components. The term "municipalities" does not include unified school districts, jails and juvenile correction facilities. The addition of the term "enforcing" closed a loophole relied on the City last year when it retained the 2012 version of UPOC including certain provisions regulating knives.

Assuming HB 2578 remains effective and enforceable, practical effects for Prairie Village:

- Prairie Village may not enact or enforce local ordinances which make the possession of knives a criminal offense.
- Prairie Village may not prohibit persons from carrying knives on public property, including into public buildings, other than jails or juvenile correctional facilities.

**The provisions in the 2014 UPOC governing knives are consistent with the HB 2578.**

**FIREARMS:**

HB 2578, Section 5, allows open carry to be prohibited in buildings, including city buildings, according to regulations and signage to be adopted by the Kansas Attorney General. As of June 11, 2014, no regulations have been adopted. It is expected that the ability to prohibit open carry in city buildings will be the same as the ability to prohibit conceal carry, or be broader.

HB 2578, Section 6, enacted a new state statute which prohibits the possession of loaded firearms (concealed or unconcealed) on or about the person or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs or both, to such a degree as to render such person incapable of safely operating a firearm.

HB 2578, Section 7, amends K.S.A. 2013 Supp. 12-16,124 by prohibiting cities from adopting or *enforcing* any ordinances governing the purchase, transfer, ownership, storage, *carrying* or transporting of firearms or ammunitions, and by eliminating certain exceptions which allowed cities to regulate certain aspects of firearms, including the “manner” of open carry and loaded firearms in vehicles. However, Section 7 does allow cities to adopt employment policies, consistent with the Personal and Family Protection Act (K.S.A. 2013 Supp. 75c01 *et seq.*) regarding the carrying of firearms by employees.

HB 2578, Section 16, allows a corrections facility, a jail facility or a law enforcement agency to prohibit the carrying of handgun or other firearm, concealed or unconcealed, by any person into any secure area of a building.

Assuming HB 2578 remains effective and enforceable, practical effects for Prairie Village:

- Prairie Village may not enact or enforce local ordinances which make the open carry of a firearm a criminal offense.
- Except as noted below, Prairie Village may not enact or enforce ordinances or other regulations relating to the transportation or possession of firearms in vehicles.
- Possession of a loaded firearm on or about the person or within a person’s immediate access and control while in a vehicle, while under the influence, may be charged by Prairie Village police as a state law violation.
- Except as noted below, Prairie Village may not prohibit open or conceal carry of firearms on public property.
- Prairie Village may prohibit open carry of firearms in city buildings in accordance with regulations to be adopted by the Kansas Attorney General.
- Prairie Village may prohibit open carry of firearms by employees in the work place, including in city vehicles. This does not appear to be conditioned upon a four year exemption or adequate security measure requirements of 2013 HB 2052.
- By virtue of the 4 year exemption period (expires January 1, 2018) adopted by Prairie Village in 2013 in response to 2013 HB 2052, Prairie Village may prohibit conceal carry (public and employees) in all buildings which are covered by the 4 year exemption.
- After the 4 year exemption period expires, Prairie Village may only prohibit employees from conceal carrying in city buildings if (i) the building has “adequate security measures” (electronic equipment and personnel at

public entrances to detect and restrict the carrying of any weapons into a building, including, but not limited to, metal detectors and metal detector wands), and (ii) the employee does not have restricted access to the building.

- After the 4 year exemption period expires, Prairie Village may only prohibit persons other than employees from conceal carrying in buildings if the building has adequate security measures.
- Prairie Village may not prohibit employees from conceal carrying in their personal vehicles and in city parking lots.
- Prairie Village may prohibit the carrying of any firearm in the secure area of the police department.

**The provisions in the 2014 UPOC governing firearms are consistent with the HB 2578.**

#### **EXPLANATION OF CHANGES TO THE 2014 UPOC PROPOSED IN ORDINANCE NO. 2315**

SECTION TWO increases the maximum fine for minor tobacco violations from \$25 to \$100. This change was made by PV to prior versions of the UPOC.

SECTION THREE restates Section 6.2 of the published 2014 UPOC to delete certain typos which were contained in the published version of that Section.

SECTIONS FOUR AND FIVE add offenses which are not included in the UPOC. These changes were made by PV to prior versions of the UPOC.

SECTION SIX adds the offense of possession of firearms while under the influence as a City offense, incorporating the elements of the same offense under state law. The actions described in SECTION SIX can be charged as either a state violation, prosecuted by the District Attorney, or a municipal court violation, prosecuted by the City Prosecutor. The LKM did not include this offense in the UPOC because it felt that it should be up to individual cities to include or not include as a municipal court violation by amending the UPOC.

SECTION SEVEN modifies the 2014 UPOC version of the offense of unlawful discharge of firearms. A “marked” version of difference between the proposed City version of 10.5 and the 2014 UPOC version of 10.5 is:

#### **10.5 UNLAWFUL DISCHARGE OF FIREARMS.**

- (a) Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city.
- (b) This section shall not be construed to apply:

- (1) If the firearm is discharged in the lawful defense of one's person, another person or one's property;
- (2) If the firearm is discharged at a private or public shooting range;
- (3) To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;
- (4) To the discharge of firearms in any licensed shooting gallery; or
- (5) To firing squads for ceremonials.

Unlawful discharge of firearms is a Class B violation. (KSA 21-6308a)

After input from the PD, the PV version of Section 10.5 of the UPOC is preferred because it does not make an exception for allowing discharge of firearms in PV to take wildlife, to defend against an animal attack, or to allow discharge using blanks (except as noted for ceremonial purposes). Chief Jordan can discuss further.

SECTION EIGHT deletes certain UPOC smoking offenses, covered elsewhere in the PV Code, and adds certain offenses not included in the UPOC. These changes have been made by PV to prior versions of the UPOC.

GENERAL. Certain changes to the UPOC made by PV in prior years are not included this year. The primary ones relate to firearms. But there were a few others which were made in prior years because certain offenses in prior versions of the UPOC were not consistent with other state statutes and therefore had to be amended locally. The 2014 UPOC cleans up those inconsistencies.

### **STO Ordinance No. 2316:**

SECTION ONE: Incorporates 2014 Standard Traffic Ordinance for Kansas Cities and adds language from Prairie Village Municipal Code Ordinance 11-705, DEFINITIONS, PEDESTRIANS to the 2014 Standard Traffic Ordinance for Kansas Cities, Definition of Pedestrians. The definition addition carries over same provision from 2013.

SECTION TWO: Establishes Prairie Village Municipal Code 11-602, SAME; TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES, which defines traffic offenses and infractions under the Prairie Village Municipal Code. Carries over same provision from 2013.

SECTION THREE: Establishes Prairie Village Municipal Code 11-603, PENALTY FOR SCHEDULED FINES, which establishes fines for offenses or infractions which do not have a penalty section under the 2014 Standard Traffic Ordinance for Kansas Cities or the Prairie Village Municipal Code. Carries over same provision from 2013.

SECTION FOUR: Modifies Article 4, Section 13.1(c) of the STO by allowing Public Works vehicles during snow to possess a traffic control signal device. Carries over same provision from 2013.

SECTION FIVE: Modifies Article 13, Section 107 of the STO by adding language allowing for remote control starts of vehicles. Carries over same provision from 2013.

SECTION SIX: Adds a Sec. 193(1) to Article 19 of the STO which requires driver's license holder to notify the Kansas Department of revenue- motor vehicles of a name or address change within 10 days of such change. Carries over same provision from 2013.

SECTION SEVEN: This amendment correct a typo in the published 2014 UPOC.

Other Changes to 2014 STO made by the League were reviewed by the PVPD, considered minor and not to require amendments by PV.

**FUNDING SOURCE**

N/A

**ATTACHMENTS**

Ordinance 2315

Ordinance 2316

**PREPARED BY**

Catherine P. Logan

City Attorney

September 15, 2014



**ORDINANCE NO. 2316**

**AN ORDINANCE REGULATING TRAFFIC WITHIN THE CITY OF PRAIRIE VILLAGE, KANSAS; INCORPORATING BY REFERENCE THE “STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES,” EDITION OF 2014; WITH CERTAIN AMENDMENTS, DELETIONS AND ADDITIONS; AMENDING AND REPEALING EXISTING SECTIONS 11-601 THROUGH 11-605 OF ARTICLE 6 OF CHAPTER XI OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, 2003, ENTITLED “STANDARD TRAFFIC ORDINANCE”; AND ADDING A NEW SECTION 11-1607 TO ARTICLE 6 OF CHAPTER XI.**

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

**SECTION ONE**

Article 6 of Chapter XI, Section 11-601 of the Code of the City of Prairie Village is hereby amended to read as follows:

**11-601. INCORPORATING STANDARD TRAFFIC ORDINANCE AND ADDING A SUBSECTION TO THE DEFINITION OF PEDESTRIAN**

A. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Prairie Village, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 2014, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. Not less than two copies of said standard ordinance shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Prairie Village, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The Police Department, municipal judges and all administrative departments of the city charged with the enforcement of the ordinances shall be supplied, at the cost of the city, such number of official copies of such “Standard Traffic Ordinance” similarly marked, deleted and changed as may be deemed expedient.

B. Article 1, Section 1, DEFINITIONS, “Pedestrian” of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended by adding the following subsection (d) to the definition of “Pedestrian”:

(d) The term pedestrian includes individuals who are walking, jogging or running within the city limits of Prairie Village, Kansas. When this article requires that pedestrians walk in a certain fashion, the term walk shall be defined to include the acts of running and jogging.

## **SECTION TWO**

Article 6 of Chapter XI, Section 11-602 of the Code of the City of Prarie Village is hereby adopted to read as follows:

### **11-602. SAME; TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.**

(a) An ordinance traffic infraction is a violation of any section of this article that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. Supp. 8-2118.

(b) All traffic violations which are included within this article, and which are not ordinance traffic infractions as defined in subsection (a) of this section, shall be considered traffic offenses.

## **SECTION THREE**

Article 6 of Chapter XI, Section 11-603 of the Code of the City of Prarie Village is hereby adopted to read as follows:

### **11-603. PENALTY FOR SCHEDULED FINES.**

(a) The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judges establish a fine in a fine schedule shall not be more than \$500. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed \$500.

(b) Every person convicted of a violation of any of the provisions of this ordinance for which another penalty is not provided by this ordinance or by the schedule of fines established by the judge of the municipal court shall be punished for first conviction thereof by a fine of not more than \$500 or by imprisonment for not more than one month or by both such fine and imprisonment; for a second such conviction within one year thereafter that person shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or both such fine and imprisonment; upon a third or subsequent conviction within one year after the first conviction such person shall be punished by a fine of not more than \$2,500 or by imprisonment for not more than one year or by both such fine and imprisonment. (K.S.A. 8-2116; K.S.A. 21-4503; K.S.A. 21-4503a).

## **SECTION FOUR**

Article 6 of Chapter XI, Section 11-604 of the Code of the City of Prarie Village is hereby adopted to read as follows:

**11-604. TRAFFIC CONTROL SIGNAL PREEMPTION DEVICES**

Article 4, Section 13.1(c) of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended by deleting and replacing subsection (c) with the following:

“(c) The provisions of this section shall not apply to the operator, passenger, or owner of any of the following authorized emergency or public works vehicles, in the course of such person’s emergency or public safety duties:

- (1) Publicly owned fire department vehicles
- (2) Publicly owned police vehicles
- (3) Motor vehicles operated by ambulance services permitted by the emergency medical services board; or
- (4) Publicly owned public works vehicles during snow removal operations.”

**SECTION FIVE**

Article 6 of Chapter XI, Section 11-605 of the Code of the City of Prarie Village is hereby amended to read as follows:

**11-605. UNATTENDED MOTOR VEHICLE.**

Article 13, Section 107 of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended to read as follows:

“**Sec. 107. Unattended Vehicles.** No person either operating or in charge of a motor vehicle shall leave the vehicle unattended and unlocked on either a public or private area within the City unless the ignition of such vehicle is in the locked position, the keys are removed from the ignition and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway. These provisions shall not apply if the windows are closed and the doors locked or the vehicle is in a closed and secure building or when an engine has been activated by a remote starter system when the keys are not in the motor vehicle. A vehicle shall be presumed unattended if the owner or person in charge of the vehicle is not in the vehicle or is not in the immediate vicinity so as to have direct control or access to the vehicle.”

**SECTION SIX**

Article 6 of Chapter XI, Section 11-606 of the Code of the City of Prarie Village is hereby amended to read as follows:

**11-606. DRIVER’S LICENSE NOTICE OF CHANGE OF ADDRESS OR NAME:**

Article 19, Sec. 193 of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended by adding Sec. 193(1) to read as follows:

“**Sec. 193(1) Driver’s License Notice of Change of Address or Name.** Whenever

any person, after applying for or receiving a driver's license shall move from the mailing address or residence address named in such application or in the driver's license issued to such person, or when the name of the licensee is changed by marriage or otherwise, such person, within ten (10) days thereafter, shall notify the Kansas Department of Revenue motor vehicles division in writing of such person's old and new mailing and / or residence address and / or of such former and new name(s) and the driver's license number of such person."

**SECTION SEVEN**

Article 6 of Chapter XI, Section 11-607 is added to the Code of the City of Prarie Village to read as follows:

**11-607. MOTOR VEHICLE LIABILITY INSURANCE**

Article 19, Section 200(a) (4) of the Standard Traffic Ordinance for Kansas Cities, Edition of 2014, is hereby amended by deleting and replacing subsection (4) with the following:

(4) is expressly exempted from the provisions of the Kansas Automobile Injury Reparations Act, K.S.A. 40-3101 *et seq.*

**SECTION EIGHT**

Article 1 of Chapter XI, Sections 11-601 through 11-606 of the Code of the City of Prarie Village are hereby repealed.

**SECTION NINE**

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

**PASSED AND APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_, 2014.**

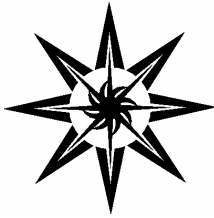
\_\_\_\_\_  
Ronald L. Shaffer, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

\_\_\_\_\_  
Catherine P. Logan, City Attorney



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 10, 2014  
Council Meeting Date: September 10, 2014

### COU2014-36 CONSIDER POOL PAINTING BIDS.

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#### RECOMMENDATION

Staff recommends the City Council approve the bid from Northeast Painting Associates, LLC for pool painting in the amount of \$57,570.00.

#### BACKGROUND

The 2014 Public Works Operating Budget provides for the painting of the lap and adult pools. The project will include sandblasting the pools and applying new paint.

A request for qualifications was publically advertised on August 12, 2014. Below are the three companies who have submitted bids.

Northeast Painting Associates, LLC	\$57,570.00
Commercial Waterproofing, Inc.	\$60,468.00
Sunshine Sandblasting	\$59,250.00

Northeast Painting Associates, LLC is currently has the City's three year painting contract and Public Works is comfortable with them providing this service. Under the City's current contract with Northeast Painting Associates, LLC any project over \$10,000 must be bid. This work will be performed under their current contract with the City.

#### FUNDING SOURCE

The 2014 Public Works Operating Budget includes this work.

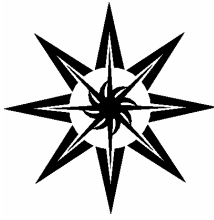
#### ATTACHMENTS

None

#### PREPARED BY

Keith Bredehoeft, Director of Public Works

September 10, 2014



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 15, 2014  
Council Meeting Date: September 15, 2014

### COU2014-37 CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TRANSYSTEMS FOR THE 2014 CDBG PROJECT.

#### RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for the 2014 CDBG project for \$5,500.

#### BACKGROUND

In 2012 TranSystems was selected to be the City's construction administration consultant for 2012, 2013 and 2014.

This contract will include construction administration services for the 2014 CDBG Project.

The total construction cost for the above project will be about \$140,000. The fee was negotiated with TranSystems to be approximately 4% of construction costs. This percentage is reasonable given the short construction timeline of this project.

#### FUNDING SOURCE

Funding is available is the CIP project RADR0001.

#### RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

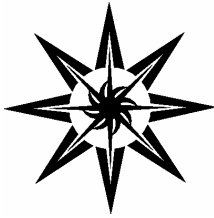
#### ATTACHMENTS

1. Construction Administration Agreement with TranSystems.

#### PREPARED BY

Melissa Prenger, Sr. Project Manager

September 9, 2014



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 15, 2014

Council Meeting Date: September 15, 2014

### COU2014-38 CONSIDER INTERLOCAL AGREEMENT WITH THE CITY OF LEAWOOD, KANSAS FOR PROJECT SODR0004: SOMERSET DRIVE- BELINDER AVENUE TO STATE LINE ROAD

#### RECOMMENDATION

Move to approve the interlocal agreement with the City of Leawood, Kansas for Project SODR0004: Somerset Drive- Belinder Avenue to State Line Road.

#### BACKGROUND

Project SODR0004: Somerset Drive- Belinder Avenue to State Line Road rehabilitation project in which about 25% of the project is in Leawood, Kansas. An Interlocal Agreement is necessary with Leawood to document the details and financial obligations of each City. This project is funded at 50% by Johnson County's CARS program. This project will be fully administered by Prairie Village. After the County's CARS funding the cost breakdown will be approximately \$107,500 Leawood and \$322,500 Prairie Village.

This project is a part of the 2014 CIP and is currently beginning construction.

#### FUNDING SOURCE

Funding is available under the Capital Infrastructure Program, Project SORD0004: Somerset Drive- Belinder Avenue to State Line Road for the City's portion of the project.

#### RELATION TO VILLAGE VISION

- CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.*
- TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.*
- TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.*

#### ATTACHMENTS

1. Interlocal Agreement with Leawood.

#### PREPARED BY

Keith Bredehoeft

September 10, 2014

## MAYOR'S ANNOUNCEMENTS

September 15, 2014

### Committee meetings scheduled for the next two weeks:

Prairie Village Arts Council	09/17/2014	7:00 p.m.
Environment/Recycle Committee	09/24/2014	7:00 p.m.
Council Committee of the Whole	09/02/2014	6:00 p.m.
City Council	09/02/2014	7:30 p.m.

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The Prairie Village Arts Council is pleased to a mixed media exhibit by Gloria Hawkins and Christina Ellis mixed media exhibit in the R. G. Endres Gallery.

The Shawnee Mission Education Foundation's Fall breakfast is Thursday, September 25<sup>th</sup> at 7 a.m. at the Overland Park Convention Center (6000 College Blvd)

Prairie Village Peanut Butter Week is October 6 - 10. Please bring peanut butter to the October 6 Council Meeting or stop by City Hall the week of the collection.

The October exhibit in the R.G. Endres Gallery will be the annual State of the Arts. The reception will be held on Friday, October 10<sup>th</sup> from 6 - 8 p.m. with the awards being announced at 7:30 p.m.

Flu shots will be offered for Council Members and city employees on Wednesday, September 17<sup>th</sup> from 9 to 11 a.m. at Public Works or from 3 - 4:30 p.m. in the Multi-Purpose Room. The fee for the shot is \$13.50. Please notify Amy Hunt at 913-385-4664 if you plan to receive a shot.



**INFORMATIONAL ITEMS**  
**September 15, 2014**

1. Council Committee of the Whole Minutes - August 18, 2014
2. Planning Commission Minutes - August 5, 2014
3. Prairie Village Arts Council - July 16, 2014
4. Environment/Recycle Committee Minutes - July 23, 2014
5. JazzFest Committee Minutes - August 13, 2014
6. JazzFest Committee Minutes - August 26, 2014
7. Corrected Sister City Committee Minutes - July 14, 2014
8. Sister City Committee Minutes - August 11, 2014
9. Mark Your Calendar

**COUNCIL COMMITTEE OF THE WHOLE**  
**August 18, 2014**

The Council Committee of the Whole met on Monday, August 4, 2014 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Ashley Weaver with the following members present: Mayor Ron Shaffer, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Laura Wassmer, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher. Staff Members present: Wes Jordan, Chief of Police; Melissa Prenger, Public Works Senior Project Manager; Katie Logan, City Attorney; Quinn Bennion, City Administrator, Kate Gunja, Assistant City Administrator; Lisa Santa Maria, Finance Director, Amy Hunt, Human Resources Manager, Eric Schumacher, Student Intern and Joyce Hagen Mundy, City Clerk.

Quinn Bennion introduced two new staff members, Amy Hunt, Human Resources Manager and Student intern, Eric Schumacher.

**PRESENTATION REGARDING TEEN COUNCIL**

Jori Nelson reported the ad-hoc committee of herself, Courtney McFadden, Terrence Gallagher, Laura Wassmer and Ted Odell met to further review the questions raised at the past committee meeting regarding the formation of a Teen Council Program. Three revised documents were prepared and presented for review.

The letter to the Principals was approved with a typographical correction.

Terrence Gallagher felt the program should include a visit with the Mayor and City Staff. This will be added under required events on the back page of the application. Brooke Morehead suggested the language should be changed from "Prairie Village residents" to "living in Prairie Village". She also suggested that the first sentence on the application read as follows: "After reading the requirements and believing that you are committed to making a difference through this learning opportunity, please complete the application for consideration."

Ted Odell confirmed with the city attorney that implementation of the program would not require any changes to the city's code.

Jori Nelson made the following motion, which was seconded by Terrence Gallagher and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE THE IMPLEMENTATION  
OF THE TEEN COUNCIL PROGRAM AND AUTHORIZE AN  
ALLOCATION OF \$500 FROM THE CITY COUNCIL BUDGET  
FOR COSTS RELATED TO THE PROGRAM.  
COUNCIL ACTION TAKEN  
8/18/2014**

## **Presentation Regarding Recreational Vehicle Parking & Storage**

Kate Gunja reviewed the existing city code regarding recreational vehicle and equipment. The current ordinance requires the following for permanent parking/storage:

- All RVs must be parked on a hard surface
- Not located in the required front yard setback (30 feet from the street)
- Five feet away from the rear lot line
- Five feet away from the side lot line
- The vehicle must be licensed and operational
- In all instances, an RV must be at least 15 feet from the street

The current ordinance on temporary parking/storage requires “parking on a resident’s driveway for the purpose of loading, unloading, cleaning and minor emergency type repairs, and for a period not to exceed 72 hours within any fourteen day period.”

Photos and information on the various types of vehicles and equipment that would be covered under the ordinance were presented.

Mrs. Gunja reviewed the latest history on this issue which was brought to the Council by a resident December 16, 2013. Staff was directed to research other cities’ regulations and these were presented to the council committee on January 21<sup>st</sup> along with the results of a survey of local homes associations regarding their restrictions. The issue was sent to the Planning Commission as the regulations are currently part of the zoning regulations. The Planning Commission reviewed the regulations on March and had the following recommendations:

- Revise temporary parking to “not to exceed 7 days total in a 30 day period”
- Agreed with the staff recommendation to move the regulations from the Zoning Regulations to the Municipal Code,
- Prior to holding a public hearing to remove the provisions from the Zoning Regulations, PC requested to see the proposed changes

The recommendation of the Planning Commission was presented to the Council Committee of the Whole on April 7<sup>th</sup>. The Council was interested in moving forward with the Planning Commission recommendation and other possible changes. A work group including Council members Weaver, Wassmer and Gallagher was formed to investigate the matter further.

The work group met four times, with the meetings open to the public. The work group was comfortable with the recommended change to the temporary storage regulations and focused on permanent storage. They considered screening provisions, setback provisions, parking on hard surface and limiting storage by height, length, weight or class.

The work group came up with the following four options:

Option A: Make no changes to the current code

Option B: Current code plus

- 1) Revise the definition of temporary parking per the Planning Commission recommendation

- 2) Add that items shall not be stored in front of the front building line or the line of the building as it extends to each side of the property

Option C: Option B, plus

- 1) RV must be fully screened up to 6 feet. RV may be over 6 feet in height, but must be screened up to 6 feet. (Screening means at a minimum the use of evergreen plantings to substantially shield the RV from the view of neighboring properties on all sides,
- 2) Add that all covers must be custom fit to the contours of the boat, RV or trailer - however, covers are not required.

Option D: Eliminate permanent storage of Class A, C, C vehicles, travel trailers, cargo trailers and boats; allowing utility trailers but require full screening.

Kate Gunja reported that the work group recommends Option C as it is a compromise on the wide spectrum of options considered. It also improves the visual appearance of neighborhoods by increasing the screening and revising the location options for storage. RVs are still allowed provided they are able to be stored in compliance with the revised code.

Mrs. Gunja stated the committee is looking for feedback on their recommendation. If the Council wants to move forward, the recommendation would be taken back to the Planning Commission who would authorize and hold a public hearing to remove the regulations from the Zoning Ordinances. She noted that removal from the zoning code would be contingent on Council approval of the new provisions in the Municipal Code. The City Council would then take action on the removal of the provisions in the zoning regulations and adopt an ordinance adding the provision to the Municipal Code. Mrs. Gunja noted the Council may add an "effective date" to the ordinance to allow residents the time to make the appropriate modifications to be in compliance with the new code.

Ted Odell asked about converted school buses. Mrs., Gunja replied the definition would need to be revised to include these. Jori Nelson confirmed the proposed temporary storage would become 7 days within a 30day period. It was noted this is the regulation used by the cities of Leawood and Mission Hills.

Eric Mikkelson noted that Option C is more restrictive, yet the proposed change for temporary storage is becoming less restrictive. Mrs. Gunja replied that change was recommended by the Planning Commission. He asked what reasons the commissioners gave for the change. Joyce Hagen Mundy stated they felt it better accommodated individuals leaving for a two week trip and provided more flexibility. Mr. Mikkelson asked if the Planning Commission had any comments from RV owners. Mrs. Gunja responded they had not, but would be receiving comments at the public hearing.

Ruth Hopkins stated she does not feel this is a problem and supports option B. She feels Option C is too restrictive.

Ted Odell supported option C. Terrence Gallagher stated the work group focused on what would be right for the neighboring residents as well as for the RV owners. He noted the work group meetings were open and did receive comments from those present.

Courtney McFadden confirmed the recommendation from the work group was unanimous. She asked about any required permits. Chief Jordan responded permits are only required for visitors that would be staying in the vehicle.

Dan Runion asked how the six foot screening was determined. Laura Wassmer responded it was based on the six foot fence height allowance. The work group would like to have the units fully screened, but felt this was an acceptable compromise. Jori Nelson thanked the work group for their efforts.

Kate Gunja noted if staff were directed to proceed, she would work with the city attorney to draft language and take it to the Planning Commission who would need to authorize a public hearing with their recommendation coming back to the City Council in December.

Laura Wassmer noted the committee discussed giving people six months to come into compliance. Kate Gunja confirmed the current regulations would remain in place until the new regulations are adopted and become effective.

Ted Odell confirmed that Code Enforcement is responsible for the enforcement of these regulations.

Andrew Wang asked if it was known how many people would be affected by the changes. Mrs. Gunja state it would require a physical count to determine. Ms. Wassmer noted she was surprised by the number of units located in the city.

Terrence Gallagher moved to direct staff to proceed with the implementation of the recommended Option C. The motion was seconded by Laura Wassmer and passed by a vote of 11 to 1 with Ruth Hopkins voting in opposition.

**\*COU2014-34 Consider a Contract for CDBG street construction Project with O'Donnell & Sons Construction**

Melissa Prenger stated this project includes asphalt surfacing and curb/gutter replacement on Rainbow Drive, 75<sup>th</sup> Street to Booth Drive.

On August 8, 2014, the City Clerk opened bids for the project. Four acceptable bids were received:

O'Donnell and Sons Construction	\$139,657.00
Kansas Heavy Construction	\$159,664.65
Little Joe's Asphalt	\$167,749.75
Freeman Construction	\$174,318.30
Engineer's Estimate	\$135,553.00

The low bid is within 10% of the Engineer's Estimate and can be awarded based upon Charter Ordinance No. 19, Chapter 2.62. The discrepancy occurred in the engineer's estimate of concrete curb and driveway pricing. Concrete prices have increased throughout the construction season as contractor's demand increases.

The Engineer has reviewed all bids and has recommended award of the low bid of O'Donnell and Sons Construction in the amount of \$139,657.00. Funding is available in the 2014 CIP CDBG Project RADR0001.

Ruth Hopkins made the following motion, which was seconded by Brooke Morehead and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE THE CONSTRUCTION  
CONTRACT WITH O'DONNELL AND SONS CONSTRUCTION FOR THE 2014  
CDBG PROJECT IN THE AMOUNT OF \$139,657.00.  
COUNCIL ACTION TAKEN  
08/18/2014**

**\*COU2014- 33      Consider Interlocal Agreement with Johnson County and the City of  
Leawood, Kansas for Project SODR0004: Somerset Drive - Belinder  
Avenue to State Line Road**

Melissa Prenger stated Johnson County has approved Project SODR0004: Somerset Drive- Belinder Avenue to State Line Road rehabilitation project. An Interlocal Agreement has been received from Johnson County for execution by the Prairie Village and the City of Leawood, Kansas. This agreement will limit the County share to 50% of the project's construction costs or \$469,000. The County's funding for this project comes from the County Assistance Road System(CARS) Program. This project is a joint project with the City of Leawood, Kansas and will be administered by Prairie Village.

Funding is available under the 2014Capital Infrastructure Program, Project SORD0004: Somerset Drive- Belinder Avenue to State Line Road for the City's portion of the project.

Terrence Gallagher confirmed that this project also included the adjacent section of Cambridge.

Laura Wassmer made the following motion, which was seconded by Ruth Hopkins and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE THE INTERLOCAL AGREEMENT  
WITH JOHNSON COUNTY AND THE CITY OF LEAWOOD, KANSAS  
FOR PROJECT SODR0004: SOMERSET DRIVE – BELINDER AVENUE  
TO STATE LINE ROAD  
COUNCIL ACTION TAKEN  
08/18/2014**

## **STAFF REPORTS**

### **Public Safety**

- Chief Jordan reported that traffic issues around Shawnee Mission East have been minimal. The biggest traffic problems are at Indian Hills with traffic backing up on 63<sup>rd</sup>. Belinder and Briarwood Elementary are experiencing some congestion problems.
- The department has an educational campaign out on pedestrian crossing with new signage and an article in the next Village Voice. They have targeted four locations and have issued 39 citations.

Brooke Morehead confirmed that previous school crossing guards were offered the opportunity to continue with company providing that service.

Eric Mikkelson asked for clarification on what constituted a crosswalk violation.

### **Public Works**

- Melissa Prenger stated the 2014 Drainage Channel Project east of Nall between 70<sup>th</sup> Terrace and 71<sup>st</sup> Street began today.
- The 2014 microsurfacing project is underway and should be completed by the end of the week.
- JazzFest signs are going up this week.
- The public meeting on Emerald Ash Borer will be held on Wednesday, August 27<sup>th</sup>. Invitations were mailed last week to all residents with Ash trees in the right-of-way. The meeting will be held at the community center and information is also available on the city website.

### **Administration**

- Kate Gunja announced weekday hours for the pool have been reduced with the pool opening at 4:30 p.m.
- Mission Lane should open on Thursday, August 21<sup>st</sup> with all of the work completed by September 15<sup>th</sup>
- Council members are invited to a Ukrainian Independence Day celebration sponsored by the Sister City Committee on Sunday, August 24<sup>th</sup> at the Community Center. The Ukrainian flag will be flown on Monday, August 25<sup>th</sup> at City Hall in commemoration.
- The Prairie Village Shops will be supporting a breast cancer awareness event and will hang pink holiday lights at the center beginning October 1<sup>st</sup>. The lights will be changedover for the holidays.
- Quinn Bennion announced the KCADC elected officials reception has been cancelled and will be rescheduled in the spring.
- The Northeast Johnson County Chamber luncheon on Thursday, August 21<sup>st</sup> will feature Dr Jim Hinson Superintendent of the Shawnee Mission schools.
- IT services will be switching over to Johnson County IT on October 1<sup>st</sup>.
- Both the PIO/Deputy City Clerk and Assistant to the City Administrator positions have been narrowed down to finalists.

**ADJOURNMENT**

With no further business to come before the Council Committee of the Whole, Council President Ashley Weaver adjourned the meeting at 7:25 p.m.

Ashley Weaver  
Council President



**PLANNING COMMISSION MINUTES**  
**August 5, 2014**

**ROLL CALL**

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, August 5, 2014, in the Municipal Building Council Chambers at 7700 Mission Road. Vice-Chairman Nancy Vennard called the meeting to order at 7:00 p.m. with the following members present: Jim Breneman, Nancy Vennard, Larry Levy and Gregory Wolf.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, City Planning Consultant; Kate Gunja, Assistant City Administrator and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary. Also present was Council Liaison Terrence Gallagher.

**APPROVAL OF MINUTES**

Larry Levy moved the approval of the Planning Commission minutes of July 1, 2014, with the following correction: Page 2, #6 second to last sentence to read "The Tree Board has addressed this issue." The motion was seconded by Gregory Wolf and passed unanimously.

**PUBLIC HEARINGS**

**PC2014-04 Consider Ordinance Revisions to Chapter 19.33 "Wireless Communications" Section 19.33.055 "Existing Site Improvements"**

Ron Williamson stated the purpose of the proposed amendment is to delegate administrative review and approval to Staff for minor improvements to existing communications facilities. Currently most changes require Site Plan approval from the Planning Commission. Proposed language changes are shown below including revisions made by the Commission:

**19.33.055 Existing Site Improvements.**

Alterations or improvements to existing wireless communication sites shall be allowed when these alterations or improvements *are approved as follows.*

- A. Accommodate additional wireless service providers, provided that the alterations or improvements meet all applicable requirements of this Chapter. ~~Unless otherwise provided for by the current Special Use Permit, application for such alteration or improvement to an existing site will require approval through an amended Special Use Permit. However, if provided by the current Special Use Permit,~~ Such application shall be considered a revised final site plan and will only require submission to and approval of the Planning Commission.

Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements *including the structural capacity of the tower.* The cumulative effect of any additional antennae and

related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.

- B. ***Accommodate Additional Antennae.*** When provided for in the approved capacity limit of a multi-user tower's current Special Use Permit, additional antennae or replacement of current antenna *and other support equipment* may be added through an application for ~~a revised site plan and will only require submission to and approval by the Planning Commission.~~ ***an Administrative Review and approval by Staff. The applicant shall submit three copies of the proposed plans and the Structural Analysis for Administrative Review and will be responsible for the costs of the review and approval.*** Any additional antennae that exceed the ~~originally approved structural~~ capacity limit shall be considered a revised application, and shall require an amended ~~Special Use Permit Site Plan approved by the Planning Commission.~~
- C. ***Accommodate New Technology.*** In the event that new technology provides a better alternative to the design requirements herein, the Planning Commission, ***by Site Plan approval,*** may reasonably approve or require design modification of a wireless communication facility, tower or antenna when the appearance of the same is deemed to be less obtrusive than the requirements permitted herein.

Any proposal by a permit holder to replace ~~a current antenna~~ or to alter and improve an existing facility, ~~or tower or antenna~~ in a manner to make the same less obtrusive such as lessening the tower height, converting the structure to an alternative tower structure, or modifying the antenna to a "slim line" or internal design shall be considered as an amended site plan and will only require submission to and approval by the Planning Commission.

- D. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements, and the cumulative effect of any additional antennae and related facilities must comply with the radio frequency emission guidelines established by the FCC ***and not exceed the structural capacity of the tower.***

The public hearing was opened for comment. With no one present to speak on this application, the public hearing was closed. Mr. Breneman suggested several revisions to clarify the proposed revisions, which were accepted by the Commission and are included above.

Larry Levy moved the Planning Commission recommend the Governing Body adopt the proposed revisions to Section 19.33.055 "Existing Site Improvements" as modified. The motion was seconded by Jim Breneman and passed unanimously.

## **NON-PUBLIC HEARINGS**

There were no applications to come before the Planning Commission.

## **OTHER BUSINESS**

### **Proposed Revisions to Off-Street Parking Requirements**

Ron Williamson stated the primary purpose of the proposed revisions to the Off-Street Parking and Loading Regulations is to resolve the parking requirements for the KU EYE Surgical Center. However, there are a couple of other amendments that are needed to revise other sections of the Chapter. He noted excessive parking requirements result in under-developed property, which is a concern for cities like Prairie Village, that are built out communities. On the other hand, the City must be cautious that parking does not become a problem in adjacent residential neighborhoods.

At its regular meeting on April 2, 2013, the Planning Commission approved the Site Plan for KU EYE, located at 7400 State Line Road. This is a multi-tenant building that has general office space and the KU EYE Ambulatory Surgical Center. The parking regulation has a standard for general office space which is one space for each 300 sq. ft. of gross floor area. The parking requirements do not include a standard for surgical centers so the medical clinic standard was used, which is one space for each 200 sq. ft. of gross floor area. General office space in the building is 28,678 sq. ft., requiring 96 parking spaces; and the medical area is 17,827 sq. ft., requiring 90 parking spaces; for a total of 186 required parking spaces. The site has 167 spaces and is 19 spaces short of meeting the parking requirement. In order to move forward on this project, the building owner leased 19 spaces from the Capitol Federal building, adjacent to the south, to meet the requirement. The leasing of the 19 spaces was proposed as an interim measure until the parking requirement could be analyzed and a new standard developed.

Staff met with the applicant's representative and requested that a Traffic Engineer be retained to prepare a parking analysis after the use opened. The Surgical Center opened May 1<sup>st</sup>, 2014. The Traffic Engineer collected data on April 16<sup>th</sup> and 17<sup>th</sup>, prior to the opening, and collected data on May 7<sup>th</sup> and 8<sup>th</sup> for comparison purposes. Data collection was done during the peak hours of operation which is from 10:00 a.m. to 2:00 pm. The data indicated the parking occupancy at 68% - 72% prior to the surgery center being open and 69% to 75% after the surgery center opened. The result was approximately 42 parking spaces in excess of the spaces required for the use. Staff has visited the site three times since it opened and also noted over 40 parking spaces vacant during its operation.

For this particular use, it appears that the parking requirement is greater than needed. The surgical rooms are larger than exam rooms and the turnover rate is much lower for surgical rooms. This is a new use for which there is very little information on required parking. The building has a total of 46,505 sq. ft. of leasable area, which at one space per 300 sq. ft. requires 155 parking spaces.

The KU EYE Surgical Center is a hybrid use which has characteristics of both a medical clinic and a hospital. The parking requirements for a medical clinic are too high and the parking requirements for a hospital are too low.

To address this, staff is recommending the addition of a definition for “Ambulatory Surgical Center”. There are definitions from both the Federal Government and the State of Kansas as follows:

Federal definition of ambulatory surgery center

An “*Ambulatory surgery center*” or ASC means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following admission.

Kansas definition of ambulatory surgery center

“*Ambulatory surgical center*” means an establishment with an organized medical staff of one or more physicians; with permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures; with continuous physician services during surgical procedures and until the patient has recovered from the obvious effects of anesthetic and at all other times with physician services available whenever a patient is in the facility; with continuous registered professional nursing services whenever a patient is in the facility; and which does not provide services or other accommodations for a patient to stay more than 24 hours.

The State of Kansas definition is more descriptive and Staff recommends that it be added to the Definitions Chapter of the Ordinance.

Nancy Vennard noted the Kansas definition was significantly longer than the Federal definition. Mr. Williamson responded the preference is to the State definitions over the Federal because they are more local and recognized.

The Zoning Ordinance does not have a definition for “Medical or Dental Clinics or Offices”. A definition had been included in a previous edition of the City Code which is as follows:

“Medical or Dental Clinic *or Office*: An establishment where patients, who are not lodged overnight, ~~except for observation or emergency treatment~~, are admitted for examination and treatment by a person or group of persons practicing any form of healing or health building services, whether such persons be medical doctors, chiropractors, osteopaths, chiropodists, naturopaths, optometrists, dentists, or any such profession, the practice of which is ~~lawful~~ **licensed** in the State.”

The Commission recommended that the phrase “except for observation or emergency treatment” be removed as patients are not lodged overnight and that the term lawful be replaced by “licensed”.

The next step is to determine a parking requirement for Ambulatory Surgical Centers. Based upon the Parking Analysis of the actual use it appears that the Off-Street Parking Requirement for general office use is adequate for ambulatory surgical centers as well and it is recommended that the use require one space per 300 sq. ft., the same as required for general offices. Mr. Williamson reviewed parking requirements for medical services in other area cities. The parking requirements are varied for medical office uses, but it appears that Prairie Village is on the high side. From an administrative

perspective it is very difficult for the Building Official to assess parking requirements for different office uses when they are located in the same building. Therefore, it is recommended that medical offices use the same standard as general offices, one space per 300 sq. ft. of net leasable area.

**Assignment of Parking for Uses Not Listed and Reduction of Parking Requirements:**

Overland Park, Olathe, Mission, and Lenexa all include a provision for assigning a parking requirement for uses not listed. The following is the proposed text for this provision.

Add *Section 19.46.030.D. Assignment of Parking for Uses Not Listed*

*Any use not included in the parking requirements in the Zoning Ordinance shall be assigned a parking requirement by the Planning Commission.*

Ron Williamson noted in reviewing the code, staff found two other areas where clarification is needed under “Mixed Uses” and “Net Leasable Area”.

When the parking requirements were established for large shopping centers it was the intent that basement storage was not included as net leasable floor area. It was not intended that storage areas in retail businesses on the main floor would be removed from the calculation. Therefore, the following revision is recommended:

D. Mixed Uses. When a building or development contains mixed uses and has less than 300,000 square feet of net leasable floor area, the off-street parking requirements shall be calculated for each individual use and the total parking requirement shall be the sum of individual parking requirements. When a building or development contains mixed uses excluding residential uses and has greater than 300,000 square feet of net leasable floor area and located in a C-2 General Business District, the off-street parking shall be calculated as set out in Mixed Business and Commercial Center Standard. Net Leasable Floor Area does not include *basement* storage areas.

14. Mixed Office and Commercial Centers that exceed 300,000 square feet in net leasable floor area and are located in District C-2 General Business District shall provide a minimum of 3.5 spaces per 1,000 square feet of *net* leasable area.

**Net Leasable Area:**

A definition for “net leasable area” should be established for all uses. Gross area would normally include common areas, such as foyers, elevators, and stairwells that do not generate traffic. In the ordinance “gross area” would be replaced by net leasable area. The following is a suggested definition:

*Net Leasable Area: The area devoted to sales or service, but excludes restrooms, common hallways, employee lounges, common foyers, stairwells, elevators, and basement storage areas.*

The Commission discussed the wording of the proposed revisions to “Mixed Uses” and “Net Leasable Area”. It was noted the language could be changed during the public hearing; however, it was suggested that mechanical/electrical equipment rooms be added.

Fred Logan, 8340 Mission Road, addressed the Commission on behalf of Tower Properties addressing the KU Eye parking requirements and the proposed additional language to be added to allow the Planning Commission to assign parking requirements for uses not addressed by the code.

Mr. Logan thanked Mr. Williamson and staff for efforts to resolve the parking issues for KU Eye. The staff has done a great job addressing the issues and putting into place regulations that will allow for the Commission to address unique situations. As the traffic studies have shown the existing parking is adequate for the use. The addition of the surgery center had no impact on parking.

He strongly supports the provision allowing the Commission to set parking requirements for hybrid uses. He is pleased to office in a medical/office hybrid building with Village Pediatrics operating out of the same building as his law firm.

Gregory Wolf moved the Planning Commission authorize a public hearing on the proposed amendments as revised for the September 9<sup>th</sup> Planning Commission meeting. The motion was seconded by Larry Levy and passed unanimously.

### **Next Meeting**

The filing deadline for the September 9<sup>th</sup> meeting is the end of this week. No applications have been filed yet. Mr. Williamson noted the car wash at 95<sup>th</sup> & Mission is being redone and may be submitted for site plan approval. It was noted due to the Labor Day holiday, this meeting is the second Tuesday of the month instead of the usual 1<sup>st</sup> Tuesday.

Kate Gunja announced that the City's Building Official Jim Brown will be leaving the city to become the Building Official for the City of Salina. There will be a reception for him on Friday from 1 to 2 p.m. The Planning Commission members expressed appreciation for Jim's excellent work over the past years. He will be missed. Larry Levy stated as a contractor, he had great respect for Jim and noted it was a pleasure to work with him.

### **ADJOURNMENT**

With no further business to come before the Commission, Vice Chairman Nancy Vennard adjourned the meeting at 7:35 p.m.

Nancy Vennard  
Vice Chairman

Prairie Village Arts Council  
Wednesday, July 16, 2014  
7:00 p.m.  
City Hall Multi-Purpose Room

## Minutes

The Prairie Village Arts Council met at 7:00 p.m. in the Multi-Purpose Room at City Hall. Members present: Truss Tyson, Acting Chair, Julie Flanagan, Art Weeks, Wayne Wilkes, Jack Shearer, Shervin Razavian, Staff: Kate Gunja

### **Minutes**

The minutes from the June 18, 2014 meeting were approved.

### **Presentation by Lisa Cattanach regarding Pianos on Parade**

Lisa Cattanach, Michelle Gehring and Jennifer Lacy with the Pianos on Parade project attended the meeting. Lisa gave a PowerPoint presentation on the project which includes 100 pianos transformed by local students and artists available for the public to play and enjoy placed in different areas across the metro area. Lisa said that they were seeking sponsorships for the event and there were different levels available. She reviewed that information with the Committee. The Committee briefly discussed and requested that discussion of a sponsorship for the event be placed on the next meeting agenda.

### **Financial Reports**

Assistant City Administrator Kate Gunja reviewed the budget information with the Committee.

### **City Council Report**

Councilmember Ted Odell was not present at the meeting.

### **Exhibit/Receptions**

July Exhibit/Reception – Senior Arts Council July 11<sup>th</sup>, 6:30-8:00 pm

Kate said that it was a very well attended reception.

August Exhibit/Reception – Randy Kronblad – August 8, 6:30-7:30 pm

Art Weeks stated that he would be unable to attend. Several other members said that they would check their calendar to see if they would be able to attend.

### **Old Business**

Discuss Marketing (including possible guidelines for promotions of events)

Wayne Wilkes said that no further work had been done on this topic.

Discuss Children's Show

Julie Flanagan stated that she was continuing to work on the idea with Shelly.

### Discuss 2014 State of the Arts

Julie said that she had been working on a timeline and description of duties for the event. The Committee reviewed the spreadsheet that she had been working on and thought that the initial draft looked good. Julie said that she would continue to work on it and would send to the committee.

### **New Business**

#### Discuss possible donation of four panels of glass – 9/11 memorial

This item was referred to the Arts Council for review by the City Council. Kate provided an overview of the donation opportunity. The panels are available from an artist name Cara Humphries. She had recently completed a 9/11 memorial for the City of Sugar Creek, MO. The set of four panels are approximately 8 feet tall x 4 feet wide and 2 feet thick. Each panel has the flight number, time and impact site of the 9/11 attack carved into them. The time carved into the panels was done in “EDT” initially and not “EST” as requested by the group who initially commissioned the pieces. The panels with the time in “EDT” are available and she is looking to donate the pieces. She is requesting a receipt for the tax purposes with a stated value of \$5,700 but the total value of the work is approximately \$19,000. Kate reviewed photos of the pieces installed in Sugar Creek that the artist had provided with the Council.

The Council appreciated the opportunity to review as referred to them by the City Council. The Arts Council had the following questions and comments about the opportunity:

- Concerns about the cost to transport, install and maintain. Would be a very expensive project and installation.
- Would need to identify a location for installation
- Felt it was more of a Memorial that an art installation
- There is a 9/11 Memorial already in Overland Park – Council wondered if they would be interested in the pieces?

In conclusion, the Council said that it would be too costly of a project for the Arts Council to take on in their existing budget.

The meeting was adjourned at 8:12 p.m. The next meeting will be August 20, 2014 at 7:00 p.m.



## PRAIRIE VILLAGE ENVIRONMENT AND RECYCLE COMMITTEE

Minutes, July 23, 2014

The meeting began at 7:05 p.m., chaired by Pete Jarchow. Attending were Pete, Thomas O'Brien, Barbara Brown, Margaret Goldstein, Karin McAdams, Al Pugsley, Deb English, Kate Gunja and Jeff Gorski, attending for the first time. Brenda Doyle was visiting.

The committee approved the minutes from June 25, which were very capably written by Thomas O'Brien.

**Informational announcement:** Brenda Doyle, Prairie Village resident, has found a way to have Styrofoam recycled. ACH Foam Technology at 4001 Kaw Drive, Kansas City, KS (I-70 and I-635) will take the molded chunks of Styrofoam that come in appliance packing and use them to make new foam.

### Reports and business:

- **Village Fest -Deb English:**

- Our booth was lively and well attended.
- The 250 treats that we provided as prizes were not enough; we need more next year, as well as more volunteers, especially from 9-10 in the morning.
- The magnets on the fishpond items held up well, although some washers fell off by the end.
- The bike activity worked quite well, but not everyone could use it effectively. A recumbent bike would work better.

- **Community Gardens: Thomas O'Brien:**

- The leadership team will be changing this fall.
- Plans are waiting on the final decision from the new Montessori school about maintaining the garden that the Cherokee Church had hosted before.
- There will be a tomato tasting at the next meeting!

- **Education Committee**

- The committee's posters livened up the PVERC booth at Village Fest.
- Ben Claypool had available another survey on banning plastic bags in Prairie Village, and it was enthusiastically received.

- **Community Forum**

- The date of the forum in October 2.
- Addressing envelopes has to happen earlier than our August meeting, so it will take place on Monday 18<sup>th</sup>; a few volunteers are needed.

- Margaret has the table decoration baskets from before and can bring them if they're needed.
- **Earth Fair**
  - The fair has a tentative reservation for the SME gym on March 28.
  - The committee needs to meet soon to discuss the date and other venue possibilities.

**Old business:**

- Last month a visitor, Rita Rosano, asked for the committee's help in creating a new farmers market in Prairie Village. After some discussion, it was decided that helping with this was a bigger job than our committee was able to manage right now, but that it was a great idea. Anyone who wishes to work with her can contact her, and we will discuss it further at the August meeting.
- Recently our committee was asked about our stand on a recent balloon release, with an eye to helping form future policy. The city doesn't feel that it has a relevant policy, but Pete and others felt that the city's littering policy would apply, as deflated balloons, even though they are considered biodegradable, will land somewhere. Kate and Ruth will discuss this.
- Food waste recycling – Many of us and others in Prairie Village would gladly pay \$30 for a bin for food waste recycling. One possible talking point for this effort is the diversion of food from the city water supply. Kate is planning to meet with Deffenbaugh to discuss it.
- Bag ban – A lively discussion showed just how many approaches to the ban there are. It's important to make sure the ban doesn't hurt our local merchants and to discuss it with them first. There's some interest in making the ban voluntary. Most seem to favor a ban on plastic bags and a fee for paper ones.
- We have plenty of room for new members! Visitor Jeff Gorski is considering becoming a member.

The meeting adjourned at 8:30 pm.

The next meeting will be held on August 27 at 7:00 p.m.

Respectfully submitted,

Karin McAdams

JazzFest Committee Minutes  
August 13, 2014

Present: JD Kinney, Jane Andrews, Donelea Hesse, Gloria Shearer, Diane Mares, Peggy Wright, Brian Peters, Dan Andersen, Brooke Morehead, Larry Kopitnik and Joyce Hagen Mundy.

Financial Status

The current committee balance is \$1,331.83 deducting the encumbered funds for the talent due the day of the event. The committee still has verbal commitments outstanding. Taylor Made Realty has informed us that they will not be buying a corporate table. However, we received an inquiry from a potential major donor. Since at this late date our print marketing has been committed, JD asked for committee input on what could be included in a late sponsorship package. A package was developed in the amounts of \$15,000; \$10,000 and \$5,000. JD will send the sponsorship package to the potential donor tomorrow

JD Kinney provided an update on the meeting with IKEA representatives. It appears that they are offering a \$40,000 radio marketing promotion including a radio push the two weeks prior to the event and will broadcast live from the festival between noon and four o'clock. They will have a display on site and will provide some furniture for use by the artists. While disappointed with the lack of a cash donation, the committee felt their presence at the event and promotions will benefit the event bringing people who otherwise may not have attended. With a positive experience, the committee will seek to develop a relationship with IKEA for future support.

Chairman Jack Shearer prepared a revised budget. JD Kinney led the committee through a line item by line item review of the new budget based on lower pre event revenue and the reduction in the requests for corporate tables/tents.

The JAM ad and write-up was shared with the committee as well as the four-page Village Voice insert and line-up cards. Four new banners were created for placement in Prairie Village. JD presented a proof of the fan that has been purchased by Claridge Court that includes the line-up on one side and will be given out to attendees as they enter. Joyce presented a proof of the stamp for admittance. The committee would like to use the JazzFest Logo on the stamp.

JD presented proofs of the proposed T-shirts for the volunteers and for sale. He is ordering 75 T-Shirts for sale. He also was getting bids on a JazzFest polo shirt for purchase by the committee members. Joyce will get him size information on past yard signs and he will get a bid. It was noted that we already have the metal posts and need only the signs.

### Talent Update

Joyce has prepared an informational letter to go out to the artists with information on the sale of their CDs, marketing information and their credentials. Air fare has already been secured and paid. Peggy is making hotel arrangements. Gloria Shearer will help with transportation; however, Peggy noted that she may need one more volunteer to assist with transporting the artists from the airport to hotel and to event. Larry and Dan discussed sound check arrangements. It was questionable whether sound checks could be done on site Friday evening; however, SME has offered the use of their facility Friday evening if needed.

### Volunteers

Jane Andrews reported that more volunteers are needed and asked committee members to provide her with the names of individuals they know that are interested in working. She stated that she has contacted area churches to advertise the need. Jane has delivered line-up cards to all the businesses at the Corinth Shopping Center.

### Site Plan & Operations

Dan Andersen stated that he has met with Public Works regarding power needs and it appears that all the power on the hill can be met with existing power outlets that they will be adding. He showed the site plan for the location of IKEA and the VIP tent. The three vendors will be operating from trucks at the back side of the pavilion. JD stated that he talked with Hy-Vee and they will provide water and soda at cost and take back unused drink. The vendors will also be selling beverages. There will be fewer tents needed and purchased. Some of the City-owned tents will be used. Piano arrangements have been made. VIP and table guests will receive food tickets for the vendors as will volunteers.

### Next Meeting:

The next meeting will be Tuesday, August 26th at 7 p.m.

## JazzFest Committee Minutes August 26, 2014

Present: Jack Shearer, JD Kinney, Jane Andrews, Donelea Hesse, Gloria Shearer, Diane Mares, Kyle Kristofer, Mike Polich, Brian Peters, Dan Andersen, Brooke Morehead, Michael Jones, Larry Kopitnik and Joyce Hagen Mundy.

### **Minutes & Financial Status**

Joyce Reported the minutes of the August 13<sup>th</sup> meeting were distributed prior to the meeting. No corrections were made to the minutes. In preparation for the event parking has been arranged, Public Works, Police Department and Med Act contacted. The City Council has approved the necessary permits. The temporary liquor permit has been received. The VIP and Corporate Table companies have been notified and requested to submit names of those attending by September 2<sup>nd</sup>. Three wireless credit card machines have been secured as well as starter cash for the five cash box locations. Credentials have been sent to the artists with the cd merchandise form. The entrance stamps with the JazzFest logo have been received. It was decided that the individual at the vendor entrance will have a stamp and will be able to let people in if they have exact cash. Otherwise, they will be directed to the two general entrances. The water sales area will have a separate cash box from the alcohol sales area.

### **Merchandise Update**

JD had yard signs available for the committee. 105 signs were order, stakes from previous years' were used. Kyle will respond to the face book requests for signs directing them to pick the signs up at City Hall. Joyce will get permission from the shopping centers for placement of signs. 75 volunteer T-shirts have been ordered and received. The T-shirts are white with the Jazz Festival imprint on front and sponsor names on the back. JD will bring them to the volunteer training session. 65 merchandise T-shirts have been ordered and received. They are heather blue with the PV JazzFest Logo on front and the lineup on the back. They will be sold for \$20. There are approximately 50 2013 Festival T-shirts remaining. The 2000 Fans paid for by Claridge Court have Claridge Court identified on the front and the line-up printed on the back. These will be given out at the entrances. JD did not pursue the purchase of polos at this time.

### **Talent Update**

Accommodations have been secured at Chase Suites for all the artists except Kevin Mahogany. The Chase Suites rooms are \$69 per night; Kevin's room is \$129. Kevin will also have car rental cost of \$170. Peggy is coordinating travel to and from the airport. Jack volunteered to take Leo Anderson to the airport Sunday morning for his 7 a.m. flight. Deborah Brown has requested dinner for her group prior to their performance.

Green Room accommodations will be in the tent next to the stage with furniture from IKEA. Water will be available in the tent. Sound Checks will begin at 8:30 Saturday morning with Kevin Mahogany with the last sound check being Deborah Brown from 12:30 to 1:30. Larry will e-mail the sound check schedule

to Kyle. Larry reported that he has interviews arranged for Shay Estes and committee members. He will try to remember to get the artists to sign some cd's after their sound check.

### **Stage Update**

Kyle Kristofer asked for copy from all the major sponsors that can be prerecorded for play between acts. Joyce will contact the sponsors and request the copy be received by September 2<sup>nd</sup>. He confirmed that Mayor Shaffer will open the close the festival. It was suggested that the Mayor be given specific times for him to be on stage. He confirmed that there will be a raffle of the artist's cd's and possibly T-shirts.

Kyle will coordinate face book and twitter broadcasts from the event. It was noted that there have been face book requests for yard signs. Kyle stated that he will be several face book posts in the coming week and updates to the website.

JD noted that Shawnee Mission East needs to be contacted to see what stage equipment they will need, chairs, stands, etc. He knows the group has 17 members.

### **Site Plan & Operations Update**

Dan reported the layout will be very similar to the previous year except there will be nothing in the front. There will be three sponsor tents. Only one generator will need to be rented as public works will be rewiring the electrical boxes at the pavilion to provide power for the ice truck. The backline and piano have been arranged. The tent cost will be approximately half of last year's cost with the use of some City tents. Public Works will mow on Tuesday, set up the fence on Wednesday and set up tents on Thursday. There will be one public works employee on site the entire day. He has the people he needs for stage operation during the event. Volunteers will be needed for Friday setup and Sunday takedown.

### **VIP Tent**

We have requested rsvp's for the corporate tables and VIP tent by next Tuesday to help determine whether to cater the tents or give them tickets for the vendors. Dan feels it should be catered. However, the committee decided that there would not be any alcohol in the tents. Each person would be given three drink tickets. Dan asked that the VIP's & Corporate Tent persons be given both credentials and wrist bands.

There was significant discussion on the giveaway during the Thursday day long broadcast promoting the festival of 12 event and 12 VIP tickets. Concerns were raised with cost of the giveaway with the very tight budget the committee is operating under. The giveaway was approved by the Committee.

### **Vendor Update**

Jack stated that the Indios Carbonsitos Truck and Wilma's Good Food Truck would be set up by 3 o'clock with the Blue Moose Truck arriving at 4 o'clock. JD announced that the committee will be only getting water for sale and for

volunteers. The committee will sell water until 3:30. After that time, water can be purchased from any of the truck vendors as well as soda. Any unused water will be taken back by HyVee.

The Trucks have yet to confirm that they will accept food tickets from volunteers with the committee reimbursing them after the festival.

### **Volunteers**

Jane reported that she is short on volunteers particularly for parking and the perimeters. Committee members updated Jane on their volunteer needs. It was decided to go with 3 shifts instead of 4 because of the limited number of volunteers. It was also noted that, with the exception of the merchandise tent, volunteer stations only needed to be manned until 9 p.m.

Jane stated that volunteer training would be held on Thursday, September 4<sup>th</sup> at 6:30 at City Hall.

### **Next Meeting**

The next committee meeting will be Friday, September 5<sup>th</sup> at 6 p.m. at Harmon Park Pavilion for those who can attend.

Sister City Minutes: July 14, 2014

Members present: Cindy Dwigans, Bob McGowan, Ivan Novikov, Vera Glywa, Bob Glywa, Jim Hohensee

Also Present: A.J. Hoyt, Mayor Shaffer, Kate Gunja

Minutes: Minutes from the last meetings were reviewed. Vera moved to approve them. Cindy seconded the motion. The minutes were approved.

Review of VillageFest: Vera recommended that the balloons have "Sister City Committee" printed on them. We used all four tanks of helium before noon.

Ukrainian Independence Day: The city will issue a proclamation to commemorate the day and the Ukrainian Flag will be flown. A.J. suggested planting more sunflowers. A picnic with invitations to the city council and staff and the Ukrainian Club was proposed for the weekend of the 23 or 24<sup>th</sup>, in the afternoon. The Community Center would be reserved. Kate will check on availability. BBQ will be purchased. Ivan urged some Ukrainian themed food and it was decided that the committee should bring a Ukraine themed dessert. Cindy moved that up to \$300 be budgeted for barbecue for an event to celebrate Ukraine Independence, for the committee, the city council and staff, with invitations to the Ukrainian Club. Bob McGowan seconded the motion and the motion was carried.

Open World visit: Cindy reported on meeting with Courtney Brooks of the KC International Visitors Council. KCIVC will take the lead on the visit. Vera explained that Mayor Garazd had named 5 good candidates and that she was working with him to complete the applications.

Bob Glywa moved the meeting be adjourned and Bob McGowan seconded. The motion was carried.



Sister City Minutes: August 11, 2014

Members present: Cindy Dwigans, Bob McGowan, Ivan Novikov, Vera Glywa, Peter Jarosewicz, Jim Hohensee

Also Present: A.J., Kate Gunja

Minutes: Minutes from the July were reviewed. It was noted that Peter was not present. Ivan moved to approve the minutes with a correction of the attendees removing Peter. Peter seconded the motion. The motion was approved.

Ukrainian Independence Day: The Community Center is reserved from 3pm-7pm on the 24<sup>th</sup>. We will invite those who have volunteered to host visitors. Cindy will get the BBQ. Jim will get paper plates and cups, ice and soda. Vera will get coffee. Cindy moved that up to \$100 be budgeted for coffee and \$100 for the plates, cups, ice and soda. The motion was approved.

Vera moved the meeting be adjourned and Bob McGowan seconded. The motion was carried.

## **PARK AND RECREATION COMMITTEE**

**May 14, 2014**

**City Hall**

Park and Recreation Committee met at 5:30 PM in the Council Chambers as the weather was not warm enough to meet in Windsor Park for the picnic. In attendance: Laura Wassmer, Chair, Eric Mikkelson, Vice Chair, Diane Pallanich, Kevin Letourneau, Eric Blevins, Lauren Wolf, Peggy Couch, Diane Mares. Staff: Danielle Dulin, Bill Billings.

Ms. Wassmer called the meeting to order at 5:30 PM.

### **Public Participation**

#### **Consent Agenda**

1. Minutes from April 9, 2014

It was moved and seconded to approve the minutes from the April 9, 2014 meeting. Motion passed unanimously.

#### **Reports**

1. Public Works Report

Mr. Billings indicated that the Public Works Department had been busy mowing and maintaining the parks for the busy season.

2. Recreation Report

Ms. Dulin stated that the pool would open for the season on May 24, 2014.

3. Chairperson's Report

No report.

### **New Business**

### **Old Business**

#### **Other**

1. Annual Park Tour
  - a. Windsor Park
  - b. Weltner Park
  - c. Taliaferro Park
  - d. Harmon Park

The Parks and Recreation Committee visited the above parks to discuss planned and proposed improvements. It was noted that the parks were in much better condition compared to this time last year.

#### **Information Items**

- Next Meeting—September 10, 2014 @ 7:00 PM.

Meeting adjourned at 8:00 PM.

**Council Members  
Mark Your Calendars  
September 15, 2014**

**September 2014** Gloria Hawkins and Christina Ellis mixed media exhibit in the R. G. Endres Gallery

**October 2014** State of the Arts exhibit in the R. G. Endres Gallery  
October 6 City Council Meeting  
October 6-10 Peanut Butter Week  
October 10 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
October 20 City Council Meeting

**November 2014** Jhulan Mukharji and Ada Koch mixed media exhibit in the R. G. Endres Gallery  
November 3 City Council Meeting  
November 14 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
November 17 City Council Meeting  
November 27 City offices closed in observance of Thanksgiving  
November 28 City offices closed in observance of Thanksgiving

**December 2014** Kathleen Manning photography exhibit in the R. G. Endres Gallery  
December 1 City Council Meeting  
December 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
December 13 Volunteer Appreciation Holiday Party - Meadowbrook Country Club  
December 15 City Council Meeting  
December 25 City offices closed in observance of Christmas