

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE**

**Tuesday, September 5, 2000
7:30 p.m.**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PUBLIC PARTICIPATION**
- IV. CONSENT AGENDA**

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

By Staff:

1. Approve Regular Council Meeting Minutes – August 21, 2000
2. Approve Claims Ordinances #2189 through #2191
3. Authorization to donate the following radio equipment and accessories to the Great Bend Humane Association: 1) Motorola HT 600 radio; 2) Motorola Radius P200 radios and 2) Motorola Chargers Model #NTN4633B
4. Approve amendment to Council Policy #131 – “Accounts Payable Procedures” by revising the claims ordinance to allow for monthly payments on approved annual contracts prior to claims ordinance approval of the Council
5. Accept a \$3,000 Grant from the Greater Kansas City Community Foundation on behalf of the Prairie Village Arts Council to construct a tile mural celebrating the City’s 50th Anniversary
6. Approve a short-term special use permit for the bank building located at the corner of Somerset and Mission Road for the placement of two 3’ x 8’ banners from September 7th to October 7th announcing the upcoming opening of a branch office for The Mission Bank
7. Approve the Data Access and License renewal agreement with Johnson County for \$2,052.00 with funding from the Public Works Operating Budget
8. Approve an agreement with United Systems Technology, Inc. (USTI) for professional software programming to provide report enhancements to the ASYST Animal Licensing Software at a cost of \$340 with funding from the City Clerk’s Operation Budget
9. Authorize the Mayor to execute the following Proclamations
Mary Eisenhower Day – October 6, 2000
Undoing Racism Day – September 20, 2000
Lancer Day – September 15, 2000

By Change Order

10. Approve additional funding of \$5,777.78 for Construction Change Order #1 for Project 191004: Federal Aid City Signing Program bringing the new Prairie Village share for the project to \$13,442.78 with \$5,777.78 coming from Capital Expenditure contingency

By Committee:

11. Approve the amendment of City Council Policy #312 – “Sidewalks” to require the construction of sidewalks in conjunction with street reconstruction projects as follows: 1) Sidewalks be constructed on both sides of an arterial street; 2) sidewalks be constructed on both sides of collector streets; 3) sidewalks be constructed on one side of residential streets; 4) that sidewalks be five-foot width when constructed next to the curb and 5) that all property owners be advised of the City’s intentions to construct a sidewalk before preliminary design begins (Council Committee of the Whole Minutes – August 21, 2000)

V. COMMITTEE REPORTS

VI. OLD BUSINESS

Review information received and staff action taken since Council’s 2/7/2000 decision regarding request for tape recorded City communications and determine whether further action should be taken

VII. NEW BUSINESS

Consider request for Attorney General opinion on Kansas Open Meeting Act

VIII. ANNOUNCEMENTS

IX. ADJOURNMENT

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

**COUNCIL
CITY OF PRAIRIE VILLAGE
September 5, 2000
-Minutes-**

The City Council of Prairie Village, Kansas, met in regular session on Tuesday, September 5, 2000, at 7:30 p.m. in the Municipal Building.

ROLL CALL

Mayor Ron Shaffer called the meeting to order with the following Council members responding to roll call: Al Herrera, Bill Griffith, Steve Noll, Ruth Hopkins, Terry Frederick, Roy True, Laura Wassmer, Jerry Kelso, Nancy Vennard, Kay Wolf, Diana Ewy Lamberson and Patty Markley.

Also present were: Barbara Vernon, City Administrator; Lt. Gary Pruitt, Police Department; Bob Pryzby, Director of Public Works; Doug Luther, Assistant City Administrator, Charles Wetzler, City Attorney and Lori Draves, Administrative Assistant.

PUBLIC PARTICIPATION

H. Boone Porter, 4104 West 91st, appeared before the Council on behalf of himself and owners of 21 other homes located on the North side of 91st Street between Mission Road on the East and Roe Avenue on the West in the Kenilworth subdivision. The group petitioned the City of Prairie Village to resolve a three-way land use issue involving the 22 homes in Kenilworth, 13 homes in Somerset Acres West subdivision and Kansas City Power & Light Company (KCP&L). Specifically, according to their interpretation, they are seeking the City's action to enforce existing provisions of the Prairie Village Municipal Code designed to protect the rights of adjacent property owners. Mr. Porter explained that KCP&L had no legal right to install underground power lines on the Somerset Acres West subdivision easements because KCP&L had not renewed their easement rights as required by the easement's terms. To remedy its wrongful trespass, KCP&L entered into negotiations with the Somerset Acres West homeowners. KCP&L has agreed to give up its existing platted easement and acquire a new easement which will be approximately 75 feet to the South of the existing easement where it will place new utility poles and relocate overhead wires. The proposed new easement will run approximately 15 feet north of the common boundary line instead of approximately 85 feet as is now the case. The new utility poles will be 10 feet higher than the utility poles currently in use. Mr. Porter further explained that the problem, as seen from the Kenilworth homeowners perspective, is that the Somerset Acres West homeowners and KCP&L are proposing to settle their dispute in a way that violates the municipal code and

their rights as adjacent property owners created under the Municipal Code. Furthermore, the Kenilworth homeowners are concerned by the negative affects it might have on their property values.

Norman Beal, 4011 West 90th Terrace, informed the Council that he lives in the Somerset Acres West subdivision. He stated that the dispute doesn't involve KCP&L, but the property rights of Kenilworth and Somerset Acres West subdivisions. He said that all this came about when KCP&L let an easement expire at the back of their properties. Not being aware of this expiration, KCP&L then installed underground utilities in the back of the yards. The Somerset Acres West homeowners learned that KCP&L did not have the right to do this and therefore, entered into discussions. In exchange for giving them an easement, KCP&L agreed to relocate existing overhead power lines to the back of their lots in the proposed new easement. There was never an exchange for money. Mr. Beal stated that it is KCP&L's responsibility to get a permit from the City. He said that the Somerset Acres West homeowners are not trying to devalue the Kenilworth properties, nor are they trying to violate any City ordinances. He stated that the poles, lines, etc. would be on the new easement on their property, at the back of their lots.

Mr. Porter rebutted that he and the Kenilworth homeowners are not saying that the Somerset Acres West homeowners have to have permission from the City to make changes. They are stating that they can not change what is on the Plat plan without a permit. Also, in dispute is the moving of poles closer to the homes in the Kenilworth subdivision.

Mayor Shaffer informed the audience that this issue would not be discussed at this time because the City Attorney would need to do research to determine if the City has authority to regulate private easements. He also stated that he would ask KCP&L to hold any further construction until the City has had a chance to review these issues. He asked the audience to sign-in so that they would be kept informed.

Nancy Vennard wanted to clarify to the audience that this issue had never been brought before the Council until that evening. She also added that it is the City's policy to keep the residents informed.

Mayor Shaffer closed the public participation.

CONSENT AGENDA

Roy True requested that Items #1 and #4 be removed from the Consent Agenda for discussion. Nancy Vennard moved to approve the Amended Consent Agenda for Tuesday, September 5, 2000:

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A roll call vote was taken on the Consent Agenda as amended with the following members voting “aye”: Herrera, Griffith, Noll, Hopkins, Frederick, True, Wassmer, Kelso, Vennard, Wolf, Ewy Lamberson and Markley.

Roy True asked that #1 be amended to show \$14,200 instead of \$14,2000. Mayor Shaffer so noted. Mr. True expressed concern on #4 that a company would only give net 15 days to pay an invoice. He inquired if the staff had notified the health insurance company and requested more days for payment. He thought it was unreasonable for an insurance company to have net 15 days.

Barbara Vernon explained that this situation comes up when there are three weeks between Council meetings. She also added that the staff had not talked with the health insurance company to ask for more time, but thought since the City did this with utility companies and had previously approved an annual agreement it would be appropriate for the insurance company.

A roll call vote was taken on #1 with the following members voting “aye”: Herrera, Griffith, Noll, Hopkins, Frederick, True, Wassmer, Kelso, Vennard, Wolf, Ewy Lamberson and Markley.

A roll call vote was taken on #4 with the following members voting “aye”: Herrera, Griffith, Noll, Hopkins, Frederick, Wassmer, Kelso, Vennard, Wolf, Ewy Lamberson and Markley with one opposing vote: True.

COMMITTEE REPORTS

Planning Commission

Mayor Shaffer announced that Terry Frederick will be leaving the Council soon and that Kay Wolf would be the new liaison to the Planning Commission. Ms. Wolf updated the Council on the signage issues for the Prairie Village Shops.

Ruth Hopkins inquired if the Planning Commission would allow logos. Terry Frederick indicated that the logos would first have to be approved by the Planning Commission.

OLD BUSINESS

Consider ADA Appeal of Mr. James Olenick

Tammy Somogye, from the City Attorney’s office, stated the issue addressed a request from Mr. James Olenick on behalf of Colin Olenick that an audio form of all City communications be provided to his son.

It had been agreed that before deciding whether the City will provide a tape recording of communications to Colin or to Mr. Olenick on behalf of Colin, the City needs more information: a) a letter from a physician with appropriate credentials stating that Colin has a physical or mental impairment that substantially limits one or more of his activities as defined by the ADA and that tape recorded communications are necessary to facilitate effective communications and b) specific items requested by Mr. Olenick to be in this alternate format.

Laura Wassmer asked for clarification regarding the letter from Mr. Olenick’s attorney. It stated that the information had not been given to Mr. Olenick. Was the information in the certified letter that Mr. Olenick refused?

Tammy Somogye, stated the two letters that Mr. Olenick had refused did not contain the information he wanted. After the information was gathered it was sent to Mr. Olenick’s attorney.

Jerry Kelso inquired if Mr. Olenick had the information now. Ms. Somogye stated that if he should have the information if his attorney had forwarded it to him.

Terry Frederick asked if Mr. Olenick's attorney was notified of the meeting this evening. Ms. Somogye stated that an Agenda for this evening had been sent by certified mail to Mr. Olenick, but not his attorney.

Mayor Shaffer added that the Council was not here to discuss an appeal. The question is "has the staff done all they can do?"

Ruth Hopkins motioned that the actions taken to date are satisfactory and there is no further action needed at this point.

Laura Wassmer seconded the motion. The motion was voted on and passed with two opposing votes.

NEW BUSINESS

Roy True asked the Council to request an opinion on the Kansas Open Meeting Act from the Attorney General. He stated that the City Attorney had checked with Paul Morrison, the District Attorney, and Mr. Morrison felt that Fred Logan, the Assistant City Attorney, did the right thing in asking one of the Councilmembers to leave the Hot Docket. Mr. True expressed that he didn't like the thought of being subjected to civil penalties and liabilities for representing his constituents in a situation like attending the Hot Docket or any City function. He continued by saying he had come up with a couple of solutions that the Council may want to think about. The first solution would be to ask the Attorney General for her opinion whether the Council would be prohibited from attending their own Hot Docket if there are more than three present. The benefit of this action is that the Council would have an opinion from the highest authority in the State giving the final answer and would no longer need to be concerned about if their opinions were correct. The negative result would be that she may find the Council is violating the ordinance and in that case would either not be able to attend public hearings or would have to fall back on the default and provide notice to the people who have requested it so that all of the public meetings would be City Council meetings. A second solution is something the Kansas League of Cities has suggested and it's been done in other cities, that is to increase the Council quorum.

Laura Wassmer asked how the Council sets their own quorum. Charles Wetzler stated that it is set by the ordinance.

Bill Griffith asked Charlie Wetzler how difficult the process is to ask the Attorney General for an opinion. Mr. Wetzler stated that it would be fairly easy. The problem is that if you get an opinion you don't like, then you are stuck with it.

Ruth Hopkins and Steve Noll both expressed that it would be nice to have the option available.

Terry Frederick asked Charlie Wetzler how he would handle asking the Attorney General a question in regard to stating the facts and circumstances. Mr. Wetzler stated that there is nothing wrong with Councilmembers attending a City meeting. The problem occurs when you have a majority of a quorum and business is conducted. There's a potential for violation of the law when a majority of a quorum of the Council is present at a City meeting. The request to the Attorney General would have to be very fact specific.

Patty Markely expressed that the problem isn't so much with the Open Meeting Act, the Council needs to self police themselves. She pointed out that the Councilmembers need to constantly be aware of what they are doing. If a majority of a quorum attends the same meeting there should be no discussion during or after the meeting. She also added that she would like an opinion from the Attorney General for clarification.

Kay Wolf agreed, saying that Councilmembers all have a responsibility to constituents to know what the proper procedures are. She added that she would be in favor of getting an opinion from the Attorney General.

Nancy Vennard stated that one way to handle this situation is that the Council have an ethics law policy. There could be something written that could include the fact that Councilmembers could attend these meetings, but no conversation or business could take place.

Roy True agreed and stated that this should be pointed out when asking for an opinion from the Attorney General. Mr. True moved that the Council first formulate a policy that the members of City Council will not conduct business outside their duly constituted City Council meetings. Bill Griffith seconded the motion.

Ruth Hopkins stated that the Kansas legislature last year put this issue into a law. She felt development of a policy would be a duplication of effort since the Council is bound to uphold the Kansas laws.

Charlie Wetzler stated that the Council could adopt a policy that says Councilmembers can attend various meetings, but should not conduct Council business if a

majority of the quorum is present. He suggested that since there is already an opinion from the City Attorney, the Council will be relying on the City Attorney's opinion. There are a number of cases that say the City does not have to have the opinion of the Attorney General if you have your own attorney's opinion.

Steve Noll asked how would it affect him if he attended a meeting as a resident and chose to speak. Would he be considered conducting Council business?

Mr. Wetzler used the example of if it were a zoning hearing and your house was going to be affected and you get up to speak, then you may be disqualified at a later time to participate in the vote on the zoning issue. If you are talking about attending as an observer and speaking to the audience regarding what is taking place at the Council meeting, then it is not considered conducting Council business.

Jerry Kelso expressed that the rules are very clear. He added that if the law is already in effect there is no reason to write another. Mr. Kelso stated that his opinion is that if Councilmembers go to the meetings they must remember not to talk.

Bill Griffith said he thinks this issue needs to be referred to the Legislative/Finance Committee.

Ruth Hopkins stated that she was confused by the City Attorney's letter. She asked if someone from the Kansas League who has dealt with KOMA should come and address the Council.

Nancy Vennard stated that there will be a League of Kansas Municipalities pre-conference on Saturday, October 7th from 2 p.m. to 5 p.m. on KOMA/KORA. This workshop has been designed especially for appointed officials and will focus on the legal and practical applications of the Kansas Open Meetings Act and the Kansas Open Records Act.

Roy True withdrew his previous motion which was approved by the second and moved that the Council request an opinion from the Attorney General based on the facts as they occurred at the Hot Docket. The first question being at the point where there were four City Councilmembers, was that a violation of the Kansas Open Meetings Act? Then assuming that the fourth Councilmember had not left the meeting, at the point issues were discussed, were the Councilmembers in violation of the Kansas Open Meetings Act?

The motion was seconded by Ruth Hopkins who asked who would write the request. Mayor Shaffer stated that Charlie Wetzler would write the letter.

The motion was voted on and passed with two opposing votes.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Tree Board	09/06/2000	6:00 p.m.
Sister City Committee	09/11/2000	7:00 p.m.
Hot Docket	09/12/2000	5:00 p.m.
Park & Recreation Committee	09/13/2000	7:00 p.m.
Council Committee of the Whole	09/18/2000	6:00 p.m.
Council Meeting	09/18/2000	7:30 p.m.

Deffenbaugh will be observing the Labor Day Holiday so all scheduled trash service will be one day late the week of September 4th.

The Prairie Village Arts Council is pleased to feature the sketches of Dean Mitchell during the month of September. An opening reception will be held on Friday, September 8th from 6:30 to 7:30 p.m.

Information on the Annual League of Kansas Municipalities Conference being held October 7th through 10th in Topeka is included in your packet. If you are interested in attending, please let Barbara Vernon know by September 5th.

Swimming Pool closed for the season on Monday, September 4th at 6 p.m. Thanks to all the staff for their work during the past summer.

The DRC is soliciting neighborhood walks. If any Councilperson would want to have a walk in their neighborhood, please let us know by the end of the month. The walk is scheduled for October 15th.

ADJOURNMENT

With no further business to come before the Council, the meeting was adjourned at 9:15 p.m.

Lori Draves
Administrative Assistant