AGENDA
GARDNER CITY COUNCIL
City Hall – 120 East Main Street -- Gardner, Kansas
Monday, March 18, 2019
7:00 p.m.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
PRESENTATION
1. Proclamation and certificates of recognition for Eagle Scouts in Troops 88 and 888
2. 2018 End of Year Financial Report
3. Kansas Department of Transportation City Connecting Link Improvement Program
PUBLIC COMMENTS
Members of the public are welcome to use this time to make comments about City matters or items on the agenda that are not part of a public hearing
CONSENT AGENDA
1. Standing approval of the minutes as written for the regular meeting on March 4, 2019 and the special meeting on March 11, 2019
2. Standing approval of City expenditures prepared March 1, 2019, in the amount of $988,704.49; March 8, 2019, in the amount of $108,373.42
3. Consider a recommendation to the City Council to chip seal Moonlight Road at the Hillsdale Water Treatment Facility
4. Consider authorizing the Mayor to execute an agreement with the Kansas Department of Transportation to construct improvements for the Moonlight Safe Routes to Schools project
5. Consider an Oil Well Permit and License Application for one (1) oil well located in the SW ¼ of Section 14-14-22
6. Consider authorizing the payment of Transportation Project Fees to Mid-America Regional Council
7. Consider a recommendation to appoint City of Gardner representatives to the Kansas Municipal Energy Agency Board of Directors
8. Consider authorizing the City Administrator to execute an addendum with Burns & McDonnell Engineering Co. Inc. for design services on the I-35 and Gardner Road Interchange project
9. Consider authorizing the City Administrator to execute an addendum with Wilson & Company, Inc. for design services on the Santa Fe, Waverly to Poplar project
10. Consider approving a Cereal Malt Beverage (CMB) license for calendar year 2019
COMMITTEE RECOMMENDATIONS
1. Consider an ordinance changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas
2. Accept the dedication of right-of-way and easements on final plat FP-19-01 for Divine Mercy Parish
3. Consider an ordinance changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas and the associated preliminary development plan PDP-19-01 for Waverly Plaza
OLD BUSINESS
NEW BUSINESS
2. Consider adopting an ordinance amending Ordinance no. 2497 of the City of Gardner, Kansas
3. Consider adopting an ordinance amending Ordinance no. 2569 of the City of Gardner, Kansas
4. Consider adopting an ordinance amending Ordinance no. 2474 of the City of Gardner, Kansas
COUNCIL UPDATE – Oral presentation unless otherwise noted

In compliance with the Americans with Disabilities Act, the City of Gardner will provide reasonable accommodations for all public meetings. Persons requiring accommodations in attending any of our public meetings should contact the City Clerk's Office at 913-856-0945 a minimum of 48 hours prior to the meeting.
EXECUTIVE SESSION
1. Consider entering into executive session to discuss matters related to non-elected personnel

ADJOURNMENT
PROCLAMATION

WHEREAS, the Boy Scouts of America has existed for 109 years creating a strong foundation of leadership, service, and community for millions of America's youth since its inception, however, only four percent of all Boy Scouts in the nation annually earn the rank of Eagle Scout, which is the highest rank in scouting; and

WHEREAS, since March 15, 2018, seventeen scouts in Troops 88 and 888 have been recognized by the Boy Scouts of America for successfully completing all requirements for Scouting's highest rank; and,

WHEREAS, we are gathered here on this occasion, as friends, family and neighbors of these scouts to support them on their attainment of the rank of Eagle Scout and to recognize the faithful and steady path taken within the Scouting organization; and

NOW, THEREFORE BE IT RESOLVED, that I, Steve Shute Mayor of the City of Gardner, Kansas, do hereby recognize and congratulate these scouts for attaining the rank of

Eagle Scout

And ask that the Community join in celebrating them for this outstanding accomplishment and extending to them our deepest appreciation for all of their dedicated work and wishing them the best in all of their future endeavors.

In witness whereof, I have hereunto set my hand and caused the Seal of the City of Gardner, Kansas to be affixed this 18th day of March, 2019.

CITY OF GARDNER, KANSAS

Steve Shute, Mayor

(SEAL)

Attest:

Amy Nasta, City Clerk
Agenda Item: 2018 End of Year Financial Report

Strategic Priority: Fiscal Stewardship

Department: Finance

Background/Description of Item:

Finance Director Matthew Wolff will present the 2018 End of the Year Financial Report to the Governing Body.
Background: US-56 / Main Street Funding Potential
On February 19, 2019, KDOT announced a new City Connecting Link Improvement Program (CCLIP), and is now taking applications for this program. A City Connecting Link is defined as any routing of the State Highway System that is located within the corporate limits of a City. US-56 / Main Street through Gardner is a City Connecting Link, and is eligible for funding.

The CCLIP is a program that provides funds to cities to address deficiencies or improve a City Connecting Link on the State Highway System. All City Connecting Links are eligible under this program except those on the Interstate System and fully controlled access sections on the Freeway System. Projects will be selected for State fiscal years 2021 and 2022 from the applications received from this announcement. CCLIP-funding levels are currently unknown and will not be available until after this “call-for-projects” has been completed. All applications must be received by KDOT-Bureau of Local Projects by end of business on March 29, 2019 to be considered.

The CCLIP program includes funding for Pavement Restoration (PR). This is a new fund category and is intended to address deficiencies in the road surface that are too extensive or expensive to be addressed by the measures under the Surface Preservation category. Actions under the PR category could include full-depth pavement replacement of the entire driving surface or extensive pavement rehabilitation. Other related improvements such as curb and gutter repair/replacement, storm sewer, parking lanes, or sidewalk construction may be included in the scope of projects and are eligible for the funding. Typically PR projects will not include any modification of the roadway geometrics other than restoring appropriate cross section.

The level of funding for PR projects is up to $1,000,000 per funding year, with a minimum matching funds based on population, for the city of Gardner population, under 25,000, the required match is 10%. However, additional matching funds increase the likelihood of the project being selected for funding.
The City Council of the City of Gardner, Kansas met in regular session on March 4, 2019, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with the Honorable Council President Lee Moore presiding. Present were Councilmembers Mark Baldwin, Randy Gregorcyk, Rich Melton, and Todd Winters. City staff present were Interim City Administrator Laura Gourley; Police Chief James Pruetting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Finance Director Matthew Wolff; and City Clerk Amy Nasta. Others present included those listed on the attached sign-in sheet and others who did not sign in. Mayor Steve Shute was absent.

CALL TO ORDER
There being a quorum of Councilmembers present, the meeting was called to order by Councilmember Moore at 7:00 p.m.

PLEDGE OF ALLEGIANCE
Councilmember Moore led those present in the Pledge of Allegiance.

PRESENTATION
1. AAA Community Traffic Safety Award Presentation

PUBLIC COMMENTS
None

CONSENT AGENDA
Councilmember Moore stated Consent Agenda Item 5 would be removed from consideration at staff’s request.

1. Standing approval of the minutes as written for the regular meeting on February 18, 2019
2. Standing approval of City expenditures prepared February 14, 2019, in the amount of $1,259,696.21; February 15, 2019, in the amount of $566,598.76; February 18, 2019 in the amount of $2,209.75; February 22, 2019 in the amount of $413,470.39
3. Consider authorizing the City of Gardner Parks and Recreation Department to initiate the request for proposals (RFP) process for Phase I of the Kill Creek Trail Project
4. Consider a recommendation to appoint City of Gardner representatives to the Kansas Rural Water Association
5. Consider a recommendation to the City Council to chip seal Moonlight Road at the Hillsdale Water Treatment Facility
6. Consider directing staff to create a policy for commemorative street signage
7. Consider authorizing the City Administrator to sign the release of a drainage easement
8. Consider the acceptance of a Settlement Agreement with Kansas Gas Service related to utility easements

Councilmember Gregorcyk asked to remove item 4 from the Consent Agenda
Councilmember Winters asked to remove item 3 from the Consent Agenda
Councilmember Gregorcyk made a motion to approve Consent Agenda items 1, 2, 6, 7, and 8
Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

Discussion of Consent Agenda Item 3
Councilmember Winters asked if it was possible to tie the trail into Saint John’s Trace at this stage as it would not add much distance. Parks and Recreation Director Jason Bruce stated funds were earmarked for a land purchase near Saint John’s Trace in 2020.

Councilmember Winters made a motion to approve Consent Agenda item 3.
Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

**Discussion of Consent Agenda Item 4**

Councilmember Gregorcyk asked who the City’s representatives for the Kansas Rural Water Association would be. Utilities Director Gonz Garcia stated Scott Millholland would be the representative and he, Gonz Garcia, would be the alternate.

Councilmember Gregorcyk made a motion to approve Consent Agenda item 4.
Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

**COMMITTEE RECOMMENDATIONS**

**OLD BUSINESS**

**NEW BUSINESS**

1. Consider adopting an ordinance regulating the sale of cereal malt beverage and beer containing not more than 6% alcohol by volume within the City of Gardner, Kansas

Councilmember Melton made a motion to adopt Ordinance No. 2604, an ordinance regulating the sale of cereal malt beverage and beer containing not more than 6% alcohol by volume within the City of Gardner, Kansas
Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2604

Melton: Yes
Moore: Yes
Winters: Yes
Baldwin: Yes
Gregorcyk: Yes

**COUNCIL UPDATES**

Parks and Recreation Director Jason Bruce stated he appreciated the Council's support on the trails project. He said staff would be seeking a grant to bring the project to Quail Meadows during the fall or winter of 2019.

Public Works Director Michael Kramer stated there had been an item in the Friday Minute Memo regarding KDOT funding for US 56 between Gardner Road and Main Street. He said KDOT had developed a new program for pavement restoration for FY 2021 and 2022 that would require up to 10% matching funds from the City for projects up to $1 million. He said this was not currently budgeted.

Mr. Kramer stated a preliminary estimate of the cost from Moonlight to Sycamore for just the pavement was $1.5 million, though he hoped to bring back a better estimate at the next Council meeting. He said that, based on Gardner's population, a 10% match was required for the program, but a larger contribution would earn additional
Councilmember Moore asked if the Infrastructure Special Sales Tax could be used. Mr. Kramer stated this was a possible option, as was bonding for the project. Councilmember Moore stated this was the State’s obligation to fix and that the road should not be in the shape it is currently in given the amount of taxes citizens already pay. He said he did not wish to ask for additional taxes. Councilmember Gregorcyk stated non-citizen financing should be considered. Finance Director Matthew Wolff stated there may be funds leftover in the Infrastructure Special Sales Tax Fund that could help. Mr. Kramer stated he would provide additional information at the next meeting.

Mr. Kramer stated the docks at Gardner Lake were divided into Tier 1 and Tier 2 docks. He said the Tier 2 docks were for individuals that did not have a residence on the lake itself and accounted for approximately 17 of the 100 docks. He said the current ordinance stated that if Tier 2 docks reached a certain level of disrepair they were not allowed to be repaired and had to be removed. He said there was also a property that would like to be split to allow their neighbor to build a Tier 1 dock. He said in the past, this property has been a Tier 2 dock and as such was not allowed.

Councilmember Melton asked why Tier 2 docks were not allowed. Mr. Kramer stated there had been issues with access in the past, as well as issues with proliferation. Interim City Administrator Laura Gourley stated Gardner Lake used to be patrolled by the Gardner Police Department. She said the only leftover jurisdiction was of the docks. Mr. Kramer stated dock permits cost approximately $25/year. He said changing the ordinance would allow staff to tell dock owners their docks needed to be repaired and a new permit would be needed rather than having to have the dock torn down.

Councilmember Winters asked if there had been issues with trespassing. Mr. Kramer stated there had not. Councilmember Moore stated he did not see a reason to change the current system. Councilmember Baldwin asked why the code would be changed to allow an individual to build on someone else’s property. Councilmember Gregorcyk stated he supported leaving the ordinance as is unless the Lake Board wanted a change. Mr. Kramer stated the Lake Board President was in favor of allowing repairs but not adding new docks. Councilmember Winters agreed with this. Interim City Administrator Laura Gourley summarized that the Council did not wish to change the Ordinance at the present time.

City Clerk Amy Nasta stated Council would need to provide consensus to extend the terms of Airport Board members set to expire by up to sixty days in order to maintain quorum. The Council provided consensus. Ms. Nasta stated the Airport Board selection process would need to be extended by up to twenty-eight days with an appointment to be brought before Council on April 1, 2019. The Council provided consensus for the extension.

Interim City Administrator Laura Gourley stated Monday, March 11, 2019 would be the meet and greet for City Administrator candidates starting at 05:00PM. She reminded the Council to arrive by 06:00PM for the executive session.

**ADJOURNMENT**

There being no further business to come before the Council, on a motion duly made by Councilmember Gregorcyk and seconded by Councilmember Melton the meeting adjourned at 07:47 p.m.

City Clerk
The City Council of the City of Gardner, Kansas met in special session on March 11, 2019, at 6:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with the Honorable Mayor Steve Shute presiding. Present were Councilmembers Mark Baldwin, Randy Gregorcyk, Rich Melton, Lee Moore, and Todd Winters. City staff present were Interim City Administrator Laura Gourley; Police Chief James Pruetting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Finance Director Matthew Wolff; and City Clerk Amy Nasta. Others present included those listed on the attached sign-in sheet and others who did not sign in.

**CALL TO ORDER**

There being a quorum of Councilmembers present, the meeting was called to order by Mayor Shute at 6:01 p.m.

**PLEDGE OF ALLEGIANCE**

Mayor Shute led those present in the Pledge of Allegiance.

**EXECUTIVE SESSION**

1. **Consider entering into executive session to discuss matters related to non-elected personnel**

Councilmember Moore made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b) (1), to discuss personnel matters related to non-elected personnel beginning at 06:02 p.m.; and returning to regular session at 09:32 p.m.

Councilmember Gregorcyk Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

Councilmember Moore made a motion to return to regular session at 09:32 p.m.

Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

**ADJOURNMENT**

There being no further business to come before the Council, on a motion duly made by Councilmember Gregorcyk and seconded by Councilmember Baldwin the meeting adjourned at 09:32 p.m.

City Clerk
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Agenda Item: Consider a recommendation to the City Council to chip seal Moonlight Road at the Hillsdale Water Treatment Facility

Strategic Priority: Fiscal Stewardship

Department: Utilities – Water Division

Board/Committee Recommendation:
On February 21, 2019, the Utilities Advisory Commission approved a recommendation to the City Council to chip seal Moonlight Road at the Hillsdale Water Treatment Facility for $41,161.

Staff Recommendation:
Approve a recommendation to chip seal Moonlight Road at the Hillsdale Water Treatment Facility and eliminate future dust control expenses.

Background/Description of Item:
The Hillsdale Water Treatment Facility was originally built in 1998 with a capacity of 2.0 MGD and expanded to 4.0 MGD in 2006. The facility is located in Miami County, 8 miles south of the City of Gardner.

As part of the expansion permitting process, Gardner signed an agreement in 2006 to pay Miami County for dust control. The total cost to date for dust control on that stretch of road is $64,350, with annual costs ranging from $3,960 to $7,260. Last year, staff received several phone calls from property owners near and around Hillsdale Water Treatment Facility complaining about the dust and road condition.

Last year, Miami County approached the City to determine if the City would be interested in a chip seal process for that stretch of road with a one-time cost of $41,161, which would eliminate the need for annual dust control. The 2019 estimate for annual dust control is $4,620 for materials plus labor.

On February 26, 2019, Miami County submitted an agreement for the proposed road improvements stating, “Such permanent improvements would be a one-time charge of $41,161.00 for a chip and seal surface”……“the maintenance of the road would vest solely with Miami County therefore voiding the annual payment by the City for dust control”.

The agreement was reviewed by Gardner City Attorney Ryan Denk.

Financial Impact:
- Though the chip seal is not in the master plan, $100,500 was included in the approved 2019-2020 budget and was included in the 2019 CIP plan approved as part of that budget

Attachments:
Suggested Motion:
Authorize the City Administrator to accept the Miami County proposal to chip seal Moonlight Road from the Hillsdale Water Treatment plant site to 223rd Street in the amount of $41,161.
AGENDA ITEM: Consider a recommendation to the City Council to chip seal Moonlight Road at the Hillsdale Water Treatment Facility

Background:

The Hillsdale Water Treatment Facility was originally built in 1998 with a capacity of 2.0 MGD and expanded to 4.0 MGD in 2006. The facility is located in Miami County, 8 miles south of the City of Gardner.

As part of the expansion permitting process, Gardner agreed to pay Miami County for dust control on Moonlight Road from the plant site to 223rd Street, and an agreement was signed in 2006. The total cost to date for dust control on that stretch of road is $64,350, with annual costs ranging from $3,960 to $7,260.

Last year, Miami County approached the City to determine if the City would be interested in a chip seal process for that stretch of road with a one time cost of $41,161, which would eliminate the need for annual dust control. The 2019 estimate for annual dust control is $4,620 for materials plus labor.

Staff Recommendation:

Agree with Miami County to chip seal Moonlight Road at Hillsdale Water Treatment Facility from the plant site to 223rd Street in the amount of $41,161.

Attachments:

- Gardner-Miami County Dust Control Agreement
- Chip Seal Cost Estimate
NEW BUSINESS

4. Consider a recommendation to the City Council to chip seal Moonlight Road at the Hillsdale Water Treatment Facility.

Director Garcia presented the staff report.

Motion by Commissioner Barney, seconded by Commissioner Williams, to forward a recommendation for approval to the City Council to agree with Miami County to chip seal Moonlight Road at the Hillsdale Water Treatment Facility from the plant site to W. 223rd Street in the amount of $41,161, with the provision that it will be a one time cost.

Motion carried 3-0 Aye (2 Absent)
November 7, 2005

The Honorable W.A. Godfrey, Chairman
Miami County Board of Commissioners
201 S Pearl Street, Suite 200
Paola, Kansas 66071

Dear Chairman Godfrey:

The City of Gardner agrees to the following conditions as part of the permitting process for the expansion of our Hillsdale Water Treatment Plant.

1. Dust control, acceptable to the Miami County Highway Department, shall be placed on Moonlight Road, by the City of Gardner, from the plant site north to 223rd Street for the duration of the construction phase of the project. The duration of the construction phase shall end with the final inspection of the last building constructed.

2. An annual payment shall be made to the Miami County Highway Department to maintain dust control on Moonlight Road from the plant site north to 223rd Street after construction ceases. This payment will be determined by the Miami County Highway Department and based on the cost of the product specified at the time of application. The Miami County Highway Department shall submit its annual bill for dust control along with receipts or proof of product cost to the following address:

   City of Gardner
   120 E Main Street
   Gardner, Kansas 66030
   Attn: Utility Department, Water Division

If this letter satisfies the stipulations approved by the Board of Commissioners for the issuance of permits for the Hillsdale Water Treatment Plant expansion, please sign where indicated on this letter and return a copy. A self addressed stamped envelope is enclosed.

Page 1 of 2
On behalf of the City of Gardner, I would like to express my gratitude for the Board’s willingness to work with the City to move this important project forward.

Sincerely,

Carol Lehman, Mayor

This letter satisfies the stipulations approved by the Miami Board of Commissioners on October 10, 2005.

W. A. Godfrey, Chairman

David M. Greene, P.E.
Public Works Director

120 E. Main
P.O. Box 347
Gardner, Kansas 66030

(913) 856-0914
FAX (913) 856-0995

E-mail: dgreene@gardnerkansas.com

Mike Howard
Operations Manager

120 E. Main
P.O. Box 347
Gardner, Kansas 66030

(913) 856-0914
FAX (913) 856-0995

E-mail: mhoward@gardnerkansas.com
Gravel Road Upgrade Cost Analysis Worksheet
Moonlight Road S of 223rd St (3,300 Linear Feet)
5 inches of AB-3 / 3 Chip Seals (2 Year One + 1 Year 2)

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Per Foot | Total Cost
---|---
$12.11 | $41,161

Estimated Cost Only
Agreement for Road Improvement
(Moonlight Road – 223rd Street to City of Gardner Water Treatment Plant Entrance)

Whereas: Miami County is a political subdivision in the State of Kansas and has the authority to enter into agreements with other entities.

Whereas: The City of Gardner is a political subdivision in the State of Kansas and has the authority to enter into agreements with other entities.

Whereas: The City of Gardner has a Conditional Use Permit (CUP # R96-11-129) granted for the construction and operation of a water treatment plant. The City in addition to the conditions set forth in the CUP has agreed to, per correspondence dated November 7th, 2005 to:

2. An annual payment shall be made to the Miami County Highway Department to maintain dust control on Moonlight Road from the plant site north to 223rd Street after construction ceases. This payment will be determined by the Miami County Highway Department and based on the cost of the product specified at the time of application. The Miami County Highway Department shall submit it annual bill for dust control along with receipts or proof of product cost to the following address:...

Whereas: The City of Gardner has petitioned Miami County to make permanent improvements on Moonlight Road on the section of road specified in the correspondence dated November 7th, 2005.

Whereas: Such permanent improvements would be a one-time charge of $41,161.00 for a chip and seal surface.

Whereas: After such improvement, the maintenance of the road would vest solely with Miami County therefore voiding the annual payment by the City for dust control.

Therefore: Miami County and the City of Gardner agree to improve Moonlight Road South of 223rd Street for a total of 3,400 linear feet with a monetary contribution of $41,161.00. Said funds will be put into an escrow account to be held by the County until the final costs are determined. Any excess funds, if any will be reimbursed to the City of Gardner. The road improvement is will be scheduled for 2019 or after proposed improvements to the Water Plant.

If any unforeseen events occur that would cause said work not to be completed the funds will be returned to the City of Gardner.

Miami County assumes any liability arising from said improvements during the time of construction or any future date. If is further agreed the final determination on any maintenance activities after completion of the improvement is solely vested with Miami County

______________________________  ________________
City of Gardner            Date

______________________________  ________________
Miami County Commission, Chairman      Date
Agenda Item: Consider authorizing the Mayor to execute an agreement with the Kansas Department of Transportation to construct improvements for the Moonlight Safe Routes to Schools project

Strategic Priority: Infrastructure and Asset Management
Fiscal Stewardship
Quality of Life

Department: Public Works

Staff Recommendation:
Authorize the Mayor to execute an agreement with the Kansas Department of Transportation (KDOT) to construct improvements for the Moonlight Safe Routes to Schools project.

Background/Description of Item:
In 2016, the City applied to the Mid-America Regional Council (MARC) for funding and was subsequently awarded KDOT funds to be used for construction of the project.

The project limits are approximately from White Drive to Warren Street along Moonlight Road. The scope of work will include filling in gaps in the existing sidewalk/trail network, replacing substandard areas of sidewalk, and making improvements to meet ADA requirements. Construction is expected to begin in early 2020.

Financial Impact:
KDOT agrees to be responsible for 80% of construction costs up to a maximum of $315,000. The estimated total cost of the project is $392,000, which includes construction, engineering design, utility relocations, and right-of-way acquisition. Costs incurred by the City of Gardner will be paid from the City’s Infrastructure Special Sales Tax Fund.

Attachments Included:
- Agreement

Suggested Motion:
Authorize the Mayor to execute an agreement with the Kansas Department of Transportation (KDOT) to construct improvements for the Moonlight Safe Routes to Schools project.
AGREEMENT

This Agreement is between the Secretary of Transportation, Kansas Department of Transportation (KDOT) (the “Secretary”) and the City of Gardner, Kansas (“City”), collectively, the “Parties.”

RECITALS:

A. The City has requested and Secretary has authorized a Safe Routes to School (SRTS) Project utilizing federal funds, as further described in this Agreement.

B. The Secretary and the City desire to construct the Project.

C. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of SRTS projects, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

1. “Agreement” means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. “City” means the City of Gardner, Kansas, with its place of business at 120 East Main Street Gardner, KS 66030.

3. “Construction” means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.

4. “Construction Contingency Items” mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

5. “Construction Engineering” means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. “Consultant” means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.

8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.

9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.

10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.

11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.

12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 et seq., Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 et seq., Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 et seq., Hazardous Waste.

13. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

14. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.

15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.

16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge, road, and other infrastructure construction projects, as reasonably determined by the Secretary.

17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
18. “**Preliminary Engineering**” means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.

19. “**Project**” means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: *constructing sidewalks, trails, ADA-complaint ramp improvements, and pavement markings on Moonlight Road from Warren Street to White Drive in Gardner, Kansas*, as described in the City’s SRTS Project Application, incorporated into this Agreement by this reference, and is the subject of this Agreement.

20. “**Project Limits**” means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.

21. “**Responsible Bidder**” means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.

22. “**Right of Way**” means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.

23. “**Secretary**” means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.

24. “**Utilities**” or “**Utility**” means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

**ARTICLE II**

**SECRETARY RESPONSIBILITIES:**

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT’s Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives to obtain participation of federal funds in the cost of the Project.

2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.
3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor’s agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party’s claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

4. **Payment of Costs.** The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed $252,000.00 in FFY 2020 TA funds for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $315,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project.

5. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary’s Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

**ARTICLE III**

**CITY RESPONSIBILITIES:**

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project’s (BLP’s) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design’s road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology’s Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project.
4. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

   (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule’s due dates as issued by KDOT, exclusive of delays beyond the Consultant’s control.

   (b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

   (c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

   “Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”
7. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the City’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

8. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

9. **Right of Way.** The City agrees to the following with regard to Right of Way:

   (a) **Right of Way Acquisition.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT’s Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

   (b) **Right of Way Documentation.** The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT’s Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

   (c) **Relocation Assistance.** The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*
(d) **Non-Highway Use of Right of Way.** Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) **Trails and Sidewalks on KDOT Right of Way.** *Intentionally Deleted.*

(f) **Use of City Right of Way.** The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing the Project.

10. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

11. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

12. **Utilities.** The City agrees to the following with regard to Utilities:

   (a) **Utility Relocation.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

   (b) **Status of Utilities.** The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

   (c) **Time of Relocation.** The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved.
City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City’s certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) **Permitting of Private Utilities.** The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) **Indemnification.** To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) **Cost of Relocation.** Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

13. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

(a) **Removal of Hazardous Waste.** The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remEDIATE any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remEDIATE Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) **Responsibility for Hazardous Waste Remediation Costs.** The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) **Hazardous Waste Indemnification.** The City shall hold harmless, defend, and indemnify the Secretary, the Secretary’s agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) **No Waiver.** By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any
other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

14. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor’s errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all performing Construction Engineering to comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8 Fluorescent Vests. The agreement for inspection services must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

15. **Traffic Control.** The City agrees to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The City shall provide a temporary traffic control plan within the Design Plans, which includes the City’s plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City’s temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary’s authorized representative may act as the City’s agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary’s authorized representative shall notify the City of the determinations made pursuant to this section.

(b) **Permanent Traffic Control.** The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) **Parking Control.** The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.
16. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

17. **Maintenance.** When the Project is completed and final acceptance is issued the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

18. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to $315,000.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $315,000.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

19. **Remittance of Estimated Share.** The City shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form **Authorization to Award Contract, Commitment of City Funds** received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

20. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary’s Chief of Fiscal Services.

21. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

22. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary’s statement of the cost incurred by the Secretary prior to the cancellation of the Project.

**ARTICLE IV**

**SPECIAL SRTS PROGRAM REQUIREMENTS:**
1. **5E Program Administration and Reporting.** The City will, at its own cost and expense, implement the 5E Program as specified in the City’s SRTS Project Application. The City agrees that the implementation of the 5E Program is integral to ensuring safe routes to schools. The City will prepare and deliver to the Secretary annual reports in the form provided by the Secretary, regarding the City’s participation in the 5E Program for a two (2) year period following execution of this Agreement. Further, the City will prepare and deliver the required SRTS Evaluation documentation in a form acceptable to the Secretary and in accordance with all form instructions for 5E Program surveys, available through the National Center for Safe Routes to School (currently [http://www.saferoutesinfo.org](http://www.saferoutesinfo.org)).

2. **No 4(f) Status.** It is the Parties’ intention that neither this Agreement nor the Project create or expand the status of any land involved in this Project as a “significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site,” for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135 (“4(f) status”), except as otherwise modified by this Agreement.

   (a) **Safe Routes to School.** Unless otherwise stated below in this section, the Parties agree the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic, environmental or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135. Exceptions: NONE.

   (b) **4(f) Determinations.** The Parties agree for purposes of any future determinations of 4(f) status issues as required by 49 U.S.C. § 303 or applicable regulations the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

3. **Change in Use.** After the Project is completed, any change in the public use of the real property for the Project will require written approval from the Secretary with FHWA concurrence.

**ARTICLE V**

**GENERAL PROVISIONS:**

1. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.

2. **Civil Rights Act.** The “Special Attachment No. 1, Rev. 09.20.17” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
3. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

4. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.

5. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

6. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

The signature page immediately follows this paragraph.
IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST: THE CITY OF GARDNER, KANSAS

CITY CLERK (Date) MAYOR
(SEAL)

Kansas Department of Transportation Secretary of Transportation

By: ____________________________ Catherine M. Patrick, P.E. (Date)
State Transportation Engineer
Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require that the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

12. **The Eleventh Amendment:** “The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment.”

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.
KANSAS DEPARTMENT OF TRANSPORTATION  
Special Attachment  
To Contracts or Agreements Entered Into  
By the Secretary of Transportation of the State of Kansas  

PREAMBLE  
The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

CLARIFICATION  
Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A  
During the performance of this contract, the contractor, for itself, it’s assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
- b. cancelling, terminating or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any
subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)
Agenda Item: Consider an Oil Well Permit and License Application for one (1) oil well located in the SW ¼ of Section 14-14-22

Strategic Priority: Public Health, Safety and Welfare

Department: Public Works

Staff Recommendation:
Staff recommends that the City Council approve the Oil Well Permit and License Application for one (1) oil well located in the SW ¼ of Section 14-14-22 subject to staff recommended conditions of approval.

Application, Background, and Supporting Documentation:
Attached is the application and supporting documentation for the eight (8) oil wells located north and east of the intersection of 167th Street and Waverly Road. The property is covered by Conditional Use Permit CUP-15-01 to allow for oil wells within an A (Agriculture District) zoning district, on 124.095 acres of property.

CUP-15-01 included four conditions:
1. Development shall be in accordance with the site plan and landscaping plan associated with CUP-15-01.
2. The Conditional Use Permit approval shall expire 20 years from the effective date.
3. A gas and oil well permit shall be obtained for each well drilled from the City as outlined in Chapter 15.55 of the Gardner Municipal Code, prior to drilling or commencing operations for the drilling.
4. All abandoned wells shall be plugged based on City and KCC standards.

Planning Staff has reviewed the oil well applications located on the parcel at 167th Street and Waverly Road, and found the applications are in compliance with the Conditional Use Permit approved in 2015, case number CUP-15-01 (Ordinance No. 2487, attached). At that time, a site plan for a total of 55 production / injection wells were approved with stipulations. Out of the 55 approved sites, applications for 16 were previously approved by the City Council: eight (8) on March 5, 2018, and eight (8) on October 15, 2018. The holding tanks have not yet been constructed, and inspections are pending on the previously approved wells and tank site.

At this time, one (1) additional well is proposed. This will be an injection well.

The site noted on the application is in within the location of approved sites on the plan. The holding tank is not part of the Oil Well Permit and License Application; however, a holding tank will be constructed in order to serve the wells.
Please note that additional permits / reports / inspections may be required by the City:
- The holding tanks may require a Building Permit to be issued by the Building Department.
- An Electrical Permit will be required by the Building Department.
- A Structural Engineering report for the holding tanks noting they are installed and properly anchored in place
- Special inspections for the site, possibly done by KDHE or KCC
- A Landscape Inspection to be conducted by the Planning Department

**Kansas Corporation Commission (KCC) requirements** – The applicant has provided copies of the approved Notice of Intent to Drill for the eight well locations to be permitted at this time.

**Fire Protection Plan** – A fire protection plan was approved for the applicant on the previous application, and meets Johnson County Fire District No. 1 requirements for this section of the GMC.

**Additional Information** – The applicant intends to utilize City of Gardner electrical services. A building permit for the electrical service and construction is required. The applicant does not intend to use a public water supply at this time.

**Staff Recommended Conditions of Approval:**

1. A bond submitted to the City Clerk consistent with Section 15.55.160 in the amount of $2,000 per well, or approved letter of credit.
2. Follow approved Fire Protection Plan in accordance with section 15.55.100
3. Payment of License Fee for 2018.
4. Application and License is Valid for Calendar year 2019.
5. Unless a new CUP is approved for the site, the license will expire no later than the expiration of CUP-15-01.
6. All conditions of CUP 15-01 shall remain, and are not altered by issuance of this permit.

**Attachments included:**

- Application
- CUP-15-01
- Location Map

**Suggested Motion:**

Approve the Oil Well Permit and License Application for one (1) oil well located in the SW ¼ of Section 14-14-22 subject to staff recommended conditions of approval.
OIL WELL PERMIT AND LICENSE APPLICATION

App  19-01  Date  3-4-19
Fee  $500
CUP#  15-01

APPLICANT
Name(s)  Thomas Investments, LP
Contact  Joel Thomas
Address  18800 Sunflower Rd.
City  Edgerton  State  KS  Zip  66021
Phone  (913)980-5036  Email  jx1thomas@gmail.com

PROPERTY OWNER
Name(s)  Thomas Investments, LP
Contact  Joel Thomas
Address  18800 Sunflower Rd.
City  Edgerton  State  KS  Zip  66021
Phone  (913)980-5036  Email  jx1thomas@gmail.com

DRILL OWNER
Name(s)  Town Oilfield Service Inc.  ST Petroleum, Inc.
Contact  Lance Town
Address  105 E. Amity St.  Edgerton, KS 66021
City  Louisburg  State  KS  Zip  66053
Phone  (913)837-3997  Email  loridriskell5@gmail.com

DRILL OPERATOR
Name(s)  Town Oilfield Service Inc.
Contact  Lance Town
Address  105 E. Amity St.
City  Louisburg  State  KS  Zip  66053
Phone  (913)837-3997  Email  loridriskell5@gmail.com

SITE INFORMATION
Property Address/Location  Northeast corner of 167th Street and Waverly Rd
Legal Description (Attach If Necessary)  See Exhibit A
Number of Existing Wells  14  Number of Proposed Wells  1
Total Site Area  124,095 acres  Present Zoning  A (Agriculture District)
Present Land Use  Agriculture  Proposed Use  Agriculture and Oil Production
I/We, the undersigned am/are the owner(s), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for an Oil Well Permit and License as indicated above.

APPLICANT SIGNATURE

S.T. Petroleum

Thomas Investments

DATE 3-4-19

DATE 3-4-19
## PERMIT AND LICENSE PROCEDURES

A LOCATION MAP SHOWING THE LEASE AND ITS RELATIONSHIP TO EXISTING SUBDIVISIONS, COMMUNITY FACILITIES, PUBLIC GROUND, AND COMMERCIAL AREAS

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>A site plan of the drilling area or some lesser area identified by the applicant showing all structures within 300 feet of the drilling area or the lesser area including:</td>
<td></td>
</tr>
<tr>
<td>a. The location, use, and width of all easements for the lease;</td>
<td>NA</td>
</tr>
<tr>
<td>b. The location of lots, streets, alleys, easements and rights-of-way;</td>
<td>X</td>
</tr>
<tr>
<td>c. The location of any waterway;</td>
<td>X</td>
</tr>
<tr>
<td>d. Written consent of the land owner on which said well is proposed to be located;</td>
<td>X</td>
</tr>
<tr>
<td>e. Statements of assurance for compliance with all federal, state and local laws;</td>
<td>X</td>
</tr>
<tr>
<td>f. Proof of compliance with K.S.A. Chapter 55-128;</td>
<td>approved KCC intent to Drill provided</td>
</tr>
<tr>
<td>g. A statement of safety for operations and equipment;</td>
<td>X</td>
</tr>
<tr>
<td>h. Such other information which the Director of Public Works deems essential to be a determination regarding the issuance of a license and which information request is consistent with the intent and purpose of this chapter;</td>
<td></td>
</tr>
<tr>
<td>1. When do you plan to install the holding tanks and appurtenances?</td>
<td>Soon after permit Note: may require building permit</td>
</tr>
<tr>
<td>2. Do you intend to apply for electrical service?</td>
<td>yes - will require building Permit</td>
</tr>
<tr>
<td>3. Do you intend to purchase water through the city now or in the future?</td>
<td>not at the current time</td>
</tr>
<tr>
<td>i. A certificate of insurance in conformity with GMC 15.55.150;</td>
<td>X</td>
</tr>
<tr>
<td>j. Cash or corporate surety bond(s) in conformity with GMC 15.55.160;</td>
<td>required as a condition of approval</td>
</tr>
<tr>
<td>or approved letter of credit</td>
<td></td>
</tr>
<tr>
<td>k. The intended exploratory well location(s) in conformity with this section;</td>
<td>X</td>
</tr>
<tr>
<td>l. The permit/license fee in conformity with GMC 15.55.030 and 15.55.040;</td>
<td>Permit Fee submitted License Fee Required after approval of License</td>
</tr>
</tbody>
</table>
m. A written drilling plan providing adequate protection to all persons who might be concerned with such drilling operations, including a reasonable and adequate plan for the handling of sludge, base sediment and salt water that may be produced in connection with the drilling and operation of said well together with facilities for the handling of production to the end that it may not be necessary to store oil in any populated area. (Ord. 2411 § 3; Ord. 1502 § 1. Code 1990 § 4-405)

I hereby submit all information required for an Oil Well Permit. I understand that failure to provide the required information may result in a postponement of the request until all information has been submitted.

<table>
<thead>
<tr>
<th>FOR STAFF USE ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved by ________ Date _______</td>
</tr>
<tr>
<td>Total Permit Cost $__<strong>$500</strong>_______ Annual License Fee $150</td>
</tr>
<tr>
<td>Permit # _______ 19-01 _______</td>
</tr>
<tr>
<td>CUP- _______ 15-01 _______ Expiration Date _______ June 1, 2035 _______</td>
</tr>
</tbody>
</table>
RECOMMENDED DESCRIPTION (C.U.P.)

(Prepared by Bradley N. Anson, P.S., May 26, 2015)

TRACT I:

The Southwest Quarter of Section 14, Township 14, Range 22, Johnson County, Kansas, except for part in streets and roads and more particularly described as follows:

All of the Southwest Quarter of Section 14, Township 14, Range 22, East of the Sixth Principal Meridian, Johnson County, Kansas described as follows: Beginning at the Northwest corner of the Southwest Quarter of said Section 14; thence North 88 degrees 49 minutes 32 seconds East, along the North line of the Southwest Quarter of said Section 14, a distance of 2596.36 feet to the Northeast corner of the Southwest Quarter of said Section 14; thence South 01 degrees 54 minutes 57 seconds East, along the East line of the Southwest Quarter of said Section 14, a distance of 2662.71 feet to the Southeast corner of the Southwest Quarter of said Section 14; thence South 88 degrees 34 minutes 20 seconds West, along the South line of the Southwest Quarter of said Section 14, a distance of 2589.90 feet to the Southwest corner of the Southwest Quarter of said Section 14; thence North 02 degrees 03 minutes 06 seconds West, along the West line of the Southwest Quarter of said Section 14, a distance of 2674.25 feet to the point of beginning, except that part in streets and roads and EXCEPT that part described as follows:

Beginning at the Southwest corner of the Southwest Quarter of Section 14, Township 14 South, Range 22 East, thence North 02 degrees 03 minutes 13 seconds West coincident with the West line of said Southwest Quarter Section, 1665.40 feet; thence North 87 degrees 56 minutes 47 seconds East, 241.67 feet; thence on a curve to the left with a radius of 400.00 feet and an arc length of 134.96 feet; thence North 68 degrees 36 minutes 51 seconds East, 93.08 feet; thence on a curve to the right with a radius of 200.00 feet and an arc length of 23.75 feet; thence North 75 degrees 25 minutes 10 seconds East, 41.01 feet; thence North 77 degrees 28 minutes 42 seconds East, 144.54 feet; thence North 75 degrees 20 minutes 26 seconds East, 64.98 feet to a point of non-tangent curvature; thence on a curve to the left with a radius of 1800.00 feet and an arc length of 254.05 feet with a chord that bears South 24 degrees 1 minutes 19 seconds East a distance of 253.84 feet; thence South 29 degrees 28 minutes 42 seconds East 192.13 feet; thence North 60 degrees 23 minutes 32 seconds East, 129.89 feet; thence on a curve to the right with a radius of 300.00 feet and an arc length of 38.16 feet; thence North 67 degrees 40 minutes 51 seconds East, 398.29 feet; thence on a curve to the left with a radius of 500.00 feet and an arc length of 23.48 feet; thence North 64 degrees 59 minutes 26 seconds East, 104.87 feet; thence South 23 degrees 00 minutes 34 seconds East, 126.53 feet; thence on a curve to the right with a radius of 730.00 feet and an arc length of 554.88 feet; thence South 18 degrees 32 minutes 29 seconds West, 544.15 feet; thence on a curve to the left with a radius of 430.00 feet and an arc length of 150.46 feet; thence South 01 degrees 30 minutes 27 seconds East, 332.88 feet to a point.
on the South line of said Southwest Quarter Section; thence South 88 degrees 34 minutes 14
seconds West coincident with the South line of said Southwest Quarter Section. 1395.52 feet to
the point of beginning, less that part in streets and roads.

TRAC II:

A tract of land located in the Southwest Quarter of Section 14, Township 14 South, Range 22
East of the 6th Principal Meridian, Johnson County, Kansas, described as follows:

Beginning at the Southwest corner of the Southwest Quarter of Section 14, Township 14 South,
Range 22 East, thence North 02 degrees 03 minutes 13 seconds West coincident with the West
line of said Southwest Quarter Section, 1665.40 feet; thence North 87 degrees 56 minutes 47
seconds East, 241.67 feet; thence on a curve to the left with a radius of 400.00 feet and an arc
length of 134.96 feet; thence North 68 degrees 36 minutes 51 seconds East, 93.08 feet; thence on
a curve to the right with a radius of 200.00 feet and an arc length of 23.75 feet; thence North 75
degrees 25 minutes 10 seconds East, 41.01 feet; thence North 77 degrees 28 minutes 42 seconds
East, 144.54 feet; thence North 75 degrees 30 minutes 26 seconds East, 64.98 feet to a point of
non-tangent curvature; thence on a curve to the left with a radius of 1800.00 feet and an arc
length of 254.05 feet with a chord that bears South 24 degrees 18 minutes 19 seconds East a
distance of 253.84 feet; thence South 29 degrees 28 minutes 42 seconds East 192.13 feet; thence
North 69 degrees 23 minutes 32 seconds East, 129.89 feet; thence on a curve to the right with a
radius of 300.00 feet and an arc length of 38.16 feet; thence North 67 degrees 40 minutes 51
seconds East, 398.29 feet; thence on a curve to the left with a radius of 500.00 feet and an arc
length of 23.48 feet; thence North 64 degrees 59 minutes 26 seconds East, 104.87 feet; thence
South 25 degrees 00 minutes 34 seconds East, 126.33 feet; thence on a curve to the right with a
radius of 730.00 feet and an arc length of 554.88 feet; thence South 18 degrees 32 minutes 29
seconds West, 544.15 feet; thence on a curve to the left with a radius of 430.00 feet and an arc
length of 150.46 feet; thence South 01 degrees 30 minutes 27 seconds East, 332.88 feet to a point
on the South line of said Southwest Quarter Section; thence South 88 degrees 34 minutes 14
seconds West coincident with the South line of said Southwest Quarter Section. 1395.52 feet to
the point of beginning, less that part in streets and roads.

EXCEPT: (Formerly CP-2 Tract Description)

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 14,
TOWNSHIP 14 SOUTH, RANGE 22 EAST OF THE 6th PRINCIPAL MERIDIAN, IN THE
CITY OF GARDNER, JOHNSON COUNTY, KANSAS DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER: THENCE NORTH 02°03'15" WEST COINCIDENT WITH THE WEST LINE OF SAID SOUTHWEST QUARTER, 995.10 FEET; THENCE NORTH 87°37'13" EAST 168.34 FEET TO A POINT OF CURVATURE; THENCE ON A CURVE TO THE LEFT BEING TANGENT TO THE LAST DESCRIBED COURSE, HAVING A RADIUS OF 750.00 FEET AND AN ARC LENGTH OF 225.98 FEET; THENCE NORTH 70°41'25" EAST 196.52 FEET; THENCE SOUTH 02°02'58" EAST 153.51 FEET; THENCE SOUTH 62°44'04" EAST 550.70 FEET; THENCE SOUTH 01°12'51" EAST 378.94 FEET; THENCE SOUTH 88°40'25" WEST 108.95 FEET; THENCE SOUTH 01°19'35" EAST 306.33 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTH 88°34'18" WEST, ALONG SAID SOUTH LINE 922.95 FEET TO THE POINT OF BEGINNING. CONTAINING 21.375 ACRES (931,097 SQUARE FEET), MORE OR LESS.

AND EXCEPT: (Formerly C-O Tract Description)

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 22 EAST OF THE 6TH PRINCIPAL MERIDIAN IN THE CITY OF GARDNER, JOHNSON COUNTY, KANSAS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER: THENCE NORTH 88°34'18" EAST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER 922.95 FEET TO THE POINT OF BEGINNING: THENCE NORTH 01°19'35" WEST 306.33 FEET; THENCE NORTH 88°40'25" EAST 108.95 FEET; THENCE NORTH 01°12'51" WEST 271.93 FEET; THENCE SOUTH 62°44'04" EAST 71.15 FEET; THENCE NORTH 88°47'09" EAST 289.40 FEET; THENCE SOUTH 01°12'51" EAST 542.83 FEET TO SAID SOUTH LINE; THENCE SOUTH 88°34'18" WEST ALONG SAID SOUTH LINE, 460.30 FEET TO THE POINT OF BEGINNING. CONTAINING 5.179 ACRES (225,609 SQUARE FEET), MORE OR LESS.
EXHIBIT TO APPLICATION FOR GAS AND OIL PERMITS

AND FOR LICENSE TO OPERATE WELLS

1. Applicant and Owner: Thomas Investments, LP
   18800 Sunflower Rd.
   Edgerton, KS 66021
   Phone: (913) 980-5036

   Operator: ST Petroleum, Inc.
   18800 Sunflower Rd.
   Edgerton, KS 66021
   Phone: (913) 980-5036

2. The location map required by Gardner City Code §15.55.050(A)(2) is attached hereto.

3. The Site Plan of the drilling area required by Gardner City Code §15.55.050(A)(3) which has already been approved by the City of Gardner, Kansas is attached hereto.

4. The subject property is subject to a lease however the applicant herein is the surface and mineral interest owner, therefore the subject property is not burdened by specific any lease easements.

5. There are no lots, streets, alleys, easements or rights of way over and across the subject property, with the exception of ordinary utility rights of way which run along the border of the subject property and will not be effected by the wells which are proposed to be drilled.

6. A location map depicting two waterways (which are man made waterways used to displaced surface water channeled through terracing as opposed to a stream or other natural waterway) is attached hereto with such waterways outlined in blue.

7. The land owner upon which the wells are proposed to be located consents to the issuance of the permits and licenses requested herein.

8. Applicant and Operator affirmatively state that all operations associated with the drilling and operating of the subject oil and gas wells will be conducted in compliance with all federal, state and local laws.

9. Approved intents to drill the proposed wells, together with a copy of the operator's Kansas Corporation Commission operator's license is attached hereto in order to demonstrate compliance with Kansas Corporation Commission rules and regulations.
10. Applicant and Operator affirmatively state that all operations associated with the drilling and operating of the subject oil and gas wells will be conducted in a safe manner and that all equipment associated therewith will be operated and maintained in a safe manner.

11. The certificate of insurance required by Gardner City Code §15.55.050(A)(3)(i) is attached hereto.

12. Applicant states that the subject well has already been drilled due to confusion by the drilling contractor regarding which wells had been approved by the City of Gardner. The City of Gardner approved Applicant’s request to drill 8 wells and the drilling contractor did in fact drill 8 wells; however, the drilling contractor drilled well #1-3-1 rather than well #C-4 as Applicant had requested. Applicant is now filing this Application to obtain authority for well #1-3-1 to correct this mistake and ensure that all wells which are drilled have been approved by the City of Gardner. Once this Application is approved Applicant will post the bond required by Gardner City Code §15.55.150 and will provide proof of such bonding to the Director of Public works.

13. The name and location of the proposed well is shown in the approved intent to drill which is attached hereto.

14. The permit/license fee in conformity with Gardner City Code §15.55.030 and §15.55.040 is enclosed herewith.

15. The written drilling plan required by Gardner City Code §15.55.050(A)(3)(m) is attached hereto.

16. The approved Fire Protection Plan required by Gardner City Code §15.55.100 is attached hereto.

THOMAS INVESTMENTS, LP

ST PETROLEUM, INC.

By: [Signature] Joel Thomas
General Partner

By: [Signature] Joel Thomas
President
NOTICE OF INTENT TO DRILL

Must be approved by KCC five (5) days prior to commencing well

Form KSONA-1, Certification of Compliance with the Kansas Surface Owner Notification Act, MUST be submitted with this form.

Expected Spud Date: 01/13/2018

Operator:

Licenee:

Address 1: 18600 SUNFLOWER RD

Address 2:

City: 

State: KS 

Zip: 66021 +

Contact Person: Rick Singleton

Phone: 313-980-9328

Contractor:

Licensee:

Name: Advisor on ACO-1 - Must be licensed by KCC

Well Drilled For:

Gas

Enh Rec

Oil

Storage

Disposal

Seismic:

Other:

Well Class:

Infill

Mud Rotary

Air Rotary

Cable

Type Equipment:

Spud Date: 14

Agent:

Submitted Electronically

For KCC Use ONLY

API #: 15-051-24472-00-00

Conductor pipe required: 0

Minimum surface pipe required: 20 feet per ALT

Approved by: Rick Hastermann 01/16/2018

This authorization expires: 01/12/2019

(Signature)

Remember to:

● File Certification of Compliance with the Kansas Surface Owner Notification Act (KSONA-1) with Intent to Drill;

● File Drill Pit Application (Form CDP-1) with Intent to Drill;

● File Completion Form ACO-1 within 120 days of spud date;

● File assurance application(s) according to field proportion orders;

● Notify appropriate district office 48 hours prior to workover or re-entry;

● Submit plugging report (CP-4) after plugging is completed within 60 days;

● Obtain written approval before disposing of injected salt water.

If well will not be drilled or permit has expired (See authorized expiration date) please check the box below and return to the address below:

Yes

No

Well will not be drilled or Permit Expired

Date

Signature of Operator or Agent
IN ALL CASES PLOT THE INTENDED WELL ON THE PLAT BELOW

In all cases, please fully complete this side of the form. Include items 1 through 6 at the bottom of this page.

Operator: ST Petroleum, Inc.
Lease: Thomas C
Well Number: 1-3-1
Field: Gardner

Location of Well: County: Johnson

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Twp.</th>
<th>S.</th>
<th>R.</th>
<th>E</th>
<th>W</th>
</tr>
</thead>
<tbody>
<tr>
<td>1680</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4830</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Is Section: ☑ Regular or ☐ Irregular

If Section is Irregular, locate well from nearest corner boundary. Section corner used: ☑ NE, ☐ NW, ☐ SE, ☒ SW

PLAT

Show location of the well. Show footage to the nearest lease or unit boundary line. Show the predicted locations of lease roads, tank batteries, pipelines and electrical lines, as required by the Kansas Surface Owner Notice Act (House Bill 2032).

You may attach a separate plat if desired.

NOTE: In all cases locate the spot of the proposed drilling location.

1880 ft.

In plotting the proposed location of the well, you must show:

1. The manner in which you are using the depicted plat by identifying section lines, i.e., section, section with 8 surrounding sections, 4 sections, etc.
2. The distance of the proposed drilling location from the south/north and east/west outside section lines.
3. The distance to the nearest lease or unit boundary line (in footage).
4. If proposed location is located within a prorated or spaced field a certificate of acreage attribution plat must be attached: (CG-7 for oil wells; CG-8 for gas wells).
5. The predicted locations of lease roads, tank batteries, pipelines, and electrical lines.
CORRECTION #1
KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION
APPLICATION FOR SURFACE PIT
Submit in Duplicate

Operator Name: ST Petroleum, Inc. License Number: 34586
Operator Address: 18800 SUNFLOWER RD EDGERTON KS 66021
Contact Person: Rick Singleton Phone Number: 913-980-5036

Lease Name & Well No: Thomas C I-3-1

Type of Pit:
☐ Emergency Pit ☐ Burn Pit
☐ Setting Pit ☒ Drilling Pit
☐ Workover Pit ☐ Haul-Off Pit
(NWP Supply API No. or Year Opened)

Pit is: ☒ Proposed ☐ Existing
If Existing, date constructed: 

Pit capacity: 128 (bbls)

Is the pit located in a Sensitive Ground Water Area? ☐ Yes ☒ No
Chloride concentration: __________ mg/l
(For Emergency Pits and Setting Pits only)

Is the bottom below ground level? ☒ Yes ☐ No
Artificial Liner? ☐ Yes ☒ No
How is the pit lined if a plastic liner is not used?
native clay

Pit dimensions (all but working pits): 12 Length (feet) 12 Width (feet)
Depth from ground level to deepest point: 5 (feet) ☐ NA: Steal Pits ☐ No Pit

If the pit is lined give a brief description of the liner material, thickness and installation procedure.

Describe procedures for periodic maintenance and determining liner integrity, including any special monitoring.

Distance to nearest water well within one-mile of pit:

NA feet Depth of water well __________ feet

Depth to shallowest fresh water __________ feet
Source of information: ☐ measured ☐ well owner ☐ electric log ☐ KDWR

Emergency, Settling and Burn Pits ONLY:
Producing Formation: 
Number of producing wells on lease: 
Barrels of fluid produced daily: 

Does the slope from the tank battery allow all spilled fluids to flow into the pit? ☐ Yes ☐ No

Drilling, Workover and Haul-Off Pits ONLY:
Type of material utilized in drilling/workover: fresh water
Number of working pits to be utilized: 1
Abandonment procedure: empty pit and use on next well

Drill pits must be closed within 365 days of spud date.

Submitted Electronically

KCC OFFICE USE ONLY
☐ Liner ☐ Steel Pit ☒ RFAC ☐ RFAS
Date Received: 01/16/2018 Permit Number: 15-091-24472-00-00 Permit Date: 01/12/2018 Lease Inspection: ☐ Yes ☒ No
CORRECTION #1
KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION
CERTIFICATION OF COMPLIANCE WITH THE
KANSAS SURFACE OWNER NOTIFICATION ACT

This form must be submitted with all Forms C-1 (Notice of Intent to Drill); CB-1 (Cathodic Protection Borehole Intent); T-1 (Request for Change of Operator Transfer of Injection or Surface Pit Permit); and CP-1 (Well Plugging Application). Any such form submitted without an accompanying Form KSONA-1 will be returned.

Select the corresponding form being filed: ☒ C-1 (Intent) ☐ CB-1 (Cathodic Protection Borehole Intent) ☐ T-1 (Transfer) ☐ CP-1 (Plugging Application)

OPERATOR: License # 34586
Name: ST Petroleum, Inc.
Address 1: 18800 SUNFLOWER RD
Address 2: ________________________________
City: EDGERTON State: KS Zip: 66021 *
Contact Person: ST Petroleum, Inc
Phone: (913) 980-5036 Fax: (_______)
Email Address: _________________________________

Well Location:
NE SW NW Sec. 14 Twp. 14 S. R. 22 ☒ East ☐ West
County: Johnson
Lease Name: Thomas C Well #: 1-3-1

If filing a Form T-1 for multiple wells on a lease, enter the legal description of the lease below:

Surface Owner Information:
Name: Thomas Enterprise
Address 1: 18800 Sunflower Road
Address 2: ________________________________
City: Edgerton State: Kansas Zip: 66021 *

When filing a Form T-1 involving multiple surface owners, attach an additional sheet listing all of the information to the left for each surface owner. Surface owner information can be found in the records of the register of deeds for the county, and in the real estate property tax records of the county treasurer.

If this form is being submitted with a Form C-1 (Intent) or CB-1 (Cathodic Protection Borehole Intent), you must supply the surface owners and the KCC with a plat showing the predicted locations of lease roads, tank batteries, pipelines, and electrical lines. The locations shown on the plat are preliminary non-binding estimates. The locations may be entered on the Form C-1 plat, Form CB-1 plat, or a separate plat may be submitted.

Select one of the following:

☒ I certify that, pursuant to the Kansas Surface Owner Notice Act (House Bill 2032), I have provided the following to the surface owner(s) of the land upon which the subject well is or will be located: 1) a copy of the Form C-1, Form CB-1, Form T-1, or Form CP-1 that I am filing in connection with this form; 2) if the form being filed is a Form C-1 or Form CB-1, the plat(s) required by this form; and 3) my operator name, address, phone number, fax, and email address.

☐ I have not provided this information to the surface owner(s). I acknowledge that, because I have not provided this information, the KCC will be required to send this information to the surface owner(s). To mitigate the additional cost of the KCC performing this task, I acknowledge that I must provide the name and address of the surface owner by filling out the top section of this form and that I am being charged a $30.00 handling fee, payable to the KCC, which is enclosed with this form.

If choosing the second option, submit payment of the $30.00 handling fee with this form. If the fee is not received with this form, the KSONA-1 form and the associated Form C-1, Form CB-1, Form T-1, or Form CP-1 will be returned.

☒ Submitted Electronically
Summary of Changes

Lease Name and Number: Thomas C I-3-1
API/Permit #: 15-091-24472-00-00
Doc ID: 1380433
Correction Number: 1
Approved By: Rick Hestermann 01/16/2018

<table>
<thead>
<tr>
<th>Field Name</th>
<th>Previous Value</th>
<th>New Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fresh Water Information Source: KDWR</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>KCC Only - Approved By</td>
<td>Rick Hestermann 01/12/2018</td>
<td>Rick Hestermann 01/16/2018</td>
</tr>
<tr>
<td>KCC Only - Approved Date</td>
<td>01/12/2018</td>
<td>01/16/2018</td>
</tr>
<tr>
<td>KCC Only - Date Received</td>
<td>01/12/2018</td>
<td>01/16/2018</td>
</tr>
<tr>
<td>Well Number</td>
<td>1-3-1</td>
<td>I-3-1</td>
</tr>
</tbody>
</table>
CERTIFICATE OF LIABILITY INSURANCE

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

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

PRODUCER

Insurance Planning Inc.
3006 Broadway Avenue
P. O. Box 100
Rays, KS 67601

INSURED

S T Petroleum, Inc.
18800 Sunflower Rd.
Edgerton, KS 66021

CONTACT NAME: Melissa Denning-Dick
PH: (785) 623-5605
E: Insuranceplanning.com

ISSUING NATIONAL AMERICAN INSURANCE CO

REVISION NUMBER:

CERTIFICATE NUMBER: 19-19

COVERAGE

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>POLICY NUMBER</th>
<th>COVERAGE</th>
<th>LIMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>COMMERCIAL GENERAL LIABILITY</td>
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<td></td>
<td>GENERAL LIABILITY</td>
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<tr>
<td></td>
<td>AUTOMOBILE LIABILITY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>WORKMEN'S COMPENSATION</td>
<td></td>
</tr>
</tbody>
</table>

EXCLUSIONS:

The limitations of liability set forth in the policies of insurance are not excluded or modified by this certificate.

CERTIFICATE HOLDER:

Thomas Investments LP
18800 Sunflower Rd.
Edgerton, KS 66021

CANCELLATION:

If any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

AUTHORIZED REPRESENTATIVE:

Melissa Denning-Dick

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CERTIFICATE OF LIABILITY INSURANCE

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

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

PRODUCER
Insurance Planning Inc.
3005 Broadway Avenue
P. O. Box 100
Mays KS 67601

INFORMAL

S T Petroleum, Inc.
18660 Sunflower Rd.
Edgerton KS 67021

CERTIFICATE NUMBER 12-19 certificate
REVISION NUMBER:

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

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>LIMIT</th>
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<tr>
<td>COMMERCIAL GENERAL LIABILITY</td>
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<tr>
<td>EXCESS LIABILITY</td>
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101): Additional Rents Schedule, may be attached if more space is required.

CERTIFICATE HOLDER
City of Gardner
Public Works Department
120 E Main Street
Gardner, KS 66030

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
Melissa K. Dannece-Dick
4 Denning-Dick/DENNIS

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ACORD 25 (2014/01)
CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 2/21/2018

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

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

INFORMED
Insurance Planning Inc.
3006 Broadway Avenue
P.O. Box 100
Skagway, AK 66701

INSURED
Tow Oilfield Service Inc.
P.O. Box 339
Louisburg, KS 66053

COVERAGE CERTIFICATE NUMBER: 2017-2018

INURES:

INURES:

INURES:

REVISION NUMBER:

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

UNITS

TYPE OF INSURANCE
ACIDENTAL
WINDSTORM
POLICY NUMBER
POLICY EFF
POLICY END
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 411, Additional Endorsements Schedule may be attached if more space is required)

CERTIFICATE HOLDER
City of Gardner
Public Works Department
120 E. Main Street
Gardner, KS 66030

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2014/01)
The ACORD name and logo are registered marks of ACORD

INS025)),/41/19/10)
DRILLING PLAN

The subject wells will be drilled using a rotary drilling rig owned and operated by Town Oilfield Services, Inc., a reputable company with extensive experience drilling in Johnson County, Kansas and surrounding counties. The wells will be spudded using a nine inch bit and will be drilled to a depth not less than 20 feet. Seven inch surface casing will then be installed to a depth of not less than 20 feet cemented up the backside using Portland cement pursuant to K.A.R. 82-3-106. A 5.6250 inch diameter hole will then be drilled to the total depth being below the Bartlesville formation at a projected depth of 900 feet as indicated in the Intents to Drill attached hereto which were approved by the Kansas Corporation Commission. A string of 2.8750 inch diameter 6.4 lbs/ft production casing will then be installed and cemented up the backside using Portland 50/50 POZ cement pursuant to K.A.R. 82-3-105 et seq. The subject wells will be completed using Alternate II completions pursuant to K.A.R. 82-3-106(c)(2). Drilling logs will be created during the drilling of the subject wells by the drilling contractor based upon examination of the drill cuttings. After drilling is complete electric logs will be run on all of the subject wells.

Solid and liquid drilling substances will be collected and contained pursuant to K.A.R. 82-3-600 et seq., and all required applications and permits will be submitted and obtained as part of such process. All sludge, base sediment and saltwater will be contained and disposed of in accordance with such regulations and under the supervision and oversight of the Kansas Corporation Commission. No sludge, base sediment, saltwater or oil will be stored in any populated area.

During the drilling process the drill site will be continuously monitored and kept free of any non-drilling personnel and unsafe conditions. The drilling operations will be conducted with safety of all drilling personnel and other persons as the number one priority.
CERTIFICATE OF LICENSE

CONSERVATION DIVISION
KANSAS CORPORATION COMMISSION

OTHER BUSINESS ENTITIES.

THIS CERTIFICATE OF LICENSE IS NON-TRANSFERABLE TO
PROVIDED BY K.S.A. 55-762. THIS CERTIFICATE OF LICENSE SHALL BE IN FULL FORCE AND EFFECT UNTIL
COMMISSION. THIS CERTIFICATE OF LICENSE IS NON-TRANSFERABLE.

THE BUSINESS ENTITY NAMED BELOW IS LICENSED WITH THE KANSAS CORPORATION

No. 34586

EDGERTON, KS 66021-9774
13800 SUNFLOWER RD
ST PETROLEUM, INC.
License Renewal Application - Detail

KCC License Renewal Application

KCC License: 34586
Application ID: 1414414
Submitted: 07/03/2018
Approved: 07/12/2018
Originally Issued: 07/14/2011

Have you, as an individual, partner or officer, had a KCC Conservation Division License revoked, suspended or not renewed by the Commission? No

Do you currently have any outstanding monetary penalties on compliance owed to the Commission or are you currently paying on a monthly installment plan? No

As a business entity, are you registered with the Securities and Exchange Commission? No

Are you in full compliance with all Kansas Corporation Commission rules, regulations, orders, and enforcement agreements? Yes

Licensee: ST Petroleum, Inc.
   Joel Thomas
   1800 SUNFLOWER RD
   EDGERTON KS 66021
   (913) 960-5036

Entity: Corporation

License Type: Operator

Representatives

<table>
<thead>
<tr>
<th>Type</th>
<th>Title</th>
<th>Name</th>
<th>Phone</th>
<th>Address</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency</td>
<td>Contact</td>
<td>Rick Singleton</td>
<td>(913) 838-6388</td>
<td>2011 Waverly Rd</td>
<td></td>
</tr>
<tr>
<td>Partner</td>
<td>Sec/Treas</td>
<td>Jeanne Smith</td>
<td>(913) 532-0612</td>
<td>17250 Edgerton Rd, Edgerton KS 66021</td>
<td></td>
</tr>
<tr>
<td>Partner</td>
<td>President</td>
<td>Joel Thomas</td>
<td>(913) 980-5036</td>
<td>2011 Waverly Rd Edgerton KS 66021</td>
<td></td>
</tr>
<tr>
<td>Partner</td>
<td>Vice President</td>
<td>Richard Singleton</td>
<td>(913) 938-5395</td>
<td>2011 Waverly Rd Edgerton KS 66021</td>
<td></td>
</tr>
</tbody>
</table>

Equipment - None

Attachments - None

Fees and Assurance

License Fee: $100.00
Assurance: $100.00
Total Cash Obligation: $200.00

Payment through KanPay

Amount: $200.00
Order Number: 34253308
Transaction ID: a0215b0b00918e4
Last Known Status: PAYMENT_COMPLETE

https://kolar.kgs.ku.edu/kcc/summaryLicenseRenewalAppDetail.cfm?doc_id=1414414
Fire and Spill Prevention and Protection Plan

General Safety Practices

All personnel who are expected to work around the subject property or who could be reasonably expected to come into operational contact with this facility shall be instructed in the operation and maintenance of the equipment utilized. This training shall include safe operational practice and impart an emphasis of safety above all else with said personnel. Such training shall also include how to prevent and detect discharges and also how to prevent and respond to fires and injuries. The final element of such training is to impart upon such employees the importance of calling 911 in response to all fires and serious medical emergencies rather than attempting to address the situation themselves.

Measures Taken to Prevent Occurrence of Fire

The subject oil and gas lease will be monitored daily 365 days per year including weekends and holidays to ensure that it is operating properly and in a safe manner. Such inspections will include visual inspections for fire hazards or other conditions which could become fire hazards and any such issues will be addressed immediately. In addition all pipelines will be monitored to ensure that no flammable materials are permitted to escape and that no unnecessary ignition sources are present. The area surrounding the tank facility upon the subject property will be kept free of weeds, grass, debris or other substances which could catch fire or hinder the response to any fire. A site plan with shut off locations marked for electric, gas and other valves is attached hereto.

Spill Response Activities

In the event of a discharge, the first priority is to stop the product flow and to shut off all ignition sources, followed by the containment, control, and mitigation of the discharge. Notifications to the National Response Center, State authorities, and any other Emergency Committees (i.e. local Fire Departments) must occur immediately upon discovery of reportable discharges/fire. In the event of a spill or discharge the following actions will be taken:

1) Dial 911 if any fires are detected or if a serious injury has occurred;
2) Immediately report the discharge to the company foreman;
3) Turn off all sources of ignition, as necessary;
4) Turn off lift pumps that charge or provide flow to the flowline if such flowline has ruptured;
5) Locate the flowline break;
6) If safe to do so, isolate the affected section of piping by closing off the closest valves upstream and downstream from the break;
7) Investigate the discharge to assess the actual or potential threat to human health or the environment;
8) Request outside assistance from local emergency responders, as needed;
9) Evaluate the need to evacuate facility and evacuate employees, as needed; and
10) Contain and remediate the spill or discharge.
Fire and Medical Emergency Response Activities

In the event of a fire or medical emergency the responding party shall immediately dial 911 to report the condition and request immediate emergency assistance. Once such assistance is in route the responding party shall notify the company foreman of the event. Until emergency assistance arrives, the responding party should take any action necessary to stabilize any injury victim and once emergency assistance arrives the responding party shall turn over complete control of the facility to the said emergency assistance personnel and provide any support which is requested of such responding party by the said emergency assistance personnel.
## CONTACT INFORMATION

**Facility Name:**

**County:**

**Name of Company:** ST. PETROLEUM, INC.

<table>
<thead>
<tr>
<th>Role</th>
<th>Person</th>
<th>Contact Numbers</th>
<th>Time of Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spill Coordinator (SC):</td>
<td>Rick Singleton</td>
<td>913-638-6398, 913-638-6398</td>
<td>During Business Hours</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>After Business Hours</td>
</tr>
<tr>
<td>Regulator Compliance Coordinator (RCC):</td>
<td>Joel Thomas</td>
<td>913-980-5036, 913-980-5036</td>
<td>During Business Hours</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>After Business Hours</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In the event that they cannot be reached,</td>
<td>Joel Thomas</td>
<td>913-980-5036, 913-980-5036</td>
<td>During Business Hours</td>
</tr>
<tr>
<td>call:</td>
<td></td>
<td></td>
<td>After Business Hours</td>
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</table>

**TO REPORT SPILLS:**

National Response Center: 800-424-8802 24 hours

**AGENCIES TO CONTACT:**

- **Fire District #1 - Johnson County, Kansas:** 913-782-3258 24 hours
- **Federal-EPA Region:** 7 913-551-7050 24 hours
- **State Regulatory Agency:** Kansas Corporation Commission
- **District:** 3-Chanute 316-630-0400 During Business Hours
- **National Response Center (as substitute for EPA Number):** 800-424-8802 24 hours
- **US Army Corps of Engineers:** 202-272-0001 24 hours
CITY OF CARMEL, JOHNSON COUNTY, KANSAS

OIL WELLS IN SW 1/4 OF SECTION 14-14-22

SITE PLAN FOR CONDITIONAL USE PERMIT
10 - 60 amp. storage building disconnect
11 - 200 amp. field disconnect

ST Petroleam Thomas C site plan
ORDINANCE NO. 2487

AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT ON CERTAIN LANDS LOCATED IN THE CITY OF GARDNER, KANSAS, UNDER THE AUTHORITY GRANTED BY THE GARDNER, KANSAS, ZONING ORDINANCE (CUP-15-01).

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

SECTION ONE: That having received a recommendation from the Planning Commission on April 28, 2015, and proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Gardner, Kansas, Zoning Ordinance, a Conditional Use Permit is issued on lands legally described as follows:

TRACT I:
The Southwest Quarter of Section 14, Township 14, Range 22, Johnson County, Kansas, except for part in streets and roads and more particularly described as follows:

All of the Southwest Quarter of Section 14, Township 14, Range 22, East of the Sixth Principal Meridian, Johnson County, Kansas described as follows: Beginning at the Northwest corner of the Southwest Quarter of said Section 14; thence North 88 degrees 49 minutes 32 seconds East, along the North line of the Southwest Quarter of said Section 14, a distance of 2596.36 feet to the Northeast corner of the Southwest Quarter of said Section 14; thence South 01 degrees 54 minutes 57 seconds East, along the East line of the Southwest Quarter of said Section 14, a distance of 2662.71 feet to the Southeast corner of the Southwest Quarter of said Section 14; thence South 88 degrees 34 minutes 20 seconds West, along the South line of the Southwest Quarter of said Section 14, a distance of 2599.90 feet to the Southwest corner of the Southwest Quarter of said Section 14; thence North 02 degrees 03 minutes 06 seconds West, along the West line of the Southwest Quarter of said Section 14, a distance of 2674.25 feet to the point of beginning, except that part in streets and roads and EXCEPT that part described as follows:

Beginning at the Southwest corner of the Southwest Quarter of Section 14, Township 14 South, Range 22 East, thence North 02 degrees 03 minutes 13 seconds West coincident with the West line of said Southwest Quarter Section, 1865.40 feet; thence North 07 degrees 56 minutes 47 seconds East, 241.67 feet; thence on a curve to the left with a radius of 400.00 feet and an arc length of 134.96 feet; thence North 68 degrees 36 minutes 51 seconds East, 93.08 feet; thence on a curve to the right with a radius of 200.00 feet and an arc length of 23.75 feet; thence North 75 degrees 25 minutes 10 seconds East, 41.01 feet; thence North 77 degrees 28 minutes 42 seconds East, 144.54 feet; thence North 75 degrees 20 minutes 26 seconds East, 64.98 feet to a point of non-tangent curvature; thence on a curve to the left with a radius of 1800.00 feet and an arc length of 254.05 feet with a chord that bears South 24 degrees 1 minutes 18 seconds East a distance of 253.84 feet; thence South 29 degrees 28 minutes 42 seconds East 192.13 feet; thence North 60 degrees 23 minutes 32 seconds East, 129.89 feet; thence on a curve to the right with a radius of 300.00 feet and an arc length of 38.16 feet; thence North 67 degrees 40 minutes 51 seconds East, 398.29 feet; thence on a curve to the left with a radius of 500.00 feet and an arc length of 23.48 feet; thence North 64 degrees 59 minutes 26 seconds East, 104.67 feet; thence South 25 degrees 00 minutes 34 seconds East, 126.53 feet; thence on a curve to the right with a radius of 730.00 feet and an arc length of 564.88 feet; thence South 18 degrees 32 minutes 29 seconds West, 544.15 feet; thence on a curve to the left with a radius of 430.00 feet and an arc length of 150.46 feet; thence South 01 degrees 30 minutes 27 seconds East, 332.88 feet to a point on the South line of said Southwest Quarter Section; thence South 88 degrees 34 minutes 14 seconds West coincident with the
South line of said Southwest Quarter Section, 1395.52 feet to the point of beginning, less that part in streets and roads.

TRACT II:
A tract of land located in the Southwest Quarter of Section 14, Township 14 South, Range 22 East of the 6th Principal Meridian, Johnson County, Kansas, described as follows:

Beginning at the Southwest corner of the Southwest Quarter of Section 14, Township 14 South, Range 22 East, thence North 02 degrees 03 minutes 13 seconds West coincident with the West line of said Southwest Quarter Section, 1665.40 feet; thence North 87 degrees 56 minutes 47 seconds East, 241.67 feet; thence on a curve to the left with a radius of 400.00 feet and an arc length of 134.96 feet; thence North 68 degrees 36 minutes 51 seconds East, 93.08 feet; thence on a curve to the right with a radius of 200.00 feet and an arc length of 23.75 feet; thence North 75 degrees 25 minutes 10 seconds East, 41.01 feet; thence North 77 degrees 26 minutes 42 seconds East, 144.54 feet; thence North 75 degrees 20 minutes 26 seconds East, 64.98 feet to a point of non-tangent curvature; thence on a curve to the left with a radius of 1800.00 feet and an arc length of 254.05 feet with a chord that bears South 24 degrees 18 minutes 19 seconds East a distance of 253.84 feet; thence South 29 degrees 28 minutes 42 seconds East 192.13 feet; thence North 60 degrees 23 minutes 32 seconds East, 129.89 feet; thence on a curve to the right with a radius of 300.00 feet and an arc length of 38.16 feet; thence North 67 degrees 40 minutes 51 seconds East, 398.29 feet; thence on a curve to the left with a radius of 500.00 feet and an arc length of 23.48 feet; thence North 64 degrees 59 minutes 26 seconds East, 104.87 feet; thence South 25 degrees 00 minutes 34 seconds East, 126.53 feet; thence on a curve to the right with a radius of 730.00 feet and an arc length of 554.88 feet; thence South 18 degrees 32 minutes 29 seconds West, 544.15 feet; thence on a curve to the left with a radius of 430.00 feet and an arc length of 150.46 feet; thence South 01 degrees 30 minutes 27 seconds East, 332.88 feet to a point on the South line of said Southwest Quarter Section; thence South 88 degrees 34 minutes 14 seconds West coincident with the South line of said Southwest Quarter Section, 1396.52 feet to the point of beginning, less that part in streets and roads.

EXCEPT: (Formerly CP-2 Tract Description)
A tract of land located in the southwest quarter of section 14, township 14 south, range 22 east of the 6th principal meridian, in the city of Gardner, Johnson County, Kansas described as follows:

Beginning at the southwest corner of said southwest quarter; thence north 02°03'15" west coincident with the west line of said southwest quarter, 995.10 feet; thence north 87°57'13" east 168.34 feet to the point of curvature; thence on a curve to the left being tangent to the last described course, having a radius of 750.00 feet and an arc length of 225.98 feet; thence north 70°41'26" east 198.52 feet; thence south 02°02'58" east 153.51 feet; thence south 01°12'51" east 530.70 feet; thence south 01°19'35" east 378.94 feet; thence south 88°40'25" west 108.95 feet; thence south 01°19'35" east 306.33 feet to the south line of said southwest quarter; thence south 88°34'18" west, along said south line 922.95 feet to the point of beginning. Containing 21.375 acres (931.097 square feet), more or less.

AND EXCEPT: (Formerly C-O Tract Description)
A tract of land located in the southwest quarter of section 14, township 14 south, range 22 east of the 6th principal meridian in the city of Gardner, Johnson County, Kansas described as follows:

Commencing at the southwest corner of said southwest quarter; thence north 88°34'18" east, along the south line of said southwest quarter 922.95 feet to the point of beginning; thence north 01°19'35" west 306.33 feet; thence north 88°40'25" east 108.95 feet; thence north 01°12'51"
west 271.93 feet; thence south 62°44'04" east 71.15 feet; thence north 88°47'09" east 289.40 feet; thence south 01°12'51" east 542.83 feet to said south line; thence south 88°34'18" west along said south line, 460.30 feet to the point of beginning. Containing 5.179 acres (225,609 square feet), more or less.

CASE NO. CUP-15-01

A Conditional Use Permit to allow for oil wells within an A (Agriculture District) zoning district, on 124.095 acres of property located north and east of the intersection of 157th Street and Waverly Road, subject to the following conditions:

1. Development shall be in accordance with the site plan and landscaping plan associated with CUP-15-01.
2. The Conditional Use Permit approval shall expire 20 years from the effective date.
3. A gas and oil well permit shall be obtained for each well drilled from the City as outlined in Chapter 15.55 of the Gardner Municipal Code, prior to drilling or commencing operations for the drilling.
4. All abandoned wells shall be plugged based on City and KCC standards.

SECTION TWO: That this Ordinance shall take effect and be in force from and after its adoption by the City Council and publication in the official City Newspaper.

APPROVED and ADOPTED this 1st day of June, 2015.

CITY OF GARDNER, KANSAS

Chris Morrow, Mayor

Jeanne Kootz, City Clerk

Approved as to form:

Ryan B. Dank, City Attorney
Oil Wells in the SW 1/4 of Section 14-14-22
Agenda Item: Consider authorizing the payment of Transportation Project Fees to Mid-America Regional Council

Strategic Priority: Infrastructure and Asset Management
Fiscal Stewardship

Department: Public Works

Staff Recommendation:
Authorize payment in the amount of $31,620.00 to Mid-America Regional Council (MARC) for Transportation Project Fees

Background/Description of Item:
In 2018, the City applied to MARC for funding and was subsequently awarded funds to be used for various projects including:
- Gardner Road & I-35 Interchange Improvements (Phase II-Bridge) - $6,000,000
- Center Street Sidewalk Improvements - $252,000
- Destination Downtown PSP - $72,000

MARC funding requires a project fee to provide a portion of non-federal funds required to match federal funds that support regional transportation planning and investment, the fee is 0.5% of the funds awarded.

Financial Impact:
Funds for the projects will come from:
- Special Highway Fund - Gardner Road & I-35 (Phase II-Bridge) - $30,000
- Infrastructure Sales Tax – Center Street Sidewalk = $1,260
- Business & Economic Development (general funds) - Destination Downtown PSP = $360

Total MARC Transportation Project Fees = $31,620.00

Attachments Included:
- MARC Letter / Invoice
- Gardner Road & I-35 Interchange Funding Award Letter
- Center Street Sidewalk Improvements Funding Award Letter

Suggested Motion:
Authorize payment in the amount of $31,620.00 to Mid-America Regional Council (MARC) for Transportation Project Fees
February 22, 2019

Laura Gourley
Interim City Administrator
City of Gardner, Kansas
120 E. Main St.
Gardner, Kansas 66030

Dear Ms. Gourley:

Congratulations on your awards of federal transportation funds through the regional planning and investment programs coordinated by the Mid-America Regional Council. We look forward to working with you to implement the following projects awarded in 2018:

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gardner Road &amp; I-35 Interchange Improvements</td>
<td>STP-Kansas</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>Center Street Sidewalk Improvements</td>
<td>TA-Kansas</td>
<td>$252,000</td>
</tr>
<tr>
<td>Destination Downtown</td>
<td>PSP-Kansas</td>
<td>$72,000</td>
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<tr>
<td><strong>Total Funding</strong></td>
<td></td>
<td><strong>$6,324,000</strong></td>
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As you know, in 2012 the MARC Board of Directors approved a project fee to provide a portion of the non-federal funds required to match federal funds that support regional transportation planning and investment programs. This project fee is 0.5% of the federal transportation funds awarded through MARC’s committee process. Applying this fee to the project above results in an amount of $31,520 that will be due to MARC in 2019, as reflected in the attached invoice. Your prompt attention to and payment of this invoice would be greatly appreciated.

If you have any questions regarding this letter and invoice, please contact me at (816) 474-4240 rona@marc.org.

Thank you for your continued support of the region’s transportation planning efforts.

Sincerely,

Ronald B. Achelpohl, PE
Director of Transportation & Environment

Attachment

Cc: Kelly Drake Woodward
    Tim McEldowney

Chair
Rob Roberts
Miami County, Kansas

1st Vice Chair
Jimmy Odum
Commissioner
Cass County, Missouri

2nd Vice Chair
Harold Johnson Jr.
Commissioner
Unified Government of Wyandotte County/Kansas City, Kansas

Treasurer
Eileen Weir
Mayor
Independence, Missouri

Secretary
Carson Ross
Mayor
Blue Springs, Missouri

Executive Director
David A. Worn
February 11, 2019

Tim McEldowney  
City of Gardner, KS  
120 E. Main  
Gardner, KS 66030

Dear Mr. McEldowney:

Congratulations, the above referenced project was awarded $6,000,000 in 2021/2022 Kansas Surface Transportation Program (STP) funds through MARC's Kansas STP Priorities Committee in July 2018. Since that time, the 2021-22 STP funding recommendations were approved by the MARC Board of Directors and have been incorporated into the 2018-2022 Transportation Improvement Program.

In order to receive your awarded funds, coordination and agreement with the Kansas Department of Transportation (KDOT) will be necessary. We request that you contact Tod Salfrank with KDOT at the following to coordinate project development activities and begin moving your project towards obligation.

KDOT Bureau of Local Projects  
700 SW Harrison  
Topeka, KS 66603-3754  
Phone: 785-368-7396  
Email: Tod.Salfrank@ks.gov

As directed by the MARC Transportation Program Local Match Policy and Strategy, adopted by the MARC Board of Directors in April 2012, a 0.5% fee will be assessed on the awarded federal funding and invoiced in 2019. For the above referenced project, this will amount to $30,000.

The above referenced project is also subject to the Reasonable Progress Policy for Federal Transportation Funds Programmed by MARC, adopted in January 2014 by the MARC Board of Directors. The policy is available for review on the MARC website at: http://marc.org/Transportation/Funding/assets/ReasonableProgressPolicy_ADOPTED.

Thank you for your interest in MARC funding programs, and good luck with your project.

Regards,

Marc Hansen, AICP  
Principal Planner  
Mid-America Regional Council
February 11, 2019

Tim McEldowney
City of Gardner, KS
120 E. Main
Gardner, KS 66030

Dear Mr. McEldowney:

Congratulations, the above referenced project was awarded $252,000 in 2022 Kansas Transportation Alternatives Program (TAP) funds through MARC’s Active Transportation Programming Committee in July 2018. Since that time, the 2021-22 TAP funding recommendations were approved by the MARC Board of Directors and have been incorporated into the 2018-2022 Transportation Improvement Program.

In order to receive your awarded funds, coordination and agreement with the Kansas Department of Transportation (KDOT) will be necessary. We request that you contact Tod Salfrank with KDOT at the following to coordinate project development activities and begin moving your project towards obligation.

KDOT Bureau of Local Projects
700 SW Harrison
Topeka, KS 66603-3754
Phone: 785-368-7396
Email: Tod.Salfrank@ks.gov

As directed by the MARC Transportation Program Local Match Policy and Strategy, adopted by the MARC Board of Directors in April 2012, a 0.5% fee will be assessed on the awarded federal funding and invoiced in 2019. For the above referenced project, this will amount to $1,260.

The above referenced project is also subject to the Reasonable Progress Policy for Federal Transportation Funds Programmed by MARC, adopted in January 2014 by the MARC Board of Directors. The policy is available for review on the MARC website at: http://marc.org/Transportation/Funding/assets/ReasonableProgressPolicy_ADOPTED.

Thank you for your interest in MARC funding programs, and good luck with your project.

Regards,

Marc Hansen, AICP
Principal Planner
Mid-America Regional Council
Bill To:

City of Gardner

120 E. Main Street
Gardner KS 66030

Return one copy with payment.

<table>
<thead>
<tr>
<th>Purchase Order No.</th>
<th>Customer ID</th>
<th>MARC Contact</th>
<th>Payment Terms</th>
<th>Master No.</th>
<th>Ext. Price</th>
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<tbody>
<tr>
<td></td>
<td>GARDNERLOCALDUE</td>
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<td>Due on Receipt</td>
<td>11,664</td>
<td>$31,620.00</td>
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<tr>
<td>Description</td>
<td>Transportation Project Fees</td>
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<td></td>
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</tr>
</tbody>
</table>

Subtotal $31,620.00
Misc $0.00
Total $31,620.00
COUNCIL ACTION FORM  

CONSENT AGENDA ITEM NO. 7

MEETING DATE:  MARCH 18, 2019
STAFF CONTACT:  GONZ GARCIA, UTILITIES DIRECTOR

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Agenda Item:  Consider a recommendation to appoint City of Gardner representatives to the Kansas Municipal Energy Agency Board of Directors

Strategic Priority:  Fiscal Stewardship

Department:  Utilities - Electric

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Board/Committee Recommendation:
On March 21, 2019, the Utility Advisory Commission approved a recommendation to the City Council to appoint Andrew Krievins as Director #1 with voting rights on the Kansas Municipal Energy Agency Board of Directors, and appoint Gary Williams as Alternate Director with voting rights to the Kansas Municipal Energy Agency Board of Directors to complete Commissioner Barney’s term on the KMEA Board.

Staff Recommendation:
Appoint Andrew Krievins as Director #1 with voting rights on the Kansas Municipal Energy Agency Board of Directors, and appoint Gary Williams as Alternate Director with voting rights to the Kansas Municipal Energy Agency Board of Directors.

Background/Description of Item:
The City of Gardner is a member of KMEA. In accordance with Section 5.1 of KMEA’s Bylaws (see attached), each KMEA member City shall have two (2) Directors and an Alternate on its Board of Directors. Each Director so selected shall reside within the territory served by the electric utility of the selecting Member City. Each Director will serve for two (2) years; however, terms are staggered in order to maintain continuity on the Board of Directors.

There are two meetings per year, generally held in the Wichita area. The spring meeting coincides with the Kansas Municipal Utilities annual conference. At least one representative from the City of Gardner shall attend each of these meetings.

Currently the following persons have been appointed to represent the City of Gardner on the Kansas Municipal Energy Agency Board of Directors:

1. Director #1 – Andrew Krievins, expiring April 30, 2019
2. Director #2 – Gonzalo Garcia, expiring April 30, 2020
3. Alternate – Clint Barney, expiring April 30, 2020

Mr. Krievins’s current term is set to expire, and Mr. Barney will no longer be eligible to represent the City of Gardner due to residency restrictions, necessitating the appointment of both a Director and an Alternate.

Financial Impact:
There would be some travel expenses paid from the Electric Fund.
Attachments:
- February 21, 2019, UAC Staff Report
- February 21, 2019, UAC Draft Meeting Minutes Excerpt
- KMEA By-Laws
- Certificate of Appointment for Director #1
- Certificate of Appointment for Alternate Director

Suggested Motion:
Appoint Andrew Krievins as Director #1 with voting rights on the Kansas Municipal Energy Agency Board of Directors for a two-year term expiring on April 30, 2021, and appoint Gary Williams as Alternate Director with voting rights to the Kansas Municipal Energy Agency Board of Directors for a one-year term expiring April 30, 2020.
AGENDA ITEM: Consider appointment of City of Gardner representatives as Director #1 and as Alternate Director with voting rights to the Kansas Municipal Energy Agency (KMEA) Board of Directors

Background:

The City of Gardner is a member of KMEA. In accordance with Section 5.1 of KMEA’s Bylaws (see attached), each KMEA member City shall have two (2) Directors and an Alternate on its Board of Directors. Each Director so selected shall reside within the territory served by the electric utility of the selecting Member City. Each Director will serve for two (2) years; however, terms are staggered in order to maintain continuity on the Board of Directors.

Currently, the following persons have been appointed to represent the City of Gardner on the Kansas Municipal Energy Agency Board of Directors:

1. Director #1: Andrew Krievins, expiring on April 30, 2019
2. Director #2: Gonzalo Garcia, expiring on April 30, 2020
3. Alternate: Clint Barney, expiring on April 30, 2020

There are two meetings per year and they are generally held in the Wichita area. The spring meeting coincides with the Kansas Municipal Utilities annual conference. At least one representative from the City of Gardner shall attend each of these meetings.

Staff Recommendation:

Approve a recommendation to the City Council to reappoint Andrew Krievins as Director #1 with voting rights on the Kansas Municipal Energy Agency Board of Directors.

Attachments:

- KMEA By-Laws
NEW BUSINESS

2. Consider appointments of City of Gardner representatives as Director #1 and as Alternate Director with voting rights to the Kansas Municipal Energy Agency (KMEA) Board of Directors.

Director Garcia presented the staff report. He noted that Commissioner Barney has submitted his resignation as commissioner, effective March 8, 2019.

Motion by Commissioner Barney, seconded by Commissioner Waldman, to forward recommendations for approval to the City Council to appoint Andrew Krievins, Utilities Advisory Commissioner, as Director #1 to the Kansas Municipal Energy Agency Board of Directors; and to appoint Gary Williams, Utilities Advisory Commissioner, as Alternate Director with voting rights to the Kansas Municipal Energy Agency Board of Directors to complete Commissioner Barney’s term on the KMEA Board.

Motion carried 3-0 Aye (2 Absent)
BYLAWS
OF
KANSAS MUNICIPAL ENERGY AGENCY

ARTICLE I
AGENCY NAME, PRINCIPAL PLACE OF BUSINESS
AND TERM OF EXISTENCE

Section 1.1. Agency Name. The official name of the agency shall be "Kansas Municipal Energy Agency."

Section 1.2. Definitions. As used in these Bylaws, the following definitions shall be applicable:

"Act" shall mean K.S.A. 12-8-85 to 12-8-111, inclusive, as amended.

"Agency" shall mean the Kansas Municipal Energy Agency.

"Agreement" shall mean the Second Amended and Restated Agreement Creating A Municipal Energy Agency dated May 17, 2000, and amendments thereto.

"Board of Directors" or "Board" shall mean the board of directors of the Agency authorized in accordance with Article VII of the Agreement.

"Bylaws" shall mean these bylaws duly adopted by the Board of Directors pursuant to Section 7.4 of the Agreement and the provisions hereof, as amended from time to time.

"Cities" or "City" shall mean a city organized and existing under the laws of Kansas and authorized by such laws to engage in the local distribution and sale of electrical energy; provided that when a municipal electric generating system in any City is owned or operated by a board of public utilities, the board of public utilities shall act for and on behalf of such City; or city shall have the meaning as defined in the Act.

"Director" shall mean the representative to the Board of Directors selected by each Member in accordance with Article V of these Bylaws.
"General Manager" shall mean the general manager of the Agency authorized pursuant to Article VI hereof.

"Members" shall mean those Cities set forth in Exhibit A to the Agreement as may be modified by members who withdraw or Cities who are added in accordance with Article VII thereof.

ARTICLE II

SEAL

Section 2.1. Inscription of Seal. The seal of the Agency shall be circular in form and around the outside shall be the words, "Kansas Municipal Energy Agency", and in the center shall be the words "Agency Seal." An impression of the Agency seal shall be impressed on this page in the space provided below. The seal shall be applied to official documents of the Agency by the Agency's Secretary-Treasurer, or authorized assistant, as evidence of their due execution and attestation.

(AGENCY SEAL)

ARTICLE III

REGISTERED OFFICE AND RESIDENT AGENT

Section 3.1. Registered Office. The Agency shall maintain a registered office in the State which shall meet the requirements of the Act or other applicable laws of the State. The Registered Office of the Agency shall be the principal office of the Agency or such other location as is designated by the Board of Directors. The Agency will provide notice of any change in location of the Registered Office to the Office of the Secretary of State of the State of Kansas and the Kansas Corporation Commission in accordance with the Act.

Section 3.2. Resident Agent. The Agency shall have and continuously maintain in the State a resident agent upon whom service of process may be had as required under the Act and any other applicable provisions or laws of the State. The Board shall have the authority to appoint or change, from time to time, such resident agent. The resident agent of the Agency shall be the General Manager or such other person appointed by the Board of Directors. The Agency will provide notice of any change of the Registered Agent to the Office of the Secretary of State of the State of Kansas and the Kansas Corporation Commission in accordance with the Act.
ARTICLE IV

CORPORATE POWERS

Section 4.1. Except as may be specifically reserved to the Members in the Agreement or under the Act, all corporate powers of the Agency shall be vested in the Board of Directors.

ARTICLE V

BOARD OF DIRECTORS

Section 5.1. Selection of Directors. The property and business of the Agency shall be managed by the Board of Directors of the Agency. The Board of Directors shall consist of two (2) Directors for each Member, provided that there shall be not less than seven (7) Directors. The Directors shall be selected by the governing bodies of the Members. In the event that the number of Members is less than seven (7), each Member shall be represented by the number of Directors which would constitute a Board of Directors of not less than seven (7) Members, provided that each Member shall select the same number of Directors. Each Member must designate the two (2) Directors as "Director-1" and "Director-2".

The term of each Director shall be for a period of two (2) years except that the initial term of a number equal to one half of the Directors, comprised of those individuals designated as Director-2, shall be selected to a term of one (1) year. Any Director selected by a Member may be removed at any time by the Member selecting the Director. Each Director so selected shall reside within the territory served by the electric utility of the selecting Member and meet all other requirements of the Act and the Agreement. Any such selection (other than a replacement selection) shall occur prior to the annual meeting of the Agency. Written evidence of selection shall be forwarded by the City Clerk or other authorized official of the Member to the Agency in writing prior to the annual meeting. Each Director shall continue in office until a successor is selected in accordance with this Article V.

Section 5.2. Voting Powers. Each Member shall be entitled to one Director vote on the Board of Directors which shall be equal to the vote of every other Member. Such vote shall be cast on behalf of the Member by Director-1 of such Member, if present; if such Director-1 is not present then by Director-2. Other than actions required in Article XII hereof, all actions of the Board of Directors shall be made upon affirmative vote of a majority of the Directors entitled to vote and voting on such action.

Section 5.3. Compensation. Except as may be specifically authorized by the Board of Directors, no Director shall receive payment from the Agency for any time spent in attending meetings of the Board of Directors or otherwise conducting business of the Agency. To the extent that funds are available, the Board of Directors, the Executive Committee, or the General Manager may authorize payment of expenses for travel in connection with the business of the Agency for other than meetings of the Board of Directors pursuant to the Act.
Section 5.4. Vacancies. In the event of a vacancy on the Board of Directors the appropriate Member shall select an individual to fill such vacancy for the remainder of the term in accordance with the same procedure as is set forth for the selection of the initial Director. Written evidence of selection shall be provided to the Agency before voting privileges will take effect.

Section 5.5. Removal or Resignation. A Director may be removed only by the governing body of the Member selecting such Director. Any Director may resign by providing notice to the governing body of the Member the Director represents. The governing body shall certify to the Agency such removal or resignation of a Director.

Section 5.6. Successor Director. Upon removal or resignation of a Director, a successor Director will be selected by the governing body in the same manner as the original Director was selected, and the successor Director will be certified by the governing body to the Agency in the same manner as the original Director was certified. The successor Director shall serve for the remainder of the unexpired term of the original Director, subject to the rights of the governing body and such successor Director under Section 5.5 of these Bylaws.

Section 5.7. Alternates. Each Member shall designate an Alternate or Alternates for the Director in the same manner as the Directors are designated. In the event any Director is unable to attend a meeting, any duly appointed Alternate may substitute at the meeting of the Board of Directors for such Director. The Member shall provide the Agency with written notification of the selection of such Alternate or Alternates. In the event neither Director designated by the Member is present, the Alternate may vote on behalf of such Member unless the governing body of the Member has specifically prohibited the Alternate from voting on the Member’s behalf. If more than one Alternate is designated by the Member, the governing body shall specify in its designation the order in which the Alternates shall have voting rights on behalf of the Member.

ARTICLE VI

GENERAL MANAGER

Section 6.1. The Board of Directors shall select and appoint a General Manager for the Agency, who shall have charge of the business of the Agency under the general control, supervision and direction of the Board of Directors. No person shall concurrently be a Director and General Manager. Subject to the supervision of the Board of Directors and the Executive Committee, the General Manager shall: (a) employ, supervise, and dismiss all agents and employees of the Agency and fix their compensation; (b) conduct the day-to-day business affairs of the Agency, including without limitation, entering into agreements relating to or implementing programs or special projects which have been approved by the Board of Directors or the Executive Committee; (c) maintain records and accounts in such a manner that the true and correct condition of the business may be ascertained therefrom at anytime; (d) furnish the Board of Directors a current statement of the business and affairs of the Agency at each scheduled meeting of the Board of Directors and at the end of each fiscal year and at such other times as the Board of Directors may direct; (e) carefully preserve and turn over to any successor all books, records, documents, and
correspondence pertaining to the business of the Agency which may come into the General Manager's possession; and (f) perform such other duties as may be prescribed by the Board of Directors or the Executive Committee.

The General Manager shall give the Board of Directors a good and sufficient surety company bond or the Board shall obtain an insurance policy in a sum to be set and approved by the Board of Directors or Executive Committee conditioned upon the satisfactory performance of the General Manager's duties. The Board of Directors may also require that any other employees hired by the General Manager or the Board of Directors be bonded or insured in such amount as the Board of Directors shall determine. The costs of any such bonds or insurance shall be paid out of the funds of the Agency.

ARTICLE VII

MEETINGS OF BOARD OF DIRECTORS

Section 7.1. Place of Meeting. The place of meetings of the Board of Directors shall be determined by the President or the Board of Directors from time to time.

Section 7.2. Annual Meetings. The Board of Directors shall have an annual meeting each year at a time and place to be specified by the Board of Directors or specified by the President if the Board of Directors fails to so specify prior to November of the year in which the meeting is to be held. In the event a quorum of the Board of Directors is not available at such time and place, the annual meeting of the Board of Directors may be adjourned by the President or other appropriate officer to another time and place without the necessity of a quorum concurring such adjournment.

Section 7.3. Regular Meetings. Regular meetings of the Board of Directors shall be scheduled as determined by the President or the Board of Directors.

Section 7.4. Special Meetings. Special meetings of the Board of Directors may be called in writing by the President or a majority of the Directors to the Board of Directors entitled to vote.

Section 7.5. Notice of Special Meetings. The President or the majority of the Directors entitled to vote calling a special meeting shall cause written notice of such meeting to be delivered to each and every Director not less than seven (7) days prior to the date of such special meeting, which notice shall specify the time and place of such special meeting and the purpose and proposed action, in general terms, to be considered at such special meeting. For purposes of this Section 7.5, such notice shall be considered as delivered upon (a) deposit of such notice in the United States mail, properly addressed, postage prepaid, or (b) communication via fax, with electronic or telephonic confirmation of receipt, or (c) communication via e-mail or other computer-generated communications device, with appropriate confirmation of receipt via computer or telephone or other method of communication.
Section 7.6. Waiver and Consent. Any or all Directors may in writing waive notice of any meeting of the Board of Directors and consent to the conducting of business at any such meeting without notice or specification of the purpose of such meeting.

Section 7.7. Business at Regular Meetings and at a Special or Adjourned Meeting. Any business of the Agency may be conducted at a regular meeting of the Board of Directors. All business to be conducted at a special or adjourned meeting of the Board of Directors shall be specified in the notice of special meeting or motion to adjourn and no action shall be taken at such special or adjourned meeting unless so specified or unless waivers are obtained in accordance with Section 7.6 of these Bylaws.

Section 7.8. Agenda. Whenever feasible to do so, proposed agendas for meetings of the Board of Directors shall be prepared at the direction of the President, and shall be available to the public upon request, and shall be distributed to each Director and Alternate and any other official of each Member so designated to receive such agenda by the governing body of the Member, along with notices of meetings.

Section 7.9. Order of Business. The order of business at all meetings of the Board of Directors shall be as determined by the President or the Board of Directors.

Section 7.10. Quorum. A quorum of the Board of Directors for the purpose of conducting its business shall be the Directors (or Alternates) entitled to vote representing a majority of the Members; but less than a quorum may adjourn a meeting.

Section 7.11. Conduct of Meetings. All meetings, whether regular, special or adjourned, including those held pursuant to waiver and consent, may be conducted via (a) conference telephone, (b) video conferencing or (c) other similar communications device deemed acceptable by unanimous consent of all persons attending such meeting. Persons attending such meetings via telephone, video or other similar communications device shall be counted as attending such meetings for purposes of quorums and may participate and vote at such meetings as if personally present.

ARTICLE VIII

EXECUTIVE COMMITTEE

Section 8.1. Executive Committee. In the event the Board of Directors consists of more than nine (9) Directors, there shall be established a committee of the Board of Directors which shall be known as the Executive Committee.

Section 8.2. Election and Qualifications. The Executive Committee shall consist of nine (9) members, which shall include the officers of the Board of Directors (President, Vice-President and Secretary-Treasurer) and six (6) at-large members, which shall be Directors. In the event the Secretary-Treasurer is not a Director, there shall be seven (7) at-large members, which shall be Directors.
Section 8.3. Terms. The terms of the officers shall be co-terminus with their positions as officers of the Board of Directors; provided that in the event the Secretary-Treasurer is not a Director, the one (1) at-large member elected in place of the Secretary-Treasurer shall serve a term of one (1) year. The term of six (6) at-large members shall be for two (2) years; provided that the initial term of three of the at-large members shall be for a period of one (1) year. The at-large members shall be elected at the annual meeting of the Board of Directors. Commencing with the election of members to the Executive Committee in May 2005, no Director shall serve on the Executive Committee as an officer or an at-large member more than eight (8) consecutive years.

Section 8.4. Resignation, Removal and Replacement. In the event that a vacancy occurs on the Executive Committee by reason of death, incapacity, resignation, removal or replacement of the member as a Director, (a) if an officer, the succeeding officer on the Board of Directors shall replace such officer on the Executive Committee or (b) if an at-large member, the President shall appoint a replacement at-large member for the balance of the member’s term, with the approval of a majority of the members of the Executive Committee.

Section 8.5. Replacement of Secretary-Treasurer. In the event the Secretary-Treasurer who is elected to replace a Secretary-Treasurer is not a Director, the President shall appoint, with the approval of a majority of the members of the Executive Committee, an at-large member to serve on the Executive Committee.

Section 8.6. Powers and Duties. The Executive Committee shall act in the place of the Board of Directors on a day-to-day basis and shall exercise those powers and have the authority to carry on the business of the Board of Directors and the Agency unless specifically restricted by the Act, the Agreement, these Bylaws or action of the Board of Directors. Specifically, the Executive Committee shall have the following powers and duties:

(a) To conduct, manage, and control the affairs and business of the Agency and to make the rules and regulations as the Executive Committee deems necessary and which are not inconsistent with any adopted Board policy, the Bylaws or the Agreement.

(b) To approve a preliminary annual budget for submission to the Board of Directors for adoption. The Executive Committee shall have the responsibility to oversee the administration of the adopted budget and shall have authority to make changes and amend the budget as circumstances require.

(c) Except as provided in Section 8.7, to approve contracts, agreements, and leases required to be negotiated and executed to assure the continued general administration of the Agency.

(d) To approve Agency policies regarding: (1) financial planning; (2) personnel management, employee benefits, compensation, and classification plans; (3) deferred compensation,
qualified money purchase and/or retirement plans; (4) policy manuals
and similar materials; and (5) all other things not hereinafter expressly
prohibited to carry on the business of the Agency in connection with
and through the General Manager of the Agency.

Section 8.7. Executive Committee Prohibitions. The Executive Committee is
specifically prohibited from and shall not have the power to: (1) adopt the annual budget;
(2) approve contracts or agreements of the Agency that provide for the development of projects or
facilities requiring the issuance of Agency bond anticipation notes or Agency revenue bonds, or
(3) approve interest rates and official financing documents of any financings.

Section 8.8. Resolution Not to Affect Powers of Board of Directors. The powers,
authority, and responsibility hereby delegated by the Board of Directors to the Executive
Committee is not intended to diminish, and shall not be construed as diminishing, the powers of the
Board of Directors to act on any and all matters so delegated to the Executive Committee.

ARTICLE IX

OFFICERS

Section 9.1. Election and Qualifications. All officers of the Agency shall be elected
from among the Directors by the Board of Directors at the annual meeting of the Board of Directors
by majority vote of the Directors entitled to vote; provided, however, the Secretary-Treasurer does
not have to be a Director. Such officers shall also be considered as such officers of the Board of
Directors.

Section 9.2. Terms and Compensation. The term of all officers of the Agency shall be
for one (1) year. Commencing with the election of officers in May 2005, no officer shall serve
more than eight (8) consecutive terms as an officer of the Agency. The officers shall receive no
compensation from the Agency for their services except as authorized by specific vote of a majority
of the Directors entitled to vote without the participation of the officer involved.

Section 9.3. Resignation and Removal. All officers of the Agency may resign as officers
or may be removed without cause by majority vote of the Directors entitled to vote.

Section 9.4. Succession of Officers. In the event that the position of President is vacant,
the Vice-President shall succeed to the position of President. In the event that the positions of
President and Vice-President are both vacant, the Secretary-Treasurer, if a Director, shall succeed to
the position of President. In the event the positions of President, Vice-President and
Secretary-Treasurer are vacant or the Secretary-Treasurer is not a Director, the remaining members
of the Executive Committee shall elect a President from among their membership. In the event that
there is a vacancy in the position of Vice-President and/or Secretary-Treasurer such positions shall
be filled by election of the remaining members of the Executive Committee.
Section 9.5. President. The powers and duties of the President shall be:

1. To preside at all meetings of the Board of Directors, the Executive Committee and all meetings of the Members.

2. To call meetings of the Members and all meetings of the Board of Directors and Executive Committee, to be held at such times and places as provided by these Bylaws.

3. To affix the signature of the agency to all deeds, conveyances, mortgages, leases, obligations, bonds, certificates and other papers and instruments in writing that may require the same; and to supervise and control, subject to the direction of the Board of Directors, all officers, agents and employees of the agency.

4. To serve as Chairman of the Executive Committee of the Board of Directors, if any.

5. To establish such committees as deemed necessary by the President, with the advice of the Executive Committee, and to appoint persons to serve on such committees. Prior to the annual election of officers and at-large members to the Executive Committee, the President shall establish a nominating committee with representation, if feasible, from each service territory in which Members are located. The Nominating Committee shall consider the following factors in nominating candidates to serve as officers and at-large members on the Executive Committee: (i) representation from each service territory in which Members are located is desirable; (ii) representation from each county of the Agency is desirable; and (iii) fair and equal representation from all sizes of communities (based on number of members) is desirable.

Section 9.6. Vice President. In the case of the absence, disability, or death of the President, the Vice-President shall take his or her place and perform his or her duties. The Vice-President of the Agency shall have such other powers and perform such other duties as may be granted or prescribed by the Board of Directors.

Section 9.7. Secretary-Treasurer. The powers and duties of the Secretary-Treasurer shall be:

1. To keep full and complete records of the proceedings of the Board of Directors, the Executive Committee and of the meetings of the Members.

2. To keep the seal of the Agency and to affix the same to all instruments which may so require.

3. To make service and publication of all notices that may be necessary or proper, and without command or direction from the Board of Directors. In
case of absence, inability, refusal or neglect of the Secretary-Treasurer to make service or publication of any notice, then such notice may be served or published by the President or Vice-President, or by any person thereunto authorized by either of them, by the Board of Directors, the Executive Committee or by a majority of the Members.

(4) Receive all monies belonging to or paid to the Agency and give receipts therefor.

(5) Deposit such monies, as he or she shall be directed by the Board of Directors or the Executive Committee, with one (1) or more financial institutions qualified to receive municipal deposits as provided by law to be designated by the Board of Directors or the Executive Committee.

(6) Shall supervise and control the maintenance of full and complete records of the funds received and the disbursements thereof.

(7) To cause all official reports of the Agency to be filed with the proper officials.

(8) Render to the Members and the Board of Directors, the Executive Committee, at any meeting thereof, or from time to time whenever the Board of Directors, the Executive Committee, or the President may require, an account of all the financial transactions and the financial condition of the Agency.

(9) Exhibit or cause to be exhibited the books of the Agency to the Board of Directors, the Executive Committee or to any committee appointed by the Board of Directors, the Executive Committee or to any Director on application during business hours, or to any other person entitled to inspect such books pursuant to pertinent provisions of the law.

(10) Generally to do and perform all such duties as pertain to this office and as may be required by the Board of Directors or the Executive Committee.

(11) All disbursements made by the Secretary-Treasurer shall be subject to control of the Executive Committee or Board of Directors.

(12) All duties assigned to the Secretary-Treasurer may, with the consent of the Executive Committee, be delegated to the General Manager or other employees or agents of the Agency.

Section 9.8. Surety Bond or Insurance. The President and Secretary-Treasurer shall give the Board of Directors a good and sufficient surety company bond or the Board shall obtain an insurance policy in a sum to be set and approved by the Board of Directors or Executive Committee conditioned upon the satisfactory performance of the President and Secretary-Treasurer's duties. The Board of Directors may also require that any other officers be bonded or insured in such
amount as the Board of Directors shall determine. The costs of any such bonds or insurance shall be paid out of the funds of the Agency.

**ARTICLE X**

**MEETINGS OF MEMBERS**

**Section 10.1. Place of Meetings.** The place of meetings of Members of the agency shall be as determined by the President or the Board of Directors.

**Section 10.2. Meetings.** The President or the Directors entitled to vote from a majority of the Members may call meetings of the Members for the purpose of discussing business of the Agency.

**Section 10.3. Notice of Meetings.** The President or Directors calling any meeting of the Members shall cause written notice of such meeting to be delivered to each and every Member not less than seven (7) days prior to the date of such meeting, which notice shall specify the time and place of such meeting and the purpose and proposed action, in general terms, to be considered at such meeting. For purposes of this **Section 10.3**, such notice shall be considered as delivered upon (a) deposit of such notice in the United States mail, properly addressed, postage prepaid, or (b) communication via fax, with electronic or telephonic confirmation of receipt, or (c) communication via e-mail or other computer-generated communications device, with appropriate confirmation of receipt via computer or telephone or other method of communication.

**Section 10.4. Order of Business and Powers of Member.** The order of business at any meeting of the Members shall be as determined by the President or by a majority of the Members. All annual and special meetings of the Members shall be for the purpose of discussion and advice only and Members, absent from the Board of Directors, shall not have the power to take any action affecting the business of the Agency except dissolution of the Agency in accordance with **Article XIV** of these Bylaws, further except amendment of the Agreement pursuant to the Act, and further except any other powers given exclusively to the Members by the Agreement or by the Act.

**Section 10.5. Adjournments.** Meetings of the Members may be adjourned from time to time.

**Section 10.6. Conduct of Meetings.** All meetings, whether regular, special or adjourned, including those held pursuant to waiver and consent, may be conducted via (a) conference telephone, (b) video conferencing or (c) other similar communications device deemed acceptable by unanimous consent of all persons attending such meeting. Persons attending such meetings via telephone, video or other similar communications device shall be counted as attending such meetings for purposes of quorums and may participate and vote at such meetings as if personally present.
ARTICLE XI
FINANCIAL MATTERS

Section 11.1. Budget Preparation and Approval. The President or General Manager shall provide a proposed annual budget for the Agency for the succeeding calendar year. If an Executive Committee exists, the Executive Committee shall review and approve the proposed annual budget prior to submission to the Board of Directors. The budget in final form shall be approved by the Board of Directors. Such budget shall include a proposed method of funding the budget; and if such budget provides for assessments against Members, it shall provide for the apportionment of assessments in specific amounts to be assessed against each Member.

Section 11.2. Assessments Against Members; Annual Dues. Proposed assessments to fund the Budget shall be submitted to Members prior to June 1 of the year preceding the year that the assessment are payable. The Agency shall send statements for dues to each Member on or before March 31 of each year, and such dues shall be paid by the Member within the time period set forth in such statement.

Section 11.3. Refusal to Pay Assessment or Dues. If a Member refuses to pay the assessment as set out in Section 11.2 of these Bylaws, such Member shall not be entitled to the benefit of any work, action or study of the Agency funded by such assessment against Members unless and until the Member which has not participated in the assessment and the cost of such work, action or study shall pay the amount of such assessment to the Agency for reimbursement to other Members on a proportionate basis as determined by the Board of Directors; and, in addition, any Director representing such Member shall be designated as inactive, shall not be entitled to serve as an officer of the Agency, shall not be entitled to vote, and shall not be counted in determining a quorum under these Bylaws. If a Member refuses to pay the annual dues as set out in Section 11.2 of these Bylaws, such Member shall not be entitled to any benefits of a Member of the Agency and the Director representing such Member shall be designated as inactive, shall not be entitled to serve as an officer of the Agency, shall not be entitled to vote, and shall not be counted in determining a quorum under these Bylaws unless and until the Member pays the amount of such dues to the Agency.

Section 11.4. Power Purchase Contracts. Any power purchase contract or similar agreement between the Agency and the Members or other persons shall be an asset of the Agency and cannot be amended, canceled or otherwise altered except to the extent as such amendments, cancellations or alterations may be specifically allowed by the terms of the documents authorizing or securing the bonds or other indebtedness of the Agency. Other contracts secured to obtain financing shall be subject to the terms of the documents authorizing or securing the bonds or other indebtedness of the Agency.

Section 11.5. Transfer, Liens or Sale of Assets. Unless specifically prohibited in the documents authorizing or otherwise securing any bonds or other indebtedness, the Agency may transfer, encumber, or sell any of the assets of the Agency with a 2/3 affirmative vote of the Directors entitled to vote; provided, however, the General Manager may approve the transfer or sale of Agency assets having a value of $1,000 or less; provided, further, that such approval by the
General Manager in any one calendar year shall not exceed the sale or transfer of Agency assets having a value greater than $5,000.

ARTICLE XII

AMENDMENTS

Section 12.1. These Bylaws may be amended, modified, supplemented or repealed by an affirmative vote of two-thirds (2/3rds) of the Members which shall be evidenced by the vote of its Director entitled to vote.

ARTICLE XIII

INDEMNIFICATION

Section 13.1. Persons. The Agency may indemnify every person, his or her heirs, executors and administrators, against any and all judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, incurred by him or her in connection with any claim, action, suit or proceedings (whether actual or threatened, brought by or in the right of the Agency or otherwise, civil, criminal, administrative or investigative, including appeals), to which he or she may be or is made a party by reason of his being or having been a Director, employee, agent or officer of the Agency, and shall do so to the extent required by the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., as amended.

Section 13.2. Unlawful Conduct. There shall be no indemnification (i) as to amounts paid in settlement or other disposition of any threatened or pending action by or in the right of the Agency, or (ii) as to matters in respect of which it shall be determined by judgment or otherwise that such Director, employee, agent or officer was not acting in good faith in the performance of his or her duties to the Agency and, in the case of any criminal action or proceeding, where he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 13.3. Good Faith. Any such person shall be entitled to indemnification as a right (i) if he or she has been wholly successful, on the merits or otherwise, with respect to any claim, action, suit or proceeding or (ii) except as hereinabove provided, in respect of matters as to which a court or independent legal counsel, approved by the Agency, shall have determined that he or she acted in good faith for a purpose which he or she reasonably believed to be within the scope of employment in the best interests of the Agency; and in addition, in the case of any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was lawful. Such court or independent counsel shall have the power to determine that such Director, officer, employee or agent is entitled to indemnification as to some matters even though he or she is not so entitled as to others. The termination of any claim, action, suit or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such Director, employee, agent or officer did not act in good faith for a purpose which he or she reasonably believed to be in the best interests of the Agency and, in the
case of any criminal action or proceeding, that he or she did not have cause to believe that his or her conduct was lawful.

Section 13.4. Amounts. Amounts paid in indemnification shall include, but shall not be limited to, counsel and other fees and disbursements and judgments, fines or penalties against, and amounts paid in settlement by, such Director, officer, employee or agent. The Agency may advance expenses undertaken to repay or to reimburse such expenses if it should be ultimately determined that he or she is not entitled to indemnification under this Article XIII.

Section 13.5. Time. The provisions of this Article XIII shall be applicable to claims, actions, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after the adoption hereof. The rights of indemnification provided in this Article XIII shall be exclusive of any rights to which any such Director, officer, agent or employee may otherwise be entitled by contract or as a matter of law.

ARTICLE XIV

TERMINATION AND DISSOLUTION

Section 14.1. Method of Termination and Dissolution. The Agency may be terminated and dissolved as provided in the Agreement. The Agency may not be dissolved at any time when any bonds or other indebtedness of the Agency remain outstanding unless cash provision has been made for the payment of such indebtedness, as provided in Article IX of the Agreement.

Section 14.2. Payment of Costs of Dissolution. Upon dissolution of the Agency, all costs and expenses of dissolution shall be paid first from assets of the Agency and then, if necessary, from assessment made to the Members.

ARTICLE XV

WRITTEN BALLOT VOTING

Section 15.1. Written Ballot. In order to further the business and projects of the Agency, the President may determine from time to time, a need exists for written ballot voting to conduct any specified business of the Agency. If so determined, the Secretary-Treasurer or General Manager shall forward such written ballot to the appropriate party. The written ballot shall contain the specified matter or question to be determined, and shall be sent via (a) deposit of such notice in the United States mail, properly addressed, postage prepaid, or (b) communication via fax, with electronic or telephonic confirmation of receipt, or (c) communication via e-mail or other computer-generated communications device, with appropriate confirmation of receipt via computer or telephone or other method of communication. The written ballots cast shall be returned in the manner set forth in the voting instructions that accompany the ballot.
Section 15.2. Passage. All matters considered by a written ballot vote shall be determined by a majority of those ballots that are received by the Agency prior to the time specified for the tabulation of the vote; provided, however, that the number of written ballots received by the Agency must equal at least a quorum of the Directors as defined in Section 7.10 of these Bylaws.

Section 15.3. Objections to Written Ballot. If a majority of those forwarded written ballots, prior to the time for receipt of completed written ballots, file a written objection to using the written ballot, such matter shall be considered instead at a regular or special meeting.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

Section 16.1. Instruments in Writing. All contracts of the Agency shall be in writing, and must be approved as set forth in these Bylaws.

Section 16.2. Annual Report. The Board of Directors of the Agency shall cause an annual report to be prepared and made available in sufficient quantities for circulation among the Members, including the governing bodies thereof and interested citizens.

Section 16.3. Fiscal Year. The fiscal year of the Agency shall be the calendar year from January 1 to December 31.
CERTIFICATE OF SECRETARY-TREASURER

The above and foregoing is a true and correct copy of the Bylaws of the Kansas Municipal Energy Agency dated as of and adopted by its Board of Directors on November 2, 2005.

[Signature]
Secretary-Treasurer
CERTIFICATE

DIRECTOR # 1

KANSAS MUNICIPAL ENERGY AGENCY BOARD OF DIRECTORS

This Certificate duly documents the appointment of a Director #1 to serve on the Board of Directors of the Kansas Municipal Energy Agency (KMEA) as provided for in Section 5.1 of the Agency’s Bylaws.

I, the undersigned City Clerk of the City of Gardner, Kansas, a member of KMEA, do hereby certify that at a meeting of the City Governing Body duly held on the 18th day of March 18, 2019;

Name: Andrew Krievins

Title: Utility Advisory Commissioner

who resides within the territory served by the City’s electric utility, was appointed to serve on the KMEA Board of Directors for a two (2) year term beginning May 01, 2019 and expiring on April 30, 2021.

I further certify that the foregoing appointment is reflected in the official Minutes of the Governing Body of the City for the meeting on the date indicated above.

This certificate is given this ____ day of __________, 2019.

__________________________

City Clerk

Gardner, Kansas
CERTIFICATE

ALTERNATE DIRECTOR

KANSAS MUNICIPAL ENERGY AGENCY BOARD OF DIRECTORS

This Certificate duly documents the appointment of an Alternate Director to serve on the Board of Directors of the Kansas Municipal Energy Agency (KMEA) as provided for in Section 5.1 of the Agency’s Bylaws.

I, the undersigned City Clerk of the City of Gardner, Kansas, a member of KMEA, do hereby certify that at a meeting of the City Governing Body duly held on the 18th day of March 18, 2019;

Name: Gary Williams

Title: Utility Advisory Commissioner

who resides within the territory served by the City’s electric utility, was appointed to serve on the KMEA Board of Directors for a two (2) year term beginning May 01, 2019 and expiring on April 30, 2021.

I further certify that the foregoing appointment is reflected in the official Minutes of the Governing Body of the City for the meeting on the date indicated above.

This certificate is given this ___day of __________, 2019.

__________________________

City Clerk

Gardner, Kansas
Agenda Item: Consider authorizing the City Administrator to execute an addendum with Burns & McDonnell Engineering Co. Inc. for design services on the I-35 and Gardner Road Interchange project.

Strategic Priority: Infrastructure and Asset Management  
Fiscal Stewardship  
Quality of Life

Department: Public Works

Staff Recommendation:  
Authorize the City Administrator to execute an addendum with Burns & McDonnell Engineering Co. Inc. for design services on the I-35 and Gardner Road Interchange project in an amount not to exceed $36,043.40.

Background/Description of Item:  
On November 20, 2017, Council authorized the City to enter into an agreement with Burns & McDonnell to provide design services for the I-35 and Gardner Road Interchange project. Services related to property acquisition were not included in the original agreement. Now that the project limits and scope of work have been established we are able to define the tasks and fees for property acquisition. Per federal requirements, the process will follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

Financial Impact:  
The City is responsible for funding these additional tasks. The funds will come from the City's Special Highway Fund.

Attachments Included:  
- Addendum

Suggested Motion:  
Authorize the City Administrator to execute an addendum with Burns & McDonnell Engineering Co. Inc. for design services on the I-35 and Gardner Road Interchange project in an amount not to exceed $36,043.40.
AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
ENGINEER-OWNER AGREEMENT

AMENDMENT No. 1                 Date: March 8, 2019

THIS AMENDMENT modifies the Agreement dated December 4, 2017 made by and between Burns & McDonnell Engineering Company, Inc., (hereinafter called ENGINEER), and the City of Gardner, Kansas (hereinafter called OWNER) for the following Project: PW1701, I-35 and Gardner Road Interchange. For good and valuable consideration, the sufficiency of which is acknowledged, the parties agree to make the following changes to their Agreement.

1. The parties agree that the ENGINEER’s Scope of Services is amended as follows:
   Additional services requested and incorporated herein by Exhibit I.

2. The following adjustments are made to the ENGINEER’s compensation:
The CONSULTANT’S compensation shall increase by an additional $36,043.40 (thirty-six thousand forty-three and 40/100 dollars). Total compensation shall not exceed new contract maximum of $542,735.85 (five hundred forty-two thousand seven hundred thirty-five and 85/100 dollars).

   Original Agreement       $506,692.45
   Amendment 1              $ 36,043.40
   Total Revised Agreement  $542,735.85

3. The time for completion of ENGINEER’s Services is adjusted as follows:
   No change to Agreement term.

4. Other changes to the Agreement, if any, are stated below:
   None.

5. The terms of this AMENDMENT supersede any contrary terms of the Agreement. This AMENDMENT will be deemed a part of, and be subject to, all other terms and conditions of the Agreement. Except as modified above, the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT the day and year first written above.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.


By: ____________________________                By: ____________________________
Name: ____________________________              Name: Benjamin J. Biller
Title: ____________________________               Title: Vice President
### Exhibit I: Scope & Fee

**MANHOUR SUMMARY AND FEE PROPOSAL**

I-35 at Gardner Road Interchange Improvements

Project PW1701

City of Gardner, Kansas

Amendment 1: Right of Way Acquisition and Legal Descriptions

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<th>Project Management</th>
<th>Road/Bridge Lead</th>
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<th>Senior Engineer</th>
<th>Staff Engineer / Designer</th>
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**Right of Way Acquisition and Legal Descriptions**

Amendment 1 Hours

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**SUBCONSULTANTS**

- Orrick & Erskine, L.L.P. | $23,900.00
- McClure Engineering | $7,825.00

**TOTAL SUBCONSULTANTS** | $31,725.00

**REIMBURSABLE EXPENSES**

- Technology Charges (9.95/manhour) | $318.40

**TOTAL REIMBURSABLE EXPENSES** | $318.40

**Total Contract Amount** | $36,543.40
Right of Way Acquisition
Proposed Scope of Services for
City of Gardner 191st Street/188th Street Realignment

All Right of Way acquisition activity will comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 USC §4601, et seq. and its implementing regulations, 49 CFR Part 24 ("the URA"), and Kansas Department of Transportation Rules and Regulations.

1. Consulting, as necessary, with City staff and Burns & McDonnell regarding acquisition and design issues;

2. Obtain written title reports through Alpha Title to identify property owners, lien-holders, easements and other interested parties;

3. Review legal descriptions and site plans of proposed takings to confirm accuracy;

4. Obtain just compensation appraisal reports from Valbridge/Shaner Appraisals;

5. Obtain review appraisal reports from Chris McCord;

6. Prepare initial letters; purchase offer letters; purchase agreements; conveyance instruments; and other pertinent documentation for presentation to property owners;

7. Deliver offer packages to property owners;

8. Follow-up in-person, telephone and/or written negotiations with each property owner as required to reach agreement or determine property must be acquired through condemnation;

9. Upon securing purchase agreements, conduct closings, including filing deeds, mortgage releases and other conveyances necessary to obtain clean title;

10. Prepare and maintain negotiation notes;

11. Provide bi-weekly progress reports to Burns & McDonnell and City staff; and

12. Maintain files for delivery to Burns & McDonnell and City upon completion of project.
Right of Way Acquisition
Proposed Fee Schedule for
City of Gardner 191st Street/188th Street Realignment

All Right of Way acquisition activity will comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 USC §4601, et seq. and its implementing regulations, 49 CFR Part 24 (“the URA”), and Kansas Department of Transportation Rules and Regulations.

This fee schedule assumes right of way or other property interests will need to be acquired from four parcels. If after design fewer tracts are affected, or more tracts are affected, the quoted fees will be adjusted accordingly.

1. Title Reports: $250/tract x 4 tracts = $1,000
2. Just Compensation Appraisal Reports
   - Gardner 188, LLC parcels $5,000 x 1 tract = $5,000
   - Other parcels $1,500 x 3 tracts = $4,500
3. Review Appraisal Reports
   - Gardner 188, LLC parcels $1,000 x 1 tract = $1,000
   - Other parcels* $800 x 3 tracts = $2,400
4. Orrick & Erskine Acquisition Fees
   - Flat Fee = $10,000
   - Total = $23,900

*Assumes Review Appraisals for other parcels will be required. Per 49 CFR §24.102 review appraisal reports are not required if just compensation estimate is less than $10,000.

Invoices for all third party fees (Alpha Title, Valbridge/Shaner Appraisals, Chris McCord) will be delivered within 10 days after delivery of reports, with payment within 30 days thereafter. For our fees, we request progress payments as follows:

1. 10% within 30 days of ordering title work;
2. 40% upon delivery of offer packages;
3. 25% forty-five days after delivery of offer packages
4. 25% upon acquisition of tract or declaration of impasse and delivery of tract files
### Right of Way Acquisition Timeline

**City of Gardner 191st Street & 188th Street Realignment**

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<th>Activity</th>
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<td>Certificates of Title Delivered</td>
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<td>Establish Project Spreadsheet/Draft Document Templates</td>
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<td>First Letters to Affected Property Owners</td>
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<td>CTs and Legals Delivered to Appraisers</td>
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<td>Appraiser Inspections Begin</td>
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<td>Delivery of Appraisal Reports</td>
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<td>Reports Delivered to Review Appraisers</td>
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<td>Review Reports Delivered</td>
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<td>Offer Packages to Owners</td>
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<td>Good Faith Negotiation Period</td>
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<td>Close Out Meeting</td>
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PROJECT LOCATION: I-35 and Gardner Road

DATE: 3/11/2019
EXPIRATION DATE: 4/11/2019

McClure Engineering Company
11250 Corporate Avenue
Lenexa, Kansas 66219
Phone: 913-888-7800

TO: Burns and McDonnell Engineering Co.
9450 Ward Parkway
Kansas City, Missouri 64114
Attn: Jonathan S. Tronson

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<th>SCOPE:</th>
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</table>
| **Option #1:**
MEC shall prepare Temporary Construction Easement, Permanent Utility Easement and Permanent Right-of-Way exhibits and descriptions over the 19 Tracts as shown on Exhibit A over the areas as shown on Exhibit B.

Estimate Fee: $7825.00

| **Option #2:**
MEC shall prepare Temporary Construction Easement, Permanent Utility Easement and Permanent Right-of-Way exhibits and descriptions over 12 Tracts (the original 19 EXCEPT Tract 7 and Tracts 14-19) as shown on Exhibit A over the areas as shown on Exhibit B. The easements and rights-of-way on Tract 7 and Tracts 14-19 can be addressed with the platting of the future Quiktrip property.

Estimate Fee: $3845.00

BUILDING STRONG COMMUNITIES

Thank you for your business!
Agenda Item: Consider authorizing the City Administrator to execute an addendum with Wilson & Company, Inc. for design services on the Santa Fe, Waverly to Poplar project

Strategic Priority: Infrastructure and Asset Management
Fiscal Stewardship
Quality of Life

Department: Public Works

Staff Recommendation:
Authorize the City Administrator to execute an addendum with Wilson & Company, Inc. to design street improvements on the Santa Fe, Waverly to Poplar project in an amount not to exceed $49,392.50.

Background/Description of Item:
On September 17, 2017, Council authorized the City to enter into an agreement with Wilson & Company to provide design services for the Santa Fe project. On January 7, 2019, Council authorized the City to execute an addendum for Wilson to design the street lighting system and add a right turn lane. At the City’s request, Wilson is now going to modify the original stormwater design to eliminate open ditches between Waverly and Poplar. This change requires additional design work and plan preparation.

Financial Impact:
The City is responsible for funding the design of this project. The funds will come from the City's Special Highway Fund.

Attachments Included:
- Addendum

Suggested Motion:
Authorize the City Administrator to execute an addendum with Wilson & Company, Inc. to design street improvements on the Santa Fe, Waverly to Poplar project in an amount not to exceed $49,392.50.
Dear Mr. McEldowney:

Through conversation with Gardner Public Work staff, additional scope of work has been identified for the Santa Fe Improvement Project. Wilson & Company is pleased to submit this proposal to the City of Gardner for engineering services required to re-design the drainage plan along Santa Fe and Waverly Road. This supplement will modify and update the Office Check plans submitted on November 21, 2018. The following tasks will be completed with the additional scope of work:

1. Update Title Page
2. Refine Typical Sections
3. Design Open Ditches Along West Side of Waverly
4. Modify Roadway Enclosed Storm Sewer (Inlet Spacing, Pipe Profiles)
5. Design Cross Road Structures and Wingwalls (Along Santa Fe, 174th, & 172nd Terrace)
6. Update Plan/Profile Sheets
7. Update Drainage Area Map
8. Update Drainage Date Sheet
9. Update Erosion Control Plans
10. Update Cross Sections
11. Update Construction Control Plans
12. Permanent Erosion Control Plans
13. West of Waverly Road Drainage Modifications
14. Update Quantities and Quantity Tables
15. Prepare Construction Cost Estimate
16. Merge Affinis’ Survey Data with our Project Surface

**We could use survey data from the Waverly Road Expansion Project is available.

Wilson & Company will complete the above additional scope of work for the total not to exceed amount of $49,392.50 (See Exhibit A for Fee Work-up). All work will be billed on a Cost Plus basis and will be completed in accordance with requirements outlined in the original agreement, dated September 18, 2017. The proposed work will be completed as a change order, but in accordance with section 19.0 of the original agreement.

If the above proposal is acceptable, please sign below and return a copy for our records.

Laura Gourley, City Administrator - City of Gardner
Date

We appreciate the opportunity to assist you with this project. Should you have any questions, please do not hesitate to contact us.

Sincerely,

Wilson & Company

Troy Elsenbraun, PE
Senior Vice President
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Agenda Item: Consider approving a Cereal Malt Beverage (CMB) license for calendar year 2019.

Strategic Priority: Business & Economic Development

Department: Administration

Staff Recommendation:
Approve a Cereal Malt Beverage (CMB) license for calendar year 2019.

Background/Description of Item:
The following businesses has applied for a “Limited Retailer” license to sell cereal malt beverages (CMB) in 2019:

- CVS Pharmacy #10862, 110 West Main Street

Suggested Motion:
Approve a Cereal Malt Beverage (CMB) licenses for CVS Pharmacy #10862 for calendar year 2019.
Agenda Item: Consider an ordinance changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas

Strategic Priority: Quality of Life

Department: Business & Economic Development

Planning Commission Recommendation:
After review of application Z-18-08, a rezoning for 7.46 acres located at 555 E. Main Street (Tax Id CP75500000 0001 and a portion of CF221426-1017) from A (Agriculture) District to R-4 (Mixed-Density Neighborhood) District, and staff report dated February 26, 2019 the Planning Commission recommends the Governing Body approve the application.

Staff Recommendation:
Staff recommended the Planning Commission approve the proposed rezoning of 555 W. Main Street from A (Agriculture) District to R-4 (Mixed-Density Neighborhood) District.

Background/Description of Item:
The subject property is currently zoned A (Agriculture) District and is used for a place of worship which would fall into the Large Assembly use group. The site is developed with one structure; a church that was constructed in 2003 with an addition built onto the main structure in 2015. Currently the site is used for religious activities.

The current zoning designation (A District) is not consistent with the Gardner Main Street Corridor Plan future land use designation of medium-density residential, and the current use is nonconforming in that district. The proposed rezoning would make the property consistent with the future land use designation in the plan (considering associated zoning districts), and would create the potential to mitigate the nonconforming status of the current use. The rezoning to the Mixed-Density Neighborhood District is compatible with the existing adjacent mixed density residential uses and the public park, and is compatible with adjacent zoning districts. The relative gain to public welfare would allow for the owner to expand the existing operation on the current site. If the property was to remain zoned A District, the large assembly use could not expand and would potentially have to relocate. The proposed use would not affect the utilities, infrastructure or public services as it is an existing developed site. Minor utility extensions are required but will not adversely impact the infrastructure in the vicinity.

The Planning Commission at their February 26, 2019 meeting held a public hearing on this item and voted unanimously to recommend approval of this application. No one spoke regarding this item.
**Financial Impact:**
None.

**Other Impacts:**
None.

**Attachments included:**
- Ordinance
- Vicinity Map
- Excerpt of the minutes from the February 26, 2019 Planning Commission meeting.
- Planning Commission packet

**Suggested Motion:**
Adopt Ordinance 2605, an ordinance changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas.
ORDINANCE NO. 2605

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF GARDNER, KANSAS, UNDER THE AUTHORITY GRANTED BY TITLE 17 OF THE MUNICIPAL CODE OF THE CITY OF GARDNER, KANSAS;

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

SECTION ONE: That having received a recommendation from the Planning Commission on February 26, 2019, and proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Gardner, Kansas Land Development Code, the zoning classification or districts of the lands legally described hereby are changed as follows:

The following described properties shall hereafter have a zoning classification of R-4 (Mixed Density Neighborhood) District:

CASE NO. Z-18-08

Rezoning from A (Agriculture) District to R-4 (Mixed Density Neighborhood) District:

Legal Description:

A Replat and Resurvey of all of Lot 1, SACRED HEART CHURCH, a subdivision of land in the City of Gardner, Johnson County, Kansas, containing 7.2959 acres, more or less, of replatted land.

Together with;

Part of the Northwest Quarter of Section 26, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Northeast corner of the Northwest Quarter of said Section 26; thence S 01°38'08" E along the East line of said Northwest Quarter, a distance of 736.03 feet to a point on the South Right-of-Way of Warren Street as now established; thence S 88°19'43" West along said South Right-of-Way of Warren Street, a distance of 1320.38' to the Northeast plat corner of said SACRED HEART CHURCH; said point also being the Northwest plat corner of MEDICALODGES ADDITION NO. 1, a subdivision of land in the City of Gardner, Johnson County, Kansas; thence S 1°29'41" E along the East line of said SACRED HEART CHURCH, said line also being the West line of said MEDICALODGES ADDITION NO. 1, a distance of 660.00 feet to the Southeast plat corner of SACRED HEART CHURCH, said point also being the Southwest plat corner of said MEDICALODGES ADDITION NO. 1 and the Point of Beginning; thence N 88°19'43" E along the South line of said MEDICALODGES ADDITION NO. 1, a distance of 1.73 feet; thence S 1°38'08" E, a distance of 48.00 feet; thence S 88°19'43" W, a distance of 159.97 feet; thence N 1°40'17" W, a distance of 48.00 feet to a point on the South line of said SACRED HEART CHURCH; thence N 88°19'43" E along the South line of said SACRED HEART CHURCH, a distance of 158.27 feet to the Point of Beginning and containing 0.1763 acres of unplatted land.
SECTION TWO: That upon the taking effect of this Ordinance, the above zoning changes shall be incorporated and shown on the Zoning District Map previously adopted by reference, and said Zoning District Map is hereby reincorporated as a part of the Land Development Code as amended.

SECTION THREE: That this Ordinance shall take effect and be in force from and after its adoption by the Governing Body and publication in the official City Newspaper.

PASSED by the Governing Body this 18th day of March, 2019.

SIGNED by the Mayor this 18th day of March, 2019.

(SEAL)

CITY OF GARDNER, KANSAS

________________________________________
Steve Shute, Mayor

Attest:

________________________________________
Amy Nasta, City Clerk

Approved as to form:

________________________________________
Ryan B. Denk, City Attorney

(Case No. Z-18-08)
Gardner City Council
Z-18-08: Rezoning A to R-4
Meeting Date: March 18, 2019

Map Date: 3/6/19
CALL TO ORDER

The meeting of the Gardner Planning Commission was called to order at 7:00 p.m. on Tuesday, February 26, 2019, by Chairman Austin.

PLEDGE OF ALLEGIANCE

Chairman Austin led the Pledge of Allegiance.

ROLL CALL

Commissioners present:

Chairman Austin
Commissioner Boden
Commissioner Brady
Commissioner Gardenhire
Commissioner McNeer
Commissioner Roberts
Commissioner Simmons-Lee

Commissioners absent:
All present.

Staff members present:
Larry Powell, Director, Business & Economic Development
Kelly Drake Woodward, Chief Planner
Michelle Leininger, Principal Planner
Bob Case, Planner
Kristie Hatley, Planning Technician
Ryan Denk, City Attorney

There were approximately 88 members of the public in attendance.

REGULAR AGENDA

1. DIVINE MERCY CHURCH
Located at 555 W. Main Street
   b. PP-19-01: Consider a single lot plat for 7.48 acres.
   c. FP-19-01: Consider a single lot plat for 7.48 acres
d. **SP-18-14**: Consider a site plan for the construction of a parish residence.

Ms. Michelle Leininger, Principal Planner, presented the rezoning request for the subject property, currently zoned A Agriculture District. The site is on the west side of Gardner, was annexed in 2000, and the original church facility was approved in 2002. An addition was approved in 2014. The surrounding zonings include light industrial to the north, agriculture (County) to the west, multi-family to the east and south. Staff has found this rezoning is consistent with the *Gardner Main Street Corridor Plan*, which identifies the property for medium density residential uses with multi-family and civic uses.

Chairman Austin asked the Commissioners if they had had outside communication with the public on this item. Only Commissioner Brady stated that he had, and Commissioner McNeer stated he was a member of the parish.

**Public Hearing**

Mr. Mark McGill, Phelps Engineering, representing the owner, said they wanted this rezoning and plat approvals to be able to allow their priest an onsite residence to better serve their needs.

**Motion to close the public hearing made by Boden and seconded by Gardenhire.**

**Motion passed 7-0.**

**Commission Discussion**

No discussion.

**Motion made after review of application Z-18-08, a rezoning for 7.46 acres located at 555 E. Main Street (Tax Id CP75500000 0001 and a portion of CF221426-1017) from A (Agriculture) District to R-4 (Mixed-Density Neighborhood) District, and staff report dated February 26, 2019 the Planning Commission recommends the Governing Body approve the application.**

**Motion made by McNeer and seconded by Boden.**

**Motion passed 7-0.**

Ms. Leininger continued her presentation on the preliminary plan, **PP-19-01**, and final plat, **FP-19-01**, for this same property at 555 W. Main St. This request is to add 7,632 s.f. to the southeast corner of the existing lot to allow for the parish residence. Also, additional right-of-way would be dedicated along 56 Hwy and onsite easements. Staff finds the final plat consistent with the preliminary plat and both are consistent with the Comprehensive Plan, Main Street Corridor Plan and Land Development Code (LDC). All technical reports were reviewed and accepted. The property owner has requested a credit on the previously paid excise tax on the property that is now being dedicated for road right-of-way.
Commission Discussion

Commissioner Gardenhire asked why the 20’ of right-of-way was necessary.

Ms. Leininger replied the Code requires specific widths for arterial streets so the right-of-way is needed for the possible widening of the road.

Motion made after review of application PP-19-01, a preliminary plat for 7.46 acres located at 555 W. Main Street, and preliminary plat dated January 30, 2019, and staff report dated February 26, 2019, the Planning Commission approves the preliminary plat finding all applicable requirements have been met,

Motion made by Boden and seconded by McNeer.

Motion passed 7-0.

Motion made after review of application FP-19-01, a final plat for 7.46 acres located at 555 W. Main Street, and final plat dated January 30, 2019, and staff report dated February 26, 2019, the Planning Commission approves the application provided the following conditions are met:

1. Prior to the Mayor signing an approved recordable plat, excise tax shall be paid to the City.
2. The construction plans for any utilities, infrastructure, or public facilities shall meet all technical specifications and public improvement plans shall be submitted and approved prior to the release of the plat for recording,

and recommends the Governing Body accept dedication of right-of-way and easements.

Motion made by McNeer and seconded by Boden.

Motion passed 7-0.

Ms. Leininger presented the final request for this property for SP-18-14, a site plan for the construction of a parish residence. It would be located in the southeast corner of the lot and includes 3,108 s.f. of residence with an attached garage along with a 624 s.f. detached garage. The exterior features brick veneer, lap siding and stucco. Parking stalls would be removed to make way for the driveway to the home. Staff finds the use in compliance with the standards of the LDC and is compatible with the church facility and adjacent residential in relation to architecture and design.

Commission Discussion

Commissioner Roberts asked how the community gardens site is to be accessed.

Ms. Leininger referred her to the site plan that shows the new proposed driveway connecting to the existing drive.
Motion made after review of application SP-18-04, a site plan for 555 W. Main Street, and site plan dated February 11, 2018, and staff report dated February 26, 2019, the Planning Commission approves the application, provided the following conditions are met:

1. Rezoning Z-19-01 shall be approved and ordinance published.
2. Final plat FP-19-01 shall be approved and recorded with the Johnson County Records and Tax Administration prior to the release of the building permit

Motion made by Brady and seconded by Boden.

Motion passed 7-0.
PROCESS INFORMATION

Type of Request: Zoning Map Amendment (Rezoning)
Date Received: December 17, 2018

APPLICATION INFORMATION

Applicant: Phelps Engineering, Inc. – Marc McGill
Owner: Roman Catholic Church Archdiocese of Kansas City in Kansas
Parcel ID: CP75500000 0001 and a small portion of CF221426-1017
Location: 555 W. Main Street, Gardner, Kansas 66030

REQUESTED ACTION

The applicant is requesting the rezoning of 7.46 acres at 555 W. Main Street from A (Agriculture) District to R-4 (Mixed Density Neighborhood) District to allow for the expansion of the existing Large Assembly use to add an accessory use, a single-family dwelling, for a parish house.

EXISTING ZONING AND LAND USE

The subject property is currently zoned A (Agriculture) District and is used for a place of worship which would fall into the Large Assembly use group.

SURROUNDING ZONING AND LAND USE

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</table>
EXISTING CONDITIONS

The site is developed with one structure; a church that was constructed in 2003 with an addition built onto the main structure in 2013. Currently the site is used for religious activities.

BACKGROUND / HISTORY

The subject property was annexed into the city under Ordinance 1957 on May 1, 2000. The Planning Commission approved the original church facility on August 26, 2002 (SP-02-10) through a concept plan for the entire property that indicated future additions and development on the subject property, however a rectory building was never depicted on the approved 2002 site plans. In November of 2014 the church submitted a site plan for a 26,698 sq./ft. addition which was approved in December 2014.

CONSISTENCY WITH COMPREHENSIVE PLAN

The subject property is within the planning area for the Gardner Main Street Corridor Plan, within the West Gateway Subarea. This plan calls for the subject property to be Medium-Density Residential uses on the Future Land Use map; the property is indicated with a red star as seen at right.

The applicant wishes to continue the existing Large Assembly (Church) use and add a parish residence as living quarters for their priests. The parish residence is considered an accessory use that is “clearly incidental to and customarily associated with an otherwise permitted or conditionally allowed use” per Section 17.05.040 Accessory Uses of the Gardner Land Development Code. Table 5-1 of the LDC translates future land uses into typically applicable zoning districts (as amended by Ordinance No. 2584); Medium Density Residential is typically applicable to R-2, R-3, and R-4 zoning districts. Of these, only the R-4 (Mixed-Density Neighborhood) District allows...
for the Large Assembly use, as well as being consistent with the Detached House –Suburban building type for the parish residence and also potentially accommodating a future school. The existing zoning of A (Agriculture) District is not consistent with the future land use map of the Comprehensive Plan. By changing the zoning of the subject property from the A to the R-4 District, the property would then be consistent with the Main Street Corridor Plan and allow for the proposed conforming uses.

STAFF ANALYSIS - ZONING MAP AMENDMENT

17.03.030 (B) Review Criteria:

1. The character of the neighborhood, including the design of streets, civic spaces and other open spaces; the scale, pattern and design of buildings; and the operation and uses of land and buildings;

Staff Comment: The general character of the neighborhood includes multi-family residential and some light industrial uses. The property to the south is undeveloped, though it provides access to the community garden which has activity in the spring and summer months. To the north across U.S. 56 there are small industrial businesses and directly adjacent and to the east are the multi-family uses and a city park. The rezoning to the Mixed Density Neighborhood District is compatible with the existing adjacent mixed density residential uses and the public park.

2. The zoning and use of properties nearby, and the compatibility with potential uses in the proposed district with these zoning districts;

Staff Comment: The R-4 District permits a range of residential, civic and institutional uses. The district does not permit retail uses, and only allows service and employment uses involving day care centers and bed and breakfast lodging by conditional use permit. The district does permit light farming. The properties adjacent to the subject property are a mix of light industrial (across the rights-of-way for Warren St. and US-56), duplex, triplex, quadruplex, park and agricultural uses. A Large Assembly use fits in well with the mix, especially being located on an arterial road. If the property would be redeveloped in the future, the property would be appropriately zoned based on the Comprehensive plan and likely to be redeveloped into some type of medium density residential living. The proposed rezoning would be compatible with the surrounding zoning districts and uses.

3. The suitability of the subject property for the uses to which it has been restricted;

Staff Comment: The subject property zoning allows for agricultural uses and some civic and institutional uses. In the previous code, a “church or similar place of worship” was permitted in this district. The Land Development Code permits Small Assembly Use, though this facility is a nonconforming use as a Large Assembly Use. In order for the addition of an accessory use (church rectory), the property must be rezoned to come into compliance with the current code. The property owners have a facility that is roughly 16 years old with the newest investment being in 2014 and future plans for expansion. At this point, the property is unlikely to be redeveloped to the uses permitted in the A District. Additionally, large scale agriculture uses are not compatible with urban uses within a city. The property exists in a transition zone at the edge of the city adjacent to a logistics park in a neighboring jurisdiction. The agriculture district would, in this context, be expected to be challenged in favor of a more intense district in the future. Staff finds that the current zoning is not suitable for the uses to which it has been restricted.

4. The extent to which removal of the restrictions will detrimentally affect nearby property;
Staff Comment: The removal of the restrictions will not detrimentally affect nearby properties as the request is to a compatible zoning district with adjacent properties. The change in zoning will make the property more consistent with the developed and potential uses of the property. The uses permitted in the nearby residential districts are the same or similar to those of the R-4 District.

5. The length of time the subject property has remained vacant as zoned;

Staff Comment: The property was developed with the large assembly buildings starting in the early 2000’s. Prior to the 2000’s the property was associated with an agricultural use to the west.

6. The relative gain to economic development, public health, safety and welfare by the current restrictions on the applicant's property as compared to the hardship imposed by such restrictions upon the property;

Staff Comment: Because of the transitioning context in the area of the subject property, including the transition to large distribution facilities and job center in the neighboring jurisdiction, the limited economic activities to be realized within the A District are likely to be challenged. The relative gain to public welfare would allow for the owner to expand the existing operation on the current site. If the property was to remain zoned A District, the large assembly could not expand and would potentially have to relocate.

7. The recommendations of professional staff;

Staff Comment: Staff recommends approval of the rezoning from A District to R-4 District based on the findings in the staff report.

8. The conformance of the requested change to the Comprehensive Plan, and in particular the relationship of the intent statement for the proposed district and how the specific application furthers that intent statement in relation to the Comprehensive Plan;

Staff Comment: The proposed change is consistent with the Gardner Main Street Corridor Plan which is incorporated by reference into the Comprehensive Plan and the intent statement of the Mixed-Density Neighborhood land use category.

9. The extent to which the proposed use would adversely affect the capacity or safety of any utilities, infrastructure or public services serving the vicinity; and

Staff Comment: The proposed use would not affect the utilities, infrastructure or public services as it is an existing developed site. Minor utility extensions are required but will not adversely impact the infrastructure in the vicinity.

10. Other factors relevant to a particular proposed amendment or other factors which support other adopted policies of the City.

Staff Comment: No other policies or factors apply to this case.

STAFF ANALYSIS – INFRASTRUCTURE / OTHER

Infrastructure for water, sewer, and electric are currently present onsite or nearby and only minor utility extensions are proposed. Additional utility extensions will be required in the future if the applicant follows through with an expansion of the site to include a school. The site currently has access to two roads including U.S. Hwy 56 and W. Warren Street.

ATTACHMENTS

I. Public notice
II. Application

RECOMMENDATION

Staff recommends approval of the proposed rezoning of 555 W. Main Street from A (Agriculture) District to R-4 (Mixed-Density Neighborhood) District.

Recommended Motion:

After review of application Z-18-08, a rezoning for 7.46 acres located at 555 E. Main Street (Tax Id CP75500000 0001 and a portion of CF221426-1017) from A (Agriculture) District to R-4 (Mixed-Density Neighborhood) District, and staff report dated February 26, 2019 the Planning Commission recommends the Governing Body approve the application.
February 5, 2019

Dear Property Owner:

The Gardner Planning Commission will hold their regular meeting on **Tuesday, February 26, 2019, beginning at 7:00 p.m.**, in the **Gardner City Hall, 120 E Main Street**. The following items may be of interest to you:

**Z-18-08**: Hold a public hearing and consider a rezoning for approximately 7.3 acres at 555 W. Main Street from A (Agriculture) District to R-4 (Mixed-Density Neighborhood) District. (Tax ID CP75500000 0001 and a portion of CF221426-1017)

Rezoning requests are considered public hearing items and the public will be given the opportunity to make oral comments on such requests at the meeting. Written comments are welcome and encouraged.

A complete legal description for this property is available at the City of Gardner Business & Economic Development Department at Gardner City Hall, 120 E. Main Street, Monday - Friday from 8:00 a.m. - 5:00 p.m. If you have questions relating to this matter, please contact me at 913-856-0909.

After the Planning Commission makes a recommendation, property owners within 200’ of the subject area, 1000’ in the county, may submit a protest petition against such recommendation. The protest petition must be filed with the City Clerk, within 14 days of the conclusion of the public hearing. For more information, contact the Business & Economic Development Department.

**PLEASE NOTE:** If you have recently transferred ownership of your property in the area of this request, or if such property is under a contract purchase agreement, we ask you to please forward this letter to the new owner or the contract purchaser.

Sincerely,

Michelle Leininger, AICP
Principal Planner

Enclosure
Gardner Planning Commission
Z-18-08: A to R-4
Meeting Date: February 26, 2019
ZONING MAP AMENDMENT (REZONING) APPLICATION

OWNER INFORMATION

Name(s) ____________________________________________ Contact _______________________________________
Address _______________________________________________________
City ______________________________ State _________________ Zip _______________
Phone __________________________ Email ______________________________________

APPLICANT/AGENT INFORMATION

Name(s) ____________________________________________ Contact _______________________________________
Address _______________________________________________________
City ______________________________ State _________________ Zip _______________
Phone __________________________ Email ______________________________________

SITE INFORMATION

Property Address/Location: _____________________________________________
Legal Description (Attach If Necessary) ________________________________________
Total Site Area ______________ Proposed Zoning ______________________________
Present Zoning ______________ Proposed Land Use ____________________________
Present Land Use ______________ Proposed Building Type(s) ______________________

Please indicate a reason for the request:
________________________________________________________________________
________________________________________________________________________

SIGNATURE

I/We, the undersigned am/are the (owner(s)), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for rezoning as indicated above.

Signature(s): ____________________________________________ Date ___________________
________________________________________________________________________ Date ___________________

Pre-App Date ____________ App Date ____________ Fee $500 ____________ File No. ____________

Attachment II

Business & Economic Development Planning Division
120 E. Main St. Gardner, KS 66030
P: 913.856.0913 | F: 913.856.4562
www.gardnerkansas.gov
ZONING MAP AMENDMENT (REZONING) APPLICATION CHECKLIST

APPLICATION SUBMITTAL REQUIREMENTS

Yes ☐ No ☐

1. Complete application packet
2. Application fee
3. Digital copies (PDF) of the completed application and legal description (Word)
4. Sign posting affidavit
5. Preliminary Development Plan application and plans (if rezoning to a planned development)

Please respond to the following statements:

Anticipated relationship of proposed zoning to economic development or public health, safety and welfare:

________________________________________________________________________________________________________
________________________________________________________________________________________________________
________________________________________________________________________________________________________
________________________________________________________________________________________________________
________________________________________________________________________________________________________

Anticipated impact of proposed zoning/use on existing public infrastructure:

________________________________________________________________________________________________________
________________________________________________________________________________________________________
________________________________________________________________________________________________________
________________________________________________________________________________________________________
________________________________________________________________________________________________________

I hereby submit all information required for rezoning application review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted.

________________________________                   _____________________________
Signature of Applicant             Date
OWNER AFFIDAVIT

I/WE ____________________________________________, hereby referred to as the “Undersigned”, being of lawful age, do hereby on this ________ day of _________, 20 __, make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

   See “Exhibit A, Legal Description” attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize ________________________________________ (Herein referred to as “Applicant”), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding ________ (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

   IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

   ____________________________________________  ____________________________________________
   Owner                                                                              Owner

   STATE OF ________________
   COUNTY OF ________________

   The foregoing instrument was acknowledged before me on this ________ day of _________, 20 __, by _____________________________________________.

   My Commission Expires: ________________________________________________
   ____________________________________________
   Notary Public
ZONING MAP AMENDMENT (REZONING)
APPLICATION PROCESS

At Least 41 Days Prior to Meeting
20 Days Prior to Meeting
13 Days Prior to Meeting
4th Tuesday of Month
3rd Monday of Next Month

Pre-application Meeting
- Schedule an appointment prior to submittal.
- Discuss any potential issues and procedural requirements.
- Receive necessary application forms and checklists.
- Determine application deadlines and meeting dates.

Application Submittal
- Submit all required items to City Hall.
- Payment of associated plan review fees.
- Retrieve affidavit and sign to be posted.

Public Notice
- Staff to contact the newspaper for public hearing notice.
- Staff to mail notice to surrounding property owners.
- Applicant to post sign(s) at subject property.

Application Review
- Staff will review and provide comments to applicant for clarification if necessary.

Public Meeting
- Applicant to provide notarized affidavit to Planning Commission Secretary.
- Staff will recommend approval or denial.
- Planning Commission recommends to Governing Body for final decision.
- Applicant presentation (optional).

Final Decision
- Majority vote of approval or denial by Governing Body.
- Ordinance published in newspaper.

* Please refer to the Planning Commission “Schedule and Submittal Deadline” calendar for upcoming submission deadlines and meeting dates.

REVIEW CRITERIA


The rezoning shall be reviewed according to the following criteria:

1. The character of the neighborhood, including the design of streets, civic spaces and other open spaces; the scale, pattern and design of buildings; and the operation and uses of land and buildings;
2. The zoning and use of properties nearby, and the compatibility with potential uses in the proposed district with these zoning districts;
3. The suitability of the subject property for the uses to which it has been restricted;
4. The extent to which removal of the restrictions will detrimentally affect nearby property;
5. The length of time the subject property has remained vacant as zoned;
6. The relative gain to economic development, public health, safety and welfare by the current restrictions on the applicant's property as compared to the hardship imposed by such restrictions upon the property;
7. The recommendations of professional staff;
8. The conformance of the requested change to the Comprehensive Plan, and in particular the relationship of the intent statement for the proposed district and how the specific application furthers that intent statement in relation to the Comprehensive Plan;
9. The extent to which the proposed use would adversely affect the capacity or safety of any utilities, infrastructure or public services serving the vicinity; and
10. Other factors relevant to a particular proposed amendment or other factors which support other adopted policies of the City.
Agenda Item: Accept the dedication of right-of-way and easements on final plat FP-19-01 for Divine Mercy Parish

Strategic Priority: Quality of Life and Asset and infrastructure Management

Department: Business & Economic Development

Planning Commission Recommendation:
After review of application FP-19-01, a final plat for 7.46 acres located at 555 W. Main Street, and final plat dated January 30, 2019, and staff report dated February 26, 2019, the Planning Commission approved the application provided the following conditions are met:

1. Prior to the Mayor signing an approved recordable plat, excise tax shall be paid to the City.
2. The construction plans for any utilities, infrastructure, or public facilities shall meet all technical specifications and public improvement plans shall be submitted and approved prior to the release of the plat for recording.

and recommends the Governing Body accept dedication of right-of-way and easements.

Staff Recommendation:
Staff recommended the Planning Commission approve FP-19-01, a final plat for Divine Mercy Parish, Parcel ID CP75500000 0001 and a small portion of F221426-1017, located at 555 W. Main Street, based on a staff report dated February 26, 2019, finding all applicable requirements have been met.

Background/Description of Item:
The site is developed with one structure; a church that was constructed in 2003 with an addition built onto the main structure in 2015. Currently the site is used for religious activities. The applicant is wishing to construct a parish house for the church’s priest(s) to live onsite with the church facility. In order to do this, a small amount of additional property needs to be added to the currently platted lot. Also, additional easements and road right-of-way are being dedicated. The proposed plat is consistent with the Gardner Main Street Corridor Plan and is in compliance with the requirements of the Land Development Code.

EXCISE TAX
Based on Section 17.04.060 of the Land Development Code, excise tax shall be levied on the portion of this plat that has not been previously platted. During the review process for this final plat, city staff determined that an additional 20 feet of right-of-way is necessary along US-56 Highway for future widening. The church has requested that the city consider allowing a credit from their past payment of excise tax in 2002 for the 20 foot right-of-way area be deducted from the new excise tax that is due on the newly platted portion of the new plat.
This property was platted in 2002 and the church paid an excise tax rate of 0.136 cents per sq. ft. at the time of the platting. If the city had asked for the 20 feet of right-of-way at that time, this right-of-way area would have been exempt from the payment as it is for an arterial road. Right-of-way dedicated for arterial roads is specifically excluded from the excise tax.

The square foot of the area to be dedicated contains 4,868.20 sq ft, multiplied by the excise tax rate of $0.136 per sq ft (2002 excise tax rate) which equals $662.07.

The land being added to the currently platted lot contains 7,678.56 sq ft, multiplied by the excise tax rate of $0.20 per sq ft (current excise tax rate) which equals $1,535.71.

If the city were to credit the previous amount paid on that requested additional right-of-way, the total due would be reduced and the new excise tax due would be $873.64.

Financial Impact:
Levy of excise tax on the newly platted portion, minus the payment of excise tax paid on the road right-of-way for Hwy 56 being dedicated, to total $873.64.

Other Impacts:
None.

Attachments included:
- Vicinity map
- Final plat document
- Excerpt of the minutes from the February 26, 2019 Planning Commission meeting.
- Planning Commission packet

Suggested Motion:
Accept the dedication of right-of-way and easements on the final plat for Divine Mercy Parish.
CALL TO ORDER

The meeting of the Gardner Planning Commission was called to order at 7:00 p.m. on Tuesday, February 26, 2019, by Chairman Austin.

PLEDGE OF ALLEGIANCE

Chairman Austin led the Pledge of Allegiance.

ROLL CALL

Commissioners present:

   Chairman Austin
   Commissioner Boden
   Commissioner Brady
   Commissioner Gardenhire
   Commissioner McNeer
   Commissioner Roberts
   Commissioner Simmons-Lee

Commissioners absent:
   All present.

Staff members present:
   Larry Powell, Director, Business & Economic Development
   Kelly Drake Woodward, Chief Planner
   Michelle Leininger, Principal Planner
   Bob Case, Planner
   Kristie Hatley, Planning Technician
   Ryan Denk, City Attorney

There were approximately 88 members of the public in attendance.

REGULAR AGENDA

1. DIVINE MERCY CHURCH
   Located at 555 W. Main Street
   b. PP-19-01: Consider a single lot plat for 7.48 acres.
   c. FP-19-01: Consider a single lot plat for 7.48 acres
d. **SP-18-14:** Consider a site plan for the construction of a parish residence.

Ms. Michelle Leininger, Principal Planner, presented the rezoning request for the subject property, currently zoned A Agriculture District. The site is on the west side of Gardner, was annexed in 2000, and the original church facility was approved in 2002. An addition was approved in 2014. The surrounding zonings include light industrial to the north, agriculture (County) to the west, multi-family to the east and south. Staff has found this rezoning is consistent with the *Gardner Main Street Corridor Plan*, which identifies the property for medium density residential uses with multi-family and civic uses.

Chairman Austin asked the Commissioners if they had had outside communication with the public on this item. Only Commissioner Brady stated that he had, and Commissioner McNeer stated he was a member of the parish.

**Public Hearing**

Mr. Mark McGill, Phelps Engineering, representing the owner, said they wanted this rezoning and plat approvals to be able to allow their priest an onsite residence to better serve their needs.

**Motion to close the public hearing made by Boden and seconded by Gardenhire.**

**Motion passed 7-0.**

**Commission Discussion**

No discussion.

**Motion made after review of application Z-18-08, a rezoning for 7.46 acres located at 555 E. Main Street (Tax Id CP7550000 0001 and a portion of CF221426-1017) from A (Agriculture) District to R-4 (Mixed-Density Neighborhood) District, and staff report dated February 26, 2019 the Planning Commission recommends the Governing Body approve the application.**

**Motion made by McNeer and seconded by Boden.**

**Motion passed 7-0.**

Ms. Leininger continued her presentation on the preliminary plan, **PP-19-01**, and final plat, **FP-19-01**, for this same property at 555 W. Main St. This request is to add 7,632 s.f. to the southeast corner of the existing lot to allow for the parish residence. Also, additional right-of-way would be dedicated along 56 Hwy and onsite easements. Staff finds the final plat consistent with the preliminary plat and both are consistent with the Comprehensive Plan, Main Street Corridor Plan and Land Development Code (LDC). All technical reports were reviewed and accepted. The property owner has requested a credit on the previously paid excise tax on the property that is now being dedicated for road right-of-way.
Commission Discussion

Commissioner Gardenhire asked why the 20’ of right-of-way was necessary.

Ms. Leininger replied the Code requires specific widths for arterial streets so the right-of-way is needed for the possible widening of the road.

Motion made after review of application PP-19-01, a preliminary plat for 7.46 acres located at 555 W. Main Street, and preliminary plat dated January 30, 2019, and staff report dated February 26, 2019, the Planning Commission approves the preliminary plat finding all applicable requirements have been met,

Motion made by Boden and seconded by McNeer.

Motion passed 7-0.

Motion made after review of application FP-19-01, a final plat for 7.46 acres located at 555 W. Main Street, and final plat dated January 30, 2019, and staff report dated February 26, 2019, the Planning Commission approves the application provided the following conditions are met:

1. Prior to the Mayor signing an approved recordable plat, excise tax shall be paid to the City.
2. The construction plans for any utilities, infrastructure, or public facilities shall meet all technical specifications and public improvement plans shall be submitted and approved prior to the release of the plat for recording,

and recommends the Governing Body accept dedication of right-of-way and easements.

Motion made by McNeer and seconded by Boden.

Motion passed 7-0.

Ms. Leininger presented the final request for this property for SP-18-14, a site plan for the construction of a parish residence. It would be located in the southeast corner of the lot and includes 3,108 s.f. of residence with an attached garage along with a 624 s.f. detached garage. The exterior features brick veneer, lap siding and stucco. Parking stalls would be removed to make way for the driveway to the home. Staff finds the use in compliance with the standards of the LDC and is compatible with the church facility and adjacent residential in relation to architecture and design.

Commission Discussion

Commissioner Roberts asked how the community gardens site is to be accessed.

Ms. Leininger referred her to the site plan that shows the new proposed driveway connecting to the existing drive.
Motion made after review of application SP-18-04, a site plan for 555 W. Main Street, and site plan dated February 11, 2018, and staff report dated February 26, 2019, the Planning Commission approves the application, provided the following conditions are met:

1. Rezoning Z-19-01 shall be approved and ordinance published.
2. Final plat FP-19-01 shall be approved and recorded with the Johnson County Records and Tax Administration prior to the release of the building permit

Motion made by Brady and seconded by Boden.

Motion passed 7-0.
PROCESS INFORMATION
Type of Request: Preliminary and Final Plats
Date Received: January 15, 2019

APPLICATION INFORMATION
Applicant: Phelps Engineering, Inc (Marc McGill)
Owner: Roman Catholic Church Archdiocese of Kansas City in Kansas
Parcel ID: CP75500000 0001 and a small portion of F221426-1017
Location: 555 W. Main Street

REQUESTED ACTION
The applicant requests approval of a preliminary and final plat for Divine Mercy Parish, First Plat to incorporate the previously platted Lot 1, Sacred Heart Church addition to include a 7,632 sf portion of the unplatted parcel to the south.

EXISTING ZONING AND LAND USE
The subject property is currently zoned A (Agriculture) District and is used for a place of worship which would fall into the Large Assembly use group.

SURROUNDING ZONING AND LAND USE

<table>
<thead>
<tr>
<th>Zoning</th>
<th>Use(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>North of subject property</td>
<td></td>
</tr>
<tr>
<td>M-1 (Restricted Industrial) District</td>
<td>Light Industrial and road right-of-way of US Hwy 56</td>
</tr>
<tr>
<td>East of subject property</td>
<td></td>
</tr>
<tr>
<td>R-2 (Two-Family Residential) District</td>
<td>Duplex structures</td>
</tr>
<tr>
<td>R-1 (Single Family Residential) District</td>
<td>Westside Park</td>
</tr>
<tr>
<td>R-5 (Apartment) District</td>
<td>Triplex</td>
</tr>
<tr>
<td>South of subject property</td>
<td></td>
</tr>
<tr>
<td>A (Agriculture) District</td>
<td>Vacant</td>
</tr>
<tr>
<td>West of subject property</td>
<td></td>
</tr>
<tr>
<td>County RUR (Rural, Agricultural uses and single family dwellings) District</td>
<td>Cultivated agriculture land</td>
</tr>
</tbody>
</table>
EXISTING CONDITIONS

The site is developed with one structure; a church that was constructed in 2003 with an addition built onto the main structure in 2013. Currently the site is used for religious activities.

BACKGROUND / HISTORY

The subject property was annexed into the city under Ordinance 1957 on May 1, 2000. The Planning Commission approved the original church facility on August 26, 2002 (SP-02-10) through a concept plan for the entire property that indicated future additions and development on the subject property, however a rectory building was never depicted on the approved 2002 site plans. In November of 2014 the church submitted a site plan for a 26,698 sq./ft. addition which was approved in December 2014.

CONSISTENCY WITH COMPREHENSIVE PLAN

The subject property is within the planning area for the Gardner Main Street Corridor Plan, within the West Gateway Subarea. This plan calls for the subject property to be Medium-Density Residential uses on the Future Land Use map.

Table 5-1 of the Gardner Land Development Code translates future land uses into typically applicable zoning districts. The applicant wishes to continue the existing Large Assembly (Church) and add a parish residence (accessory single-family dwelling, Detached House – Suburban building type) as living quarters for their priest and any visiting priests. The R-4 (Mixed-Density Neighborhood) District allows for the Large Assembly and Household Living uses and is compatible with the Detached House –Suburban building type along with their future plans to build a school. The current and the proposed use are not permitted in the A (Agriculture) District. By changing the zoning of the subject property from the A to the R-4 District, the property would then be consistent with the Main Street Corridor Plan.

STAFF ANALYSIS - PRELIMINARY PLAT

17.03.020 (D1) Review Criteria:

a. The application is in accordance with the Comprehensive Plan and in particular the physical patterns, arrangement of streets, blocks, lots and open spaces, and public realm investments that reflect the principles and concepts of the plan.

Staff Comment: The Gardner Main Street Corridor Plan identifies the property for Medium Density Residential land uses. This lot is an existing parcel which was developed with a large assembly structure. While it is not conducive to the normal arrangement of streets and blocks, it does adhere to the creation of open space and even provides some public art that is reflective of the Comprehensive Plan in particular to the section of public realm investment.
b. Compliance with the requirements of this Land Development Code, and in particular the blocks and lots proposed are capable of meeting all development and site design standards under the existing or proposed zoning.

**Staff Comment:** Additional property along the south side could provide for the continuation of streets from the west off of US 56 if the adjacent agricultural property to the west of the subject parcel ever develops.

c. Any phasing proposed in the application is clearly indicated and demonstrates a logical and coordinated approach to development, including coordination with existing and potential development on adjacent property.

**Staff Comment:** Additional development is planned to occur on the subject parcel in the future that is complimentary to the existing use. There is no indication that future plans will be detrimental to the development of adjacent properties.

d. Any impacts identified by specific studies or technical reports, including a preliminary review of storm water, are mitigated with generally accepted and sound planning, engineering, and urban design solutions that reflect long-term solutions and sound fiscal investments.

**Staff Comment:** All technical reports have been reviewed and have been accepted.

e. The application does not deter any existing or future development on adjacent property from meeting the goals and policies of the Comprehensive Plan.

**Staff Comment:** The development of the subject property does not deter any future development of adjacent property from meeting the goals of the Comprehensive Plan.

f. The design does not impede the construction of anticipated or planned future public infrastructure within the area.

**Staff Comment:** The Applicant is dedicating an additional 20’ of right-of-way for the future expansion of U.S. 56 Highway. The development of this site does not impede the future expansion of infrastructure.

g. The recommendations of professional staff, or any other public entity asked to officially review the plat.

**Staff Comment:** Staff recommends approval of the preliminary plat.

## STAFF ANALYSIS - FINAL PLAT

### 17.03.020 (E1) Review Criteria:

a. The layout and design of the final plat is in substantial compliance with the approved preliminary plat considering the number of lots or parcels; the block layout, street designs and access; the open space systems and civic design elements; the infrastructure systems; or other elements of coordinated developments.

**Staff Comment:** The Final Plat is in substantial compliance with the Preliminary Plat.

b. The construction plans for any utilities, infrastructure or public facilities shall have been found to meet all technical specifications, or final plat approval shall be conditioned on such plans meeting all technical specifications, before the recording of the final plat.
Staff Comment: Public improvement plans shall be submitted and approved prior to the release of the Final Plat for recording at the County (this is a recommended condition of approval). The City is the provider for sanitary sewer, water, stormwater, and electric facilities to this site.

c. The phasing and timing of public improvements ensures construction and performance guarantees.

Staff Comment: There are no additional public improvements that are planned as part of this Final Plat.

d. Any deviations in the final plat from the preliminary plat brings the application in further compliance with the Comprehensive Plan and the purposes and intent of this Code.

Staff Comment: No deviations are requested from the Preliminary Plat.

e. The recommendations of professional staff, or any other public entity asked to officially review the plat.

Staff Comment: Staff recommends approval of the Final Plat and recommends forwarding the plat to the Governing Body for acceptance of the “Dedication of Right-of-Way and Easements”.

EXCISE TAX

The Divine Mercy parish has decided to construct a parish house. This requires the additional platting of property currently owned by the church but that has not been included in previous plats. During the review process for this final plat, city staff determined that an additional 20-foot right-of-way is necessary along US-56 Highway for future widening.

The church has requested that the city consider allowing a credit on their past payment of excise tax in 2002, specifically for the 20 foot right-of-way area, to be deducted from the new excise tax that is due on the newly platted portion of the new plat.

This property was platted in 2002 and the church paid an excise tax rate of .136 cents per sq. ft. at the time of the platting. If the city had asked for the 20 foot of right-of-way at that time, this right-of-way area would have been exempt from the payment as it is for an arterial road. Right-of-way dedicated for arterial roads is specifically excluded from the excise tax.

The sq. ft. of the area to be donated is a trapezoid containing 4,868.20 sq. ft., multiplied by the excise tax rate of .136 per sq. ft. (this is the 2002 excise tax rate) which equals $662.07.

The land being added to the currently platted lot is 48 feet by 159.70 feet or 7,678.56 sq. ft., multiplied by the excise tax rate of 20 cents per sq. ft. (current excise tax rate) which equals $1,535.71.

If the city were to credit the previous amount paid on that requested additional right-of-way, the total due would be reduced and the new excise tax due would be $873.64.

Excise tax computations:

$1,535.71 new excise tax value - $662.07 previously paid value = $873.64 the difference in values.
Only the City Council can adjust the excise tax due or reduce it for additional value offered. In this case, the value of the 20 foot of right-of-way is to be exchanged as a credit to the new excise tax value that is levied on this final plat.

**STAFF ANALYSIS – INFRASTRUCTURE / OTHER**

**ELECTRIC AND SEWER –**
Service lines for both electric and sewer will be provided from the east.

**WATER –**
Water will be extended to the parish from the west. An existing fire line along the east will be extended.

**STORMWATER –**
Public Works department has reviewed the provided stormwater information and has approved the study. The stormwater will flow into an existing junction box at the northwest corner of the parish site and is piped south beyond the parish where it is released onto the southwest corner of the parish site.

**ROADWAY AND VEHICULAR ACCESS –**
Through the plat process the applicant has dedicated additional right-of-way along Hwy 56. No new access or streets will be provided with this site plan.

**ATTACHMENTS**

I. Preliminary plat document  
II. Final plat document  
III. Applications

**RECOMMENDATIONS**

**PRELIMINARY PLAT**
Staff recommends the Planning Commission approve PP-19-01, a preliminary plat for Divine Mercy Parish, Parcel ID CP75500000 0001 and a small portion of F221426-1017, located at 555 W. Main Street, based on a staff report dated February 26, 2019, finding all applicable requirements have been met.

**Recommended Motion:**
After review of application PP-19-01, a preliminary plat for 7.46 acres located at 555 W. Main Street, and preliminary plat dated January 30, 2019, and staff report dated February 26, 2019, the Planning Commission approves the preliminary plat finding all applicable requirements have been met.
FINAL PLAT

Staff recommends the Planning Commission approve FP-19-01, a final plat for Divine Mercy Parish, Parcel ID CP75500000 0001 and a small portion of F221426-1017, located at 555 W. Main Street, based on a staff report dated February 26, 2019, finding all applicable requirements have been met.

Recommended Motion:

After review of application FP-19-01, a final plat for 7.46 acres located at 555 W. Main Street, and final plat dated January 30, 2019, and staff report dated February 26, 2019, the Planning Commission approves the application provided the following conditions are met:

1. Prior to the Mayor signing an approved recordable plat, excise tax shall be paid to the City.
2. The construction plans for any utilities, infrastructure, or public facilities shall meet all technical specifications and public improvement plans shall be submitted and approved prior to the release of the plat for recording.

and recommends the Governing Body accept dedication of right-of-way and easements.
## OWNER INFORMATION

<table>
<thead>
<tr>
<th>Name(s)</th>
<th>Roman Catholic Church Archdiocese of Kansas City in Kansas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact</td>
<td>Fr. John Riley</td>
</tr>
<tr>
<td>Address</td>
<td>12615 Parallel Parkway</td>
</tr>
<tr>
<td>City</td>
<td>Kansas City</td>
</tr>
<tr>
<td>State</td>
<td>Kansas</td>
</tr>
<tr>
<td>Zip</td>
<td>66109</td>
</tr>
<tr>
<td>Phone</td>
<td>913-647-0324</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:fjriley@archckck.org">fjriley@archckck.org</a></td>
</tr>
</tbody>
</table>

## APPLICANT/AGENT INFORMATION

<table>
<thead>
<tr>
<th>Name(s)</th>
<th>Phelps Engineering, Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact</td>
<td>Marc McGill</td>
</tr>
<tr>
<td>Address</td>
<td>1270 N. Winchester</td>
</tr>
<tr>
<td>City</td>
<td>Olathe</td>
</tr>
<tr>
<td>State</td>
<td>Kansas</td>
</tr>
<tr>
<td>Zip</td>
<td>66061</td>
</tr>
<tr>
<td>Phone</td>
<td>913-393-1155</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:mmcgill@phelpsengineering.com">mmcgill@phelpsengineering.com</a></td>
</tr>
</tbody>
</table>

## SITE INFORMATION

<table>
<thead>
<tr>
<th>Property Address/Location</th>
<th>555 W. Main Street, Gardner, KS 66030</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Description</td>
<td>See attached</td>
</tr>
<tr>
<td>Number of Existing Lots</td>
<td>1</td>
</tr>
<tr>
<td>Number of Proposed Lots</td>
<td>1</td>
</tr>
<tr>
<td>Total Site Area</td>
<td>7.47 Acres</td>
</tr>
<tr>
<td>Present Zoning</td>
<td>AG</td>
</tr>
<tr>
<td>Number of Existing Structures</td>
<td></td>
</tr>
<tr>
<td>Number of Proposed Structures</td>
<td></td>
</tr>
<tr>
<td>Present Land Use</td>
<td>Church</td>
</tr>
<tr>
<td>Proposed Street Design Type(s) &amp; Class</td>
<td>N/A</td>
</tr>
<tr>
<td>Proposed Type(s) Open &amp; Civic Space</td>
<td>None</td>
</tr>
<tr>
<td>Proposed Frontage Type(s)</td>
<td>N/A</td>
</tr>
<tr>
<td>Proposed Building Types(s)</td>
<td>Housing residence for priest</td>
</tr>
</tbody>
</table>

## SIGNATURE

I/We, the undersigned am/are the (owner(s)) (duly authorized agent) (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for preliminary plat as indicated above.

Signature(s): **Marc McGill**  
Date: **1-15-19**
PRELIMINARY PLAT APPLICATION CHECKLIST

APPLICATION SUBMITTAL REQUIREMENTS

Yes ☑ No ☐

1. Complete application packet ☑
2. Application fee ☑
3. 10 complete sets of plans printed ☑
4. Digital copies (PDF) of the completed application, plans, and legal description ☑
5. 1 copy of existing covenants and restrictions applicable to the development, if any (reference book and page).

6. Letter of intent as to whether a Homeowners Association will be created and if any covenants and restrictions are proposed by the subdivider.

7. Preliminary Floodplain modeling using HEC-RAS model provided by the City if encroachment is proposed within a FEMA or Shaded Zone X 100-year floodplain. (Contact City Engineer to obtain model and requirements).

8. Preliminary Stormwater Management Plan (2 printed and 1 digital copy)  


PRELIMINARY PLAT REQUIREMENTS

☑ ☐ ☐

1. Name of subdivision (unique and numerically consistent and the words “PRELIMINARY PLAT,” prominently displayed as the title.)

☐ ☑ ☐

2. Names, addresses, and phone numbers of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).

☑ ☑ ☐

3. Date of preparation of preliminary plat and/or revisions.

☑ ☑ ☐

4. Vicinity map (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)

☑ ☐ ☐

5. A legal boundary description with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres.

☑ ☐ ☐

6. Location of monuments, shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.

☐ ☑ ☐

7. Boundary lines of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).

☑ ☐ ☐

8. All public streets within the plat conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.

☑ ☐ ☐

9. Building setback lines along public and private streets with dimensions in feet.
10. **Platted and unplatted land** adjacent to the plat boundary. Include identification of adjacent platted subdivisions and unplatted tracts with external bearings and distances of adjacent plats and property owners for a distance of not less than 400 feet. Include original plat names if replatted. Exterior dimensions shall coincide with adjoining plats unless differences are noted.

11. **Lots and tracts** identified clearly, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.

12. **Note on plat** indicating intended ownership, purpose, and maintenance responsibilities for any parcels labeled as tracts.

13. **Existing streets, driveways, trails, and sidewalks** which abut, touch upon or extend through the subdivision and/or streets located within 400 feet of the plat. The description shall include types and widths of existing surfaces, right-of-way widths, and dimensions of any bridges and culverts, access points and signals.

14. **Location of existing open space, alleys, parks, streams, ponds, vegetation**, or other similar features within plat, and whether they are to be retained or removed.

15. **Location of existing buildings** and structures within 200 feet of the plat.

16. **Existing utilities**, including sanitary sewer, force main, water main, gas mains, culverts and storm sewer pipe, street lights, electric conduits, and invert elevations of sewers at points of proposed connection.

17. **Topography** of the area contained in the plat and within 20 feet of the plat boundary shown by 2-foot contour intervals and proposed preliminary grading. Contour lines shall be legible but not overpowering.

18. **Proposed street network**, including right-of-way, bearings, tangents, and horizontal and vertical curvature data (use of flow direction arrows and percent of grade is permitted at preliminary for vertical curve data, unless otherwise specified/required) along the centerline of each street.

19. **Proposed sidewalks** and/or trail locations including proposed widths.

20. **Proposed utilities**, including approximate location of sanitary sewer, water main, street lights, storm sewer, detention and treatment facilities.

21. **Existing and proposed easements** with dimensions. Existing easements shall be labeled with book and page number.

22. **Any area within a federally designated floodplain.** Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).

23. **Stream corridor boundary** and dimensions.

24. **Intersection site distance analysis.**

25. **Copies of all pertinent exception documents**, or a copy of a current American Land Title Association (ALTA) survey, or both.
Written explanations for any items not checked or checked "No" (attach additional sheets, if necessary):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

I hereby submit all information required for preliminary plat review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted. By signing this application, I acknowledge that all public streets and public infrastructure within the plat shall conform to the applicable minimum design standards set forth in the Gardner Municipal Code and the Technical Specifications.

[Signature]
Signature of Applicant

1/15/19
Date
OWNER INFORMATION

Name(s) Roman Catholic Church Archdiocese of Kansas City in Kansas
Contact Fr. John Riley
Address 12615 Parallel Parkway
City Kansas City State Kansas Zip 66109
Phone 913-647-0324 Email frilay@archkck.org

APPLICANT/AGENT INFORMATION

Name(s) Phelps Engineering, Inc.
Contact Marc McGill
Address 1270 N. Winchester
City Olathe State Kansas Zip 66061
Phone 913-383-1155 Email mmcgill@phelpsengineering.com

SITE INFORMATION

Property Address/Location 555 W. Main Street, Gardner, KS 66030
Legal Description (Attach If Necessary) See attached
Number of Existing Lots 1 Number of Proposed Lots 1
Total Site Area 7.47 Acres Present Zoning AG
Number of Existing Structures 1 Present Land Use Church
Proposed Street Design Type(s) & Class N/A
Proposed Type(s) Open & Civic Space None
Proposed Frontage Type(s) N/A
Proposed Building Types(s) Housing residence for priest

SIGNATURE

I/We, the undersigned am/are the (owner(s)) (duly authorized agent) (Circle One) of the aforementioned property. By execution of my/our signature, I/We do hereby officially apply for final plat as indicated above.

Signature(s): Marc McGill
Date 1-16-19
FINAL PLAT
APPLICATION CHECKLIST

APPLICATION SUBMITTAL REQUIREMENTS

Yes  No
1. Complete application packet  
2. Application fee  
3. 10 complete sets of plans printed and folded  
4. Digital copies (PDF) of the completed application, plans, and legal description  
5. 1 copy of existing covenants and restrictions applicable to the development, if any (reference book and page).  
6. Letter of intent as to whether a Homeowners Association will be created and if any covenants and restrictions are proposed by the subdivider, if not submitted with the Preliminary Plat. Covenants and restrictions, as well as evidence of the establishment of the agency for the ownership and maintenance of any common space, shall be submitted to the City for review and approval prior to recording of the plat.  
7. Final Floodplain modeling using HEC-RAS model provided by the City if encroachment is proposed within a FEMA or Shaded Zone X 100-year floodplain. (Contact City Engineer to obtain model and requirements).  
9. Final Traffic Impact Study (TIS) as required by the Access Management Code. (2 printed and 1 digital copy)  
10. Development Agreement, if required  
11. Street tree plan

FINAL PLAT DOCUMENT REQUIREMENTS

Yes  No
1. Name of subdivision (unique and numerically consistent and the words “FINAL PLAT,” prominently displayed as the title.)  
2. Names, addresses, and phone numbers of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).  
3. Date of preparation and/or revisions.  
4. Vicinity map (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)  
5. A legal boundary description with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres.
6. Provide the following sentence after the Legal Description "The undersigned proprietors of the above described tract of land have caused the same to be subdivided in the accompanying plat, which subdivision and plat shall hereafter be known as "Plat Name".

7. Location of monuments, shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.

8. Boundary lines of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).

9. Accurate dimensions for all lines, angles, and curves, used to describe boundaries, streets, easements and areas to be reserved for public use. Data for all curves shall include radius, arc length, chord length, and central angle.

10. Platted and unplatted land adjacent to the plat boundary. Include identification of adjacent platted subdivisions and unplatted tracts with external bearings and distances of adjacent plats and property owners for a distance of not less than 400 feet. Include original plat names if replatted. Exterior dimensions shall coincide with adjoining plats unless differences are noted.

11. Blocks, lots and tracts identified clearly, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.

12. Note on plat indicating intended ownership, purpose, and maintenance responsibilities for any parcels labeled as tracts.

13. Existing and proposed easements with dimensions. Existing easements shall be labeled with book and page number.

14. Any area within a federally designated floodplain. Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).

15. Stream corridor boundary and dimensions.


17. Endorsement of the Planning Commission as evidenced by the signature of its Chairperson. Endorsement line shall contain the printed name of the Chairperson and their title.

18. Acceptance of Dedication by the Governing Body, as indicated by the signature of the Mayor and attested by the City Clerk. The Endorsement Line shall contain the printed name and title of the person signing.

19. Signature of Owner, properly attested.
20. Yes. A dated signature and seal of the licensed Land Surveyor responsible for the survey and a note stating: "This survey conforms to the Kansas Minimum Standards for Boundary Surveys."

21. No. Copies of all pertinent exception documents, or a copy of a current American Land Title Association (ALTA) survey, or both.

22. Yes. Calculation documents containing the following data: coordinates of the plat boundary and the unadjusted error of closure of the field traverse that established the plat.

23. Yes. A statement on the plat concerning prior easement rights as follows: The undersigned proprietor of said property shown on this plat does hereby dedicate for public use and public ways and thoroughfares, all parcels and parts of land indicated on said plat as streets, terraces, places, roads, drives, lanes, parkways, avenues and alleys not heretofore dedicated. Where prior easement rights have been granted to any person, utility or corporation on said parts of the land so dedicated, and any pipes, lines, poles and wires, conduits, ducts or cables heretofore installed thereupon and therein are required to be relocated, in accordance with proposed improvements as now set forth, the undersigned proprietor hereby absolves and agrees to indemnify the City from any expense incident to the relocation of any such existing utility installations within said prior easement.

24. Yes. A statement on the plat concerning utility easements as follows: An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction or maintenance and use of conduits, water, gas, sewer pipes, poles, wires, drainage facilities, irrigation systems, ducts and cables, and similar facilities, upon, over and under these areas outlined and designated on this plat as "Utility Easement" or "U/E" is hereby granted to the City with subordinate use of the same by other governmental entities and public utilities as may be authorized by state law to use such easement for said purposes. Utility easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of public utilities located within the easement.

25. No. A statement on the plat concerning drainage easements as follows: An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction, maintenance or use of conduits, surface drainage facilities, subsurface drainage facilities, and similar facilities, upon, over and through those areas outlined and designated on this plat as "Drainage Easement" or "D/E" is hereby granted to the City. Drainage easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of storm drainage facilities.

26. Yes. Certification of dedication of all streets, highways and other rights-of-way or parcels for public park or other public use, signed by the owners and all other parties who have a mortgage or lien interest in the property.
Written explanations for any items not checked or checked "No" (attach additional sheets, if necessary):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

I hereby submit all information required for final plat review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted. By signing this application, I acknowledge that all public streets and public infrastructure within the plat shall conform to the applicable minimum design standards set forth in the Gardner Municipal Code and the Technical Specifications.

Marc W. Stall
Signature of Applicant

1/15/19
Date
Council Action Form

Committee Recommendation No. 3

Meeting Date: March 18, 2019

Staff Contact: Larry Powell, Director Business & Economic Development

Agenda Item: Consider an ordinance changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas and the associated preliminary development plan PDP-19-01 for Waverly Plaza

Strategic Priority: Economic Development, Quality of Life, and Asset and Infrastructure Management

Department: Business & Economic Development

Planning Commission Recommendation:
After review of applications Z-19-01 and PDP-19-01 for Waverly Plaza, a rezoning and associated preliminary development plan for property located at the northeast corner of Waverly Road and W. Santa Fe Street (Tax IDs CF221423-2004, CF221423-2001, CF221423-2011) and preliminary development plan document dated February 26, 2019, and staff report dated February 26, 2019, the Planning Commission recommends the Governing Body approve the applications subject to the following conditions:

1. Remove the greyed fence off the property of the proposed Tract A shown on page C1 and C4.
2. Update the on-street parking count on the first parking block from the north, on the east side of Laurel St from 9 to 7 and then update the parking data on the page.
3. Update the parking count of the center east parking block along the drive on the east side of the property from 10 to 9 and then update the parking data on the page.
4. Revise any sidewalks along any parking with vehicle overhangs to be a minimum of 8' wide in the residential area.
5. Revise sidewalks which are primary routes between the street or parking area to the building entrance to be a minimum of 8' wide.

Staff Recommendation:
Staff recommended that the Planning Commission approve rezoning Z-19-01 and preliminary development plan PDP-19-01 for Waverly Plaza and recommended forwarding the application to the Governing Body with the conditions outlined below:

1. Remove the greyed fence off the property of the proposed Tract A shown on page C1 and C4.
2. Update the on-street parking count on the first parking block from the north, on the east side of Laurel St from 9 to 7 and then update the parking data on the page.
3. Update the parking count of the center east parking block along the drive on the east side of the property from 10 to 9 and then update the parking data on the page.
4. Revise any sidewalks along any parking with vehicle overhangs to be a minimum of 8' wide in the residential area.
5. Revise sidewalks which are primary routes between the street or parking area to the building entrance to be a minimum of 8' wide.
Background/Description of Item:
In May of 2005, approximately 42 acres was rezoned to RP-2, Planned Two Family Residential District and CP-2, Planned General Business District, and an associated preliminary development plan for a larger area which is called Waverly Pointe was approved. In 2007, a revision to the zoning from RP-2 to RP-3 (Planned Garden Apartment District) to allow for townhomes on the development plan was approved. In 2014, revisions to the RP-3 portion of the development plan to show the intention to split the townhomes with a small amount of land around the units were approved for The Reserve at Waverly Pointe.

To date the commercial corner remains undeveloped, and the residential to the north of the commercial along with one lot to the east are undeveloped. The property to the north is now owned by the school district and those approximately 91 originally planned units will not be constructed.

After public notice was posted on the subject property, some nearby property owners and neighborhood associations voiced their concerns regarding the proposed rezoning and project. Staff facilitated a meeting on Wednesday, February 13, 2019 at the Senior Center with the developer, the engineer and the architect on the project and sent meeting invitations to those within 200' of the property boundary. Approximately 20 citizens attended. Questions regarding traffic, the clubhouse and pool location and details, apartment design and rents, waste collection, stormwater, streets and street improvements, parking, airport review, project timeline, property management, tax incentives and potential impact on property values were discussed. Some residents speculated about the potential impact to school boundaries. Many written comments were sent for the Planning Commission meeting, and are included in the Planning Commission packet attachment.

Staff finds that the proposed rezoning is generally consistent with the Comprehensive Plan and the change is compatible with the adjacent zoning districts and land uses. The property is less suitable for the uses to which it is restricted today as the property owner has not been able to secure tenants for the commercial areas and the property has remained vacant since it was zoned in 2005. Demand for diverse residential developments has increased. Additionally, the changes in the zoning will allow a better transition between the commercial and existing multi-family residential, the rezoning would be an economic gain to allow for new development that meets current needs for the community, and the development provides for the installation of additional streets out of the existing neighborhood which improves public safety.

A planned development application is a type of zoning map amendment, and must meet all of the procedures and requirements of that process, but it also accommodates specific master development plan. Approval of a development plan for planned zoning shall be considered a rezoning of the property. A preliminary development plan represents an overall plan for a development to include the specific land uses and their density/intensity, block and lot patterns, building types and scale, design characteristics, and other building and site design elements that reflect the proposed character of the plan. A final development plan provides specific details of a portion or the entirety of the approved preliminary development plan. The final development plan including elevations, building materials, landscaping and other specific details has not been submitted at this time so these details are not available.

The preliminary development plan has two distinct areas, the commercial and the multi-family areas. The proposed uses and building types are all permitted within the base zoning district and
the standards have been met regarding these uses. Deviations and departures from the standards associated with all zoning districts may be considered through planned zoning and subsequently approved provided they are based upon a comprehensive and well-integrated development plan for the area. Nine deviations were requested with this project, with two being related to accessory structures (proposed garages on the residential portion), three related to frontage types in relation to street types in order to maintain continuity throughout the site, two related to sidewalk widths, and two related to required parking. Staff has found that the deviations that have been recommended for approval are based upon a comprehensive and well-integrated development plan for the area, with the exception of the sidewalk width, which is addressed in the conditions of approval.

On the day of the meeting, the applicant, in order to help address some public comments, revised the plans showing the intent to dedicate a portion of the eastern lot across N. Laurel Street to the adjacent neighborhood association for open space. This space will allow for the adjacent property owners to access the rear of their existing fences and access the existing open space for the townhomes.

At the February 26, 2019 Planning Commission meeting, after holding a public hearing, the Commission recommended the Governing Body approve the rezoning and preliminary development plan for Waverly Plaza with conditions by a vote of 4-3. Ten people spoke, either representing themselves or a group, regarding this item.

**Governing Body Action Options:**
When the Planning Commission submits a recommendation of approval or disapproval of such amendment and the reasons therefor, the Governing Body may:

1. Adopt such recommendation by ordinance,
2. Override the Planning Commission's recommendation by at least a two-thirds vote of the membership of the Governing Body, or
3. Return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove.

**Financial Impact:**
None

**Other Impacts:**
None

**Attachments included:**
- Ordinance
- Vicinity Map
- Preliminary development plan document-revised recommended approval by PC
- Excerpt of the minutes from the February 26, 2019 Planning Commission meeting.
- Planning Commission packet

**Suggested Motion:**
Approve Ordinance 2606, an ordinance changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the
ORDINANCE NO. 2606
AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF GARDNER, KANSAS, UNDER THE AUTHORITY GRANTED BY TITLE 17 OF THE MUNICIPAL CODE OF THE CITY OF GARDNER, KANSAS;

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

SECTION ONE: That having received a recommendation from the Planning Commission on February 26, 2019, and proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Gardner, Kansas Land Development Code, the zoning classification or districts of the lands legally described hereby are changed as follows:

The following described properties shall hereafter have a zoning classification of RP-3 (Planned Garden Apartment) District and CP-2 (Planned General Business) District, in accordance with preliminary development plan PDP-19-01 Waverly Plaza dated 2/26/19 and subject to the following conditions:

1. Remove the greyed fence off the property of the proposed Tract A shown on page C1 and C4.
2. Update the on-street parking count on the first parking block from the north, on the east side of Laurel St from 9 to 7 and then update the parking data on the page.
3. Update the parking count of the center east parking block along the drive on the east side of the property from 10 to 9 and then update the parking data on the page.
4. Revise any sidewalks along any parking with vehicle overhangs to be a minimum of 8' wide in the residential area.
5. Revise sidewalks which are primary routes between the street or parking area to the building entrance to be a minimum of 8' wide.

CASE NO. Z-19-01(PDP-19-01)
Rezoning from CP-2 (Planned General Business) District to CP-2 (Planned General Business):

Legal Description:
All that part of the Southwest Quarter of Section 23, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Southwest corner of the Southwest Quarter of said Section 23; thence N 1°53'36" W, along the West line of the Southwest Quarter of said Section 23, a distance of 635.92 feet; thence N 88°06'24" E, a distance of 50.00 feet; thence Easterly on a curve to the left, said curve being tangent to the last described course and having a radius of 470.00 feet, an arc distance of 92.75 feet; thence N 76°48'00" E, a distance of 169.86 feet; thence Easterly on a curve to the right, said curve being tangent to the last described course and having a radius of 455.00 feet, an arc distance of 89.74 feet; thence N 88°06'00" E, a distance of 148.13 feet; thence S 1°53'36" E, a distance of 686.37 feet to a point on the South line of the Southwest Quarter of said Section 23; thence S 88°01'15" W, along the South line of the Southwest Quarter of said Section 23, a distance of 546.00 feet to the point of beginning, containing 8.3440 acres, more or less.

Rezoning from CP-2 (Planned General Business) District to RP-3 (Garden Apartment) District:
Legal Description:
All that part of the Southwest Quarter of Section 23, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Southwest corner of the Southwest Quarter of said Section 23; thence N 88°01'15" E, along the South line of the Southwest Quarter of said Section 23, a distance of 546.00 feet to the point of beginning; thence N 1°53'36" W, a distance of 681.37 feet; thence N 88°06'00" E, a distance of 182.98 feet; thence Easterly on a curve to the right, said curve being tangent to the last described course and having a radius of 400.00 feet, an arc distance of 325.33 feet; thence S 45°18'00" E, a distance of 22.00 feet; thence Southerly on a curve to the left said curve having an initial tangent bearing of S 44°42'00" W and a radius of 200.00 feet, an arc distance of 162.94 feet; thence S 1°58'45" E, a distance of 394.04 feet to a point on the South line of the Southwest Quarter of said Section 23; thence S 88°01'15" W, along the South line of the Southwest Quarter of said Section 23, a distance of 426.77 feet to the point of beginning, containing 6.6289 acres, more or less.

Rezoning from RP-3 (Planned Garden Apartment) District and RP-3 (Planned Garden Apartment) District:

Legal Description:
All that part of the Southwest Quarter of Section 23, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, being more particularly described as follows:

Commmencing at the Southwest corner of the Southwest quarter of said Section 23; thence N 88°01'15" E, along the South line of the Southwest quarter of said Section 23, a distance of 1002.77 feet to the Southwest plat corner of The Reserve at Waverly Pointe, Ninth Plat, a platted subdivision of land in the City of Gardner, Johnson County, Kansas; thence N 1°58'45" W, along the West plat line of said The Reserve at Waverly Pointe, Ninth Plat and along the Westerly plat line of The Reserve at Waverly Pointe, Fourteenth Plat, a platted subdivision of land in the City of Gardner, Johnson County, Kansas, a distance of 298.01 feet to the Northwest plat corner of said The Reserve at Waverly Pointe, Ninth Plat, said point also being the point of beginning; thence N 6°39'44" W, a distance of 61.25 feet; thence N 1°58'45" W, a distance of 34.99 feet; thence Northerly on a curve to the right, said curve being tangent to the last described course and having a radius of 175.00 feet, an arc distance of 142.57 feet; thence N 44°42'00" E, a distance of 29.99 feet to the West-most plat corner of The Reserve at Waverly Pointe, Eighth Plat, a platted subdivision of land in the City of Gardner, Johnson County, Kansas; thence S 53°05'33" E, along the Southwesterly plat line of said The Reserve at Waverly Pointe, Eighth Plat, a distance of 259.69 feet to an angle point on the Northerly plat line of The Reserve at Waverly Pointe, Eleventh Plat, a platted subdivision of land in the City of Gardner, Johnson County, Kansas; thence along the Northerly plat line of said The Reserve at Waverly Pointe, Ninth Plat and the Northerly plat line of said The Reserve at Waverly Pointe, Eleventh Plat and also along the Northerly plat line of The Reserve at Waverly Pointe, Fifteenth Plat, a platted subdivision of land in the City of Gardner, Johnson County, Kansas, for the following three (3) courses; thence S 86°15'48" W, a distance of 25.66 feet; thence S 70°42'18" W, a distance of 183.20 feet; thence S 68°47'47" W, a distance of 77.68 feet to the point of beginning, containing 0.8181 acres, more or less.

SECTION TWO: That upon the taking effect of this Ordinance, the above zoning changes shall be incorporated and shown on the Zoning District Map previously adopted by reference, and said
Zoning District Map is hereby reincorporated as a part of the Land Development Code as amended.

**SECTION THREE**: That this Ordinance shall take effect and be in force from and after its adoption by the Governing Body and publication in the official City Newspaper.

PASSED by the Governing Body this 18th day of March, 2019.

SIGNED by the Mayor this 18th day of March, 2019.

CITY OF GARDNER, KANSAS

(Seal)

______________________________
Steve Shute, Mayor

Attest:

______________________________
Amy Nasta, City Clerk

Approved as to form:

______________________________
Ryan B. Denk, City Attorney

(Case No. Z-19-01(PDP-19-01))
Gardner City Council
Waverly Plaza
Meeting Date: March 18, 2019
CALL TO ORDER

The meeting of the Gardner Planning Commission was called to order at 7:00 p.m. on Tuesday, February 26, 2019, by Chairman Austin.

PLEDGE OF ALLEGIANCE

Chairman Austin led the Pledge of Allegiance.

ROLL CALL

Commissioners present:

   Chairman Austin
   Commissioner Boden
   Commissioner Brady
   Commissioner Gardenhire
   Commissioner McNeer
   Commissioner Roberts
   Commissioner Simmons-Lee

Commissioners absent:
   All present.

Staff members present:
   Larry Powell, Director, Business & Economic Development
   Kelly Drake Woodward, Chief Planner
   Michelle Leininger, Principal Planner
   Bob Case, Planner
   Kristie Hatley, Planning Technician
   Ryan Denk, City Attorney

There were approximately 88 members of the public in attendance.

REGULAR AGENDA

2. Waverly Plaza
   Located at the northeast corner of W. Santa Fe Street and Waverly Road
   a. Z-19-01(PDP-19-01): Hold a public hearing and consider a rezoning for approximately 13.10 acres from CP-2 (Planned General Business) and RP-3 (Planned Garden Apartment) Districts to CP-2 (Planned General Business) and
RP-3 (Planned Garden Apartment) Districts and an associated preliminary development plan for Waverly Plaza.

b. **PP-19-02**: Consider a preliminary plat for a five lot, commercial and residential subdivision.

Ms. Michelle Leininger, Principal Planner, presented the rezoning request for the subject property. Already zoned CP-2 and RP-3, the boundaries of the two districts within the property have been shifted towards the west. The rezoning is consistent with the Comprehensive Plan that is used by the City as a general guide. Land to the north is owned by the school district and will not be developed as multi-family although zoned for that use. The zoning is compatible and in character with the neighborhood and provides appropriate transitions from commercial to higher density multi-family to lower density multi-family to single family. The site is suitable for the uses for which it has been restricted though potentially no longer feasible per market indications. The parcel was originally identified as all commercial, however the applicant was unsuccessful at securing tenants for the proposed spaces. The rezoning will not detrimentally affect nearby property in that it is a reallocation of existing zoning districts and the potential uses will not adversely affect the capacity or safety of utilities, infrastructure or public services. The applicant will build two new streets, Washington St. and the continuation of N. Laurel St., and the City is already proceeding with plans to reconstruct W. Santa Fe St. from the split from 56 Hwy west to the intersection of Waverly Rd. Utility upgrades will also be made. Additional public infrastructure upgrades are currently being engineered from Waverly Rd. just south of that intersection, north to Madison St. and possibly beyond.

The preliminary development plan was approved in 2007 with 130 single family lots, 158 multi-family units in the form of townhomes, 144,700 s.f. of retail and office space, a pool/recreation area, and stormwater detention. A 2014 revision to the townhouse area showed future lot lines for the splitting of townhomes and open space. The townhomes were split and each had property associated with it. Tracts owned by the HOA as open space were also shown. This new plan shows 5 commercial buildings, five 3-story apartment buildings and 5 garages, and a clubhouse/pool area. On-street parking will be provided along Laurel and Washington Streets as well as in the three on-site parking lots. There is approximately 60,000 s.f. of retail space with access from W. Santa Fe St., Waverly Rd and Washington St. The access located on W. Santa Fe St. is shared with the multi-family development. The plan includes sidewalks throughout the site connecting to the multi-family area and access to the future trail. The City will be constructing 10’ wide recreational trails along the east side of Waverly Rd. and the north side of W. Santa Fe St. This design allows one to reside, shop and eat within the development without the use of a car. The apartments contain 144 total units, a pool and clubhouse area, and the 5 garage structures; all connected through sidewalks. Approximately 60 on-street parking stalls are planned and the apartment buildings will have secured access at the doors. The luxury apartments will have high-end fixtures and amenities. The pool area includes lush landscape surrounding it.

Staff hosted and moderated a neighborhood meeting for adjacent property owners to give the applicant/developer and interested participants the opportunity to ask questions and voice concerns. The biggest concern heard by staff was the clubhouse/pool location. The applicant has now proposed to divide Tract A, the pool and clubhouse location, into Tracts A1 and A2. Tract A1 would contain the pool and clubhouse for the
new development, and Tract A2 would contain the rear eastern corner of the parcel along with a 5' wide strip running parallel to the south property line. The developer proposed to dedicate Tract A2 to the HOA of the adjacent townhomes for their community’s use. The townhomes that back up to this south property line have existing fences with gates along the back property line, anticipating that the area would be left as open space for the townhome development. The applicant is providing the 5’ to provide access to the townhome open area to be part of their open space. Tract A1 would be heavily landscaped to aid as a noise buffer and provide pool privacy.

The preliminary development plan findings show this could not be accomplished through the strict application of the base zoning district mostly due to the accessory structure regulations that are aimed more at single-family zoning. Staff will be looking at those regulations for a future Code revision. The proposed plan reflects generally accepted and sound planning and urban design principles with respect to applying the Comprehensive Plan, for example, the development provides for transitions of varying intensity from commercial to residential uses. The applicant included 9 deviation requests:

- Deviations 1 & 2: Section 17.05.020.C.3a and 17.05.020.C.3f General Zoning Standard, Accessory Buildings. These codes are more intended for single-family residential uses. Staff recognizes this and supports these deviations to allow enclosed parking for the residents of the apartments.
- Deviations 3, 4 & 5: Section 17.07.050.B. Frontage Design, Applicability and Section 17.07.040 Specific Building Type Standards, Small Civic. The applicant has asked to maintain the same frontage type (Buffer Edge) throughout the development for streetscape consistency although the street types differ within the development. Staff supports these buffer deviations.
- Deviation 6: Section 17.09.020.C.2 Block and Lot Access, Sidewalks. The standard is 8’ wide sidewalks abutting parking stalls, allowing for vehicular overhang of 2’ and 6’ for pedestrian use. The request for 6’ wide sidewalks is not supported by staff. This is to be a recommended condition of approval.
- Deviation 7: Section 17.09.020.C2 Block and Lot Access, Sidewalks. This standard applies to a primary route between the street or parking to a building. The minimum is 8’ wide, the applicant has requested 5’-6’ wide. Staff feels this is insufficient and recommends a minimum of 8’ wide. This is to be a recommended condition of approval.
- Deviation 8: Section 17.09.030.C2 Required Parking, Parking Reductions. All on-street parking within 600’ of any lot frontage may count towards the parking requirement at a rate of one space for every three on-street spaces. The applicant has proposed 70 on-street parking stalls and staff supports this deviation.
- Deviation 9: Section 17.09.030.E Required Parking, Bicycle Parking. Staff found the standard of 1 bicycle parking space per dwelling unit excessive due to the garage spaces available as well as the ability for residents to store their bicycle within their apartment. Thirty outside spaces in addition to garage spaces have been proposed and staff supports this deviation.

Ms. Leininger concluded with the staff recommendation of approval of this rezoning and preliminary development plan for Waverly Plaza with the conditions included in the motion.
Public Hearing

Chairman Austin asked if any of the Commissioners had any ex parte discussion with the public regarding this project. Commissioner McNeer said he was involved in the sale and development of the first two plats of single-family in Waverly but has had no further contact in the past 7 years. All commissioners stated they had had no contact.

Mr. Phillip DiVilbiss, owner and developer, stated he developed only beautiful properties and tried to build things so nice there was no competition. He owned the property for 12 years and had opportunities to develop projects not in the keeping of what people wanted when they talked about what was desired there. He said the site was planned for a grocery store and the City had a study done and it was decided Price Chopper would build a new store instead near its current location. He then came up with a plan for 220 apartments but it was not as livable as he wanted it to be so one building was removed from the plan. The remaining buildings were reduced from 36 down to 24 units each with added grassed areas and sidewalks for a more enjoyable place to live. There is contention among the neighbors as he noticed the “Save our Yards” signs. He said the townhome owners whose fenced backyards are adjacent to this property were told by the previous developer that they would have access to the land in their backyards. He said he had no idea about that and when the land became available, it was open to anybody, and he bought it. He decided that was where he would put the clubhouse to allow for more green space for the apartments. After listening to these homeowners, in the past 24 hours, he decided to fence the pool area but allow the townhome owners access onto his land to gain access to the green space.

He continued to say he had an offer on the larger, 15 acre tract to put a diesel engine repair shop and would have netted more money than he could make in his lifetime. He decided it was not what he wanted to do because he wanted something attractive and beneficial to the whole community. He stated the public would not be able to use Washington and Laurel Streets if he built them as private streets but was instead making them public streets. The previous developer had no money to build the planned street. Currently, Waverly Pointe has one vehicular access point, and with the construction of Laurel St. on his property, they could get out onto Waverly Rd. They would also have sidewalks along 175th St. for access to schools. He was proposing to deed the land directly behind the townhomes abutting his property (Tract A2) to the townhome HOA so they can access and use their green space.

Ms. Diane Owen, 131 N. Pear St, has lived in Waverly Pointe since 2009 and is president of the Waverly Pointe Master Homes Association. The neighborhood met several times to discuss their concerns. They welcome the promised retail but oppose the rezoning and did not want apartments west of their neighborhood. Their concerns were increased traffic, parking issues and declining property values. Madison Elementary was over capacity so any increase would push other developments west of Waverly Rd. into school district boundary changes. She cited a market analysis from 2018 on the Gardner website. She stated the rate of renter occupied growth was greater in Gardner than in Johnson County. Gardner was creating a “pit stop atmosphere” with young families staying long enough until their financial situations increase and they are forced to leave the City for better housing opportunities. The constant rentals decreases the resale value across the City as a whole. She cited a similar apartment complex in Lenexa as
comparison. She said their concerns were laughed at and mocked on the last two online City Council meetings. She stated they had come together as a neighborhood over the years to clean up and maintain their HOA financially and organizationally. They take the utmost pride in their homes and community, keeping it safe, clean and uniform. The pool, park and clubhouse were the biggest assets of their community and the addition of 144 rental units without direct access to the school would increase the foot traffic through their neighborhood and potentially add to their liability. She asked the Commission to reconsider the rezoning and keep it as retail only or as originally planned, or at least review the location of the proposed clubhouse/pool. The location of it was an invasion to the neighborhood. Noise would be an issue and no amount of vegetation would buffer it. She invited the Commission and City Council to walk the grounds with them.

Mr. Daniel Strom, 720 W. Shawnee Ct, stated his home was 66’ from his back door to the corner of the proposed pool. He represented 25 families, who were not opposed to growth but to the disrespect and unethical decision and carelessness to the adjacent homes. The area now slotted for a clubhouse was supposed to be greenspace for families. The proposed plans show a clubhouse and pool wedged into a community with no regard to established homes. He said there were 33 homes directly impacted by the pool placement with a combined investment of nearly $7 million. He noted the concerns of noise, intrusion of lights, safety and foot traffic just behind their homes and said the burden should not be on the homes already established there. Other options are available with proper communication. Both communities want green space and only one wants the pool forced where others must deal with the negative impact associated with it. Waverly Pointe is expected to assume the burden with the rezoning. The traffic studies showed traffic would be less with the combination commercial and residential apartments than with all commercial. However, commercial and residential have different peak times. More homes would be impacted by the residential than just the commercial. Madison Elementary would be affected and children were already being bussed to Edgerton. The townhomes would be affected the most with the increased traffic on the new roads. The people he represented want to see Gardner grow with opportunities and economic growth but not at the sacrifice to those that already called Gardner home. Some talked about moving if the clubhouse was forced upon them. He asked the Commission to be a voice and advocate for the community and not create a place that people want to leave, rather a place to stay for people to provide stability for Gardner. He asked for help in moving the puzzle pieces around to not place the burden on the homeowners.

Mr. William McGee, 729 W. Shawnee Ct., President of the Reserve (Townhouse) HOA, said he was surprised about this project because it was intended as green space so the HOA was maintaining it. Ken Rogler, the previous owner, had not indicated he was selling the property. The commercial development was attractive to the homeowners with N. Laurel St. providing another access. He polled his community and it was unanimously agreed that:

1. The shoehorning of the pool breaks the line of the entire community and how it was developed, and increases the amount of noise within this compressed area. He wondered if the homeowners around that pool could use it even though the Waverly subdivision has its own pool. The Waverly pool was designed with space around it but this proposed one invades the space of the homeowners.
2. The amount of traffic on the roads because of the density of the project with apartment dwellers transiting in and out. They would not have the ownership like the surrounding homes. He understood the traffic would drive more business towards the commercial but it did not fit for the community. He suggested condos would be more in line.

3. The increased amount of traffic walking through the neighborhood.

He said he realized there needed to be a certain density and that both the apartments and homeowners need green space. However, the tradeoff was pushed onto the homeowners. The majority of the responses he received from homeowners was they want the rezoning denied and the project be left as only commercial.

Ms. Christine Wilson, 132 N. Pecan St., said she had spoken in 2010 about the neighborhood when low income housing was proposed and the school district took the land as eminent domain. She asked why the Commission and Council did not have bigger dreams for Gardner, to make it a destination instead of a stepping stone. She felt there needs to be a better mix of available housing to embrace the surrounding diversity. Gardner provides options for those just starting out with all the multi-family and these proposed apartments. Gardner has been making up for the business development in Edgerton. She was curious to know if the traffic study done on the widening of 175th St. and Waverly Rd. was completed before or after the announcement of this apartment project. The overcrowding of the schools is a concern and she wondered if the school district had chimed in their concerns on this project. There would be an impact on the schools and it could cause the need to enlarge the high school again.

Mr. Tim Homburg, architect with NSPJ Architects in Prairie Village, KS, presented the design of the site. The commercial buildings were located facing inward to hide fields of parking from the streets and they brought building fronts up to the streets. This embraces a sense of community. The apartments will be manor homes with secured entries, meaning the ground level doors will be secured with open stairways above. The building materials will be stucco, cultured stone, and brick surrounded by lush landscape. The clubhouse embraces the site and the angled parking creates a neighborhood feel to the street. Street parking slows traffic down and helps pedestrians traversing through the area. They also want to encourage residents to walk through the development to the commercial area. There will be 1-2 bedroom apartments that historically house young professionals instead of families with children. He felt this complex would not add to school overcrowding. There would be a main north-south thoroughfare through the site between the retail and multi-family to place people onto either Washington St. or Santa Fe St. He presented the traffic study results showing lower overall expected traffic during peak hours as compared to the current plan.

The target market for the apartments is the “renter by choice” who wants the flexibility of renting such as the recent college graduates or the empty nesters downsizing and wanting maintenance-free living. Starting rates for a 1-bedroom would be $750-$1,000/month. Rental housing is chosen according to a specific need and many times people choose a place close to their work. After a number of years, they take the next step and look around the neighborhood for a home to buy. Multi-family housing is an incubator to single-family home sales.
He addressed the concern about noise at the clubhouse by stating the pool and clubhouse would close each evening at a reasonable time. There would also be on-site management if there ever were an issue. This developer has been successful when taking care of problems as they occur.

Ms. Jessica Strom, 720 W. Shawnee Ct., said she agreed Gardner needs to grow and thrive. The problem tonight was not how pretty the apartments would be or how the vegetation might offset the noise but rather they were looking for a compromise between the builder and homeowners. The parcel where the pool and clubhouse is proposed was purchased just 2 months ago and was an afterthought for the developer. The original developer planned a townhome there but did not build it and sold the land. She proposed that the developer build his apartments and clubhouse but the pool location was unacceptable by the townhouse owners. She felt the builder thought this was about green space but it was not. The main concern was quality of life and peace and quiet. The pool could be moved closer to the apartments for them to enjoy and if the renters did not like the noise, they had the option to move. Homeowners have invested their savings into these homes and if they decided to sell she was sure the ability to re-sell would result in a loss. The homeowners have invested in Gardner and want to see it grow and asked that the puzzle pieces be moved around to take the burden off of the homeowners.

Ms. Melissa Hershey, 301 N. Pear St., stated she brought a unique perspective because she is a single-family homeowner living next to the neighborhood pool for the townhomes. She said it is noisy but she was cautioned prior to purchasing by her real estate agent that the lot was located by a pool. Homes by a pool are affected and it takes a certain buyer to purchase near one. She also agreed with staff on the need for the wider sidewalks.

Ms. Mary Pribyl, 132 N. Pear St., said her townhouse would be overlooking the proposed pool. The developer failed to say it was mentioned in the February 13th meeting that this project would be turned over to a management company upon completion and they would not be onsite 24/7. The management would be there only during regular clubhouse hours so homeowners would be on their own to defend for themselves after 5 p.m. during the week and weekends. She was instrumental in early 2019 renegotiating the mowing contract on that piece of land where the pool is proposed on behalf of the HOA. She said they had spoken with Mr. Rogler specifically about that piece of land being included within the contract. The HOA had spent thousands of dollars on upkeep of that property. Until the rezoning signs were placed, they had no idea the land had been sold. She did not believe Mr. Rogler approached anyone else to purchase this land as it had not been advertised. She said the land was purchased on December 28th.

Ms. Jennifer Wilson, 212 N. Pear St., has worked in HR for many years. She said that the developer, who lives in Prairie Village, was thinking this area was going to be inhabited by people who work in the intermodal. If so, they would not be making the same money as someone living in Prairie Village. They would be making $10/hr and living with 5 people in a 2-bedroom house. It may be presented that children would not be living in these apartments but with the income these types of people will be making at the intermodal that may be something to think about.
Ms. Jessica Bridges, 314 N. Laurel St., lived as a young parent in an apartment with a child. She said the overcrowding at the school is a safety concern to her especially when her son suffered a concussion and no one knew what happened. There are too many children and not enough staff. The addition of more children is putting children in an unsafe condition.

Mr. Kevin Barragar, 559 W. Santa Fe St., said the narrow sidewalks are cheaper to build so wider sidewalks are a good recommendation. Some of the recommendations need to be looked at so things are not crammed onto the site, like the car overhangs over the sidewalks and the parking along the street. The parking is there because the developer does not want to provide parking inside the apartment area so it is on the public street. There are supposed to be 144 bicycle spaces but they are only providing 80. This project is affecting many people. The clubhouse does not affect him personally but it does many others. He said no one had a problem until this rezoning.

Motion to close the public hearing by McNeer and seconded by Brady.

Motion passed 7-0.

Commission Discussion

Note: Each Commissioner thanked the public for attending the meeting and appreciated their views being shared.

Commissioner McNeer asked about the need for 3-story buildings and if there were any concerns with this being located near the airport.

Mr. Larry Powell, Director of Business & Economic Development, replied that the building heights was allowable by the LDC. The project is outside the airport runway zone.

Commissioner McNeer asked if the high-density was a matter of economics.

Mr. Homburg said the density on this site with all of the green space was probably not different than a 2-story complex with a building, a parking lot, a building, a parking lot and so on. The building is increased by a story to decrease the building footprint on the site to allow for more green space. This also does lend itself to better economics with the anticipated rents, and this is a comparable density to other apartment developments in Gardner.

Commissioner McNeer asked the reasoning for 144 units.

Mr. Homburg replied this is a garden apartment complex and this is a common density. There are a certain number of units needed to make it economically feasible and most of his developments are 250 units.

Commissioner McNeer asked if there were plans for a clubhouse prior to last December and where it was to be located.

Mr. DiVilbiss said there was no previous plan for a clubhouse; there was a plan for a
The previous developer couldn’t finish that last townhome and put in the road because the school took the land planned for additional residential development (impacting the economics). DeVilbiss’s proposed development became viable when that piece became available. He also said the clubhouse was not going to be a game room but rather offices for the rentals.

Commissioner McNeer asked if a traffic study had been done.

Mr. Powell answered there was a study done by the City prior to this development for the road improvements and another one done for this project. Both studies were reviewed by HDR, the City’s traffic consultant.

Mr. DiVilbiss interjected the site is 15 acres but he is only able to use 13.2 acres with the rest going to streets and right-of-way.

Commissioner McNeer asked how many parking spaces per apartment were planned.

Mr. Judd Clauson, Phelps Engineering, stated there were 241 parking spaces provided for the apartments, or 1.67 spaces per unit, and code required a minimum of 1.5 spaces per unit. Some residents may have two cars and others will have one so this is an aggregate number. The code in Gardner is in line with other local cities.

Commissioner McNeer asked about the Code for the number of bicycle parking stalls. He mentioned the new Price Chopper was held to the standard but the Commission was to consider a pass on this project.

Ms. Leininger replied the Code is one bicycle space per unit for residential uses, and that he was trying to compare a commercial project to the residential portion of this site where more bicycle storage options are available.

Commissioner Brady thanked staff for hosting the neighborhood meeting, and invited the members of the public to consider being on the Planning Commission or City Council. He restated the concerns he had heard, and also several positive aspects of the development. He then asked if there would be any direct sidewalk routes to the high school and Madison Elementary.

Ms. Leininger replied there were sidewalks along Washington St. and there would be a 10’ wide trail along Waverly Rd.

Mr. Powell said there were sidewalks along the streets. Directly north was school-owned property, and they do not desire a sidewalk, so there was no direct route.

Commissioner Brady asked if the pool would have regulated hours and what those would be. He also asked if the Waverly Pointe pool had regulated hours.

Mr. DiVilbiss answered they would work on it, but there would be regulated hours around 9-10 p.m. on weekends and earlier on week days.

Someone in the audience replied the Waverly Pointe pool hours were 10 am-9 pm weekdays and 10 am-10 pm on weekends.
Commissioner Brady asked about the mention of children being bussed to Edgerton due to overcrowding at Madison Elementary, and stated that was speculation.

Ms. Owens came forward and clarified that she was involved with the PTA of Madison Elementary, and the school was currently over capacity. Last year, there were boundary changes proposed, including proposals that the children west of Waverly Rd. in St. John’s subdivision would possibly be bussed to Edgerton to school. She was not aware of a proposal for students in the Waverly Pointe subdivision to be bussed.

There was some discussion about property reserved for future schools and possible locations for schools.

Commissioner Brady asked if the clubhouse and pool could be flip-flopped so the pool is on the street side, or if the clubhouse and pool could be located in the middle of the complex. This could free up the piece of land proposed for the clubhouse for construction of another apartment building.

Mr. DiVilbiss said there was a 6’x 6’ storm drain located in the middle of that property that collects all of the drainage from the frontage, Laurel St. and the townhomes. He also said the homeowners would not want a 3-story building behind their homes. The pool would not be used that much.

Commissioner Brady said it is their job to see if the codes are met, and the Council will make the final decision.

Commissioner Roberts commented on her appreciation to the developer for trying to work with the homeowners by dedicating land to them through the HOA. She said the owner of the land should, within reason, be able to put what they wanted on it.

Commissioner Gardenhire told of his experiences living in a similar luxury apartment complex very near the pool. The pool was not heavily used. New $400K homes were built nearby after the apartments so he did not believe property values would decrease because of an apartment complex like the one proposed. He said the renter occupancy in Gardner had risen to 6% as compared to Lenexa, at 2.2% and Johnson County, as a whole. This was because Gardner grew later than other areas; the area is experiencing a boom in multi-family housing now because this is desired by Millennials and retirees.

Commissioner Simmons-Lee wanted clarification that the developer was deeding part of Tract A to the Waverly Pointe HOA.

Mr. DiVilbiss explained the homeowners built their fences on or close to the property lines along the back so he proposed to give them some green space for access. He would then build a nice fence and lush landscape for the pool.

Commissioner Simmons-Lee asked if there would be a cost involved.

Ms. Leininger said she did not know if there would be a cost for the process, but the HOA would need to be willing to accept the land. The developer would deed the property over to the HOA.
Commissioner Simmons-Lee asked who the prospective tenants would be for the retail area.

Mr. DiVilbiss replied they were talking about having 2-3 restaurants like an Italian place and a sports bar, a bank, a stand-alone building to house fast food such as Jimmy John's, a liquor store and possibly a health food store.

Commissioner Simmons-Lee asked how much consideration was put into moving the pool.

Mr. DiVilbiss replied there was none.

Commissioner Simmons-Lee said there were several people who had concerns and felt it needed more consideration. She did not know if other locations were considered and whether there were reasons it would not work.

Mr. DiVilbiss said he had submitted the drawings to the City before he knew there was a problem. He had no knowledge of a problem with the pool until he was informed by City staff about 24 hours ago. Now that he knew, he was trying to give the HOA land for free.

Commissioner Boden told of his personal experiences with his home purchase and the surrounding land issues. He explained that the former developer did not lie to the Waverly Pointe community, but he did change his mind, and now this community was paying the price. He said the Planning Commission had a very limited scope and that was to look at the zoning, the adjacent zoning, determine if it was appropriate, and make a zoning change if they looked at the site plans to make sure it met the Code for that level of zoning. The Commission does not get to choose what goes on the land as long as it meets the zoning. If this land gets rezoned, the developer can build what he wants as long as it meets the LDC. The Planning Commission is also limited on the deviations that can be accepted. The proposed RP-3 zone is the same zoning as the townhomes. This property is zoned RP-3, and if a pool is allowed in that zone and the LDC has been met, the Commission does not technically have the ability to tell him to move the pool. He felt the school district concerns are not within the scope of Planning Commission consideration, but was more a consideration for Council.

Commissioner McNeer asked the developer how many high-density apartment complex projects he has been involved in.

Mr. DiVilbiss replied he had been involved in several but this was his first to own.

Commissioner McNeer asked if it were possible to move the pool location to the center of the apartment buildings but leave the clubhouse where it was shown.

Mr. DiVilbiss stated it is a matter of scale, and answered if he did not have to make a profit and pay back the loans, that could work. He needed a minimum number of units and had already taken a 36-unit building out of that area.

Commissioner Boden said he appreciates the addition of luxury level apartments into
the community as the urban wave is real, and suburban sprawl less popular.

Chairman Austin clarified that the recommended motion would need to be revised to reflect the newly proposed plan dated February 26, 2019.

**Motion made to table the Waverly Plaza proposal until the plan can be resubmitted by the developer that reflected a change of location for the pool and clubhouse.**

**Motion made by Brady and seconded by McNeer.**

Mr. Ryan Denk, City Attorney, explained the difference in “tabling” an item and an “extension”. A tabled item would need to be brought back at the next meeting, while an extension could be to a future date.

Commissioner Brady stated he wanted to retract his motion after a vote was taken on the original motion on the floor.

**Motion denied 0-7.**

**Motion made to extend the Waverly Plaza proposal until the plan could be resubmitted by the developer to reflect a change of location for the pool and clubhouse.**

**Motion made by Brady and seconded by McNeer.**

Commissioner Brady explained his reasoning for the motion was to give the developer the chance to respond to comments made tonight. He wanted to see a proposal that was a compromise.

Commissioner McNeer added he agreed and saw much frustration and had concerns and desired alternatives to the plans be shown.

Commissioner Gardenhire asked Mr. Denk if this motion was within the jurisdiction of the Commission.

Mr. Denk replied that with this motion, the developer must submit a new plan. If a new plan was not submitted showing an alternative location for the pool and clubhouse then it would not come back before the Commission. Typically in this situation, this would be continued to a date certain to allow for the parties to get together and attempt to compromise. He said he had concerns about an indefinite extension.

Commissioner Brady amended his motion to:

**Motion made to extend the Waverly Plaza proposal until the plan could be resubmitted by the developer to reflect a change of location for the pool and clubhouse by the April Planning Commission meeting.**

**Motion by Brady and seconded by McNeer.**
Mr. Denk referred to Kansas statute and Gardner code Section 17.03.010(G.4) which states that the longest an application could be continued out to allow for further analysis without applicant consent is 60 days from the date of the original review. If the Commission wanted a continuance, he recommended it continued to the next meeting to allow for dialogue between the groups, and if it was not done by then but there was indication of a possible resolution, it could be continued until the following meeting.

Commissioner Gardenhire questioned the scope because Mr. Denk stated the Commission could postpone this for further study but this motion mandated the plan be changed. He said he felt that was outside of the Commission’s scope.

Mr. Denk said he did not disagree with him. The Code allows an extension for further analysis.

Commissioner Gardenhire stated this was not further analysis, rather it was telling the developer to change his plans. He asked if the motion was invalid.

Mr. Denk replied he agreed that it was beyond the scope permitted by the Code section he referenced. He added he was there to offer advice but the Chair has the authority to deem if a motion was out of order.

Chairman Austin said he did understand the sentiment but he did agree it is not the Commission’s place to direct applicants how to design their property. He was not comfortable with the motion as stated but would entertain a motion for further study.

After some Commission discussion with the City Attorney about the motion presented, Chairman Austin decided the original motion was not acceptable.

Chairman Austin made a finding that the motion on the floor was out of order.

He told the Commission a different motion for further study for the feasibility would be acceptable.

Motion made by McNeer to extend the meeting until 10:30 p.m. and seconded by Boden.

Motion passed 7-0.

Commissioner Boden asked Mr. Denk about the ramifications if the developer came back and said the groups talked but the pool and clubhouse locations need to remain the same. He asked if the Commission had the scope to tell the developer he could not develop unless he put the pool in another location. He said he did not believe that was in the Commission’s scope.

Mr. Denk said he understood the pool to be a permitted use. A pool/clubhouse would not be permitted on its own without being associated with a residential development. This application is for the rezoning on the piece zoned commercial with a request for it to be zoned residential. If all he was proposing was the pool and clubhouse, it would probably be a commercial use. This project was designed as a planned development
with the pool and clubhouse tied to that.

He explained that he felt the Commission had the authority to deny the application if they determined that the entirety of the use as proposed, with the clubhouse in that location, and its effect upon the adjacent properties was negative.

Commissioner Boden clarified with Mr. Denk that a denial would be for the entire RP-3 zoning.

Mr. Denk affirmed that was his recommendation on a denial.

Commissioner McNeer said if something was deemed unworkable within this planned development then he wanted to know if an alternative could be submitted. He said that building a pool on either side of the street would be the same cost while leaving the clubhouse where it was. His question was if an alternative could be submitted with a planned zoning.

Mr. Denk advised him to look at the options relating to the application. The Commission can either approve the application, approve it with modifications to lessen or mitigate by attaching stipulations, or deny.

There was discussion on extending this until the next meeting to consider alternatives and come back and report the efforts and then vote up or down.

Motion to extend the rezoning until the March Planning Commission meeting to try to mitigate the pool issue between the developer and the neighborhood.

Motion made by McNeer and no second. The motion dies.

Motion made after review of applications Z-19-01 and PDP-19-01 for Waverly Plaza, a rezoning and associated preliminary development plan for property located at the northeast corner of Waverly Road and W. Santa Fe Street (Tax Ids CF221423-2004, CF221423-2001, CF221423-2011) and preliminary development plan document dated February 26, 2019, and staff report dated February 26, 2019, the Planning Commission recommends the Governing Body approve the applications subject to the following conditions:

1. Remove the greyed fence off the property of the proposed Tract A shown on page C1 and C4.
2. Update the on-street parking count on the first parking block from the north, on the east side of Laurel St from 9 to 7 and then update the parking data on the page.
3. Update the parking count of the center east parking block along the drive on the east side of the property from 10 to 9 and then update the parking data on the page.
4. Revise any sidewalks along any parking with vehicle overhangs to be a minimum of 8’ wide in the residential area. (Deviation 6)
5. Revise sidewalks which are primary routes between the street or parking area to the building entrance to be a minimum of 8’ wide. (Deviation 7)
Motion made by Gardenhire and seconded by Boden.

Motion passed 4-3.
(Austin, Roberts, Gardenhire, Boden – yay; Brady, Simmons-Lee, McNeer – nay)

Ms. Leininger presented PP-19-02 on Waverly Plaza. The application was generally consistent with the Comprehensive Plan and in compliance with the LDC. The development construction timeline corresponds with the adjacent public improvement timelines. All the technical studies were submitted and approved. The plat was updated with Tract A1 and A2.

Commission Discussion

Commissioner Gardenhire commented he appreciated the efforts made with the buffer of the apartments between the retail and residential housing.

Motion made after review of applications PP-19-02 for Waverly Plaza, a preliminary plat for property located at the northeast corner of Waverly Road and W. Santa Fe Street (Tax Ids CF221423-2004, CF221423-2001, CF221423-2011) and preliminary plat dated February 26, 2019, and staff report dated February 26, 2019, the Planning Commission approves the application as proposed, provided the following conditions are met:

1. Approval of Z-19-01 (PDP-19-01) is completed.
2. Provide a cross access easement for the driveway access from W. Santa Fe Street and access from Waverly Rd.

Motion made by Boden and seconded by Roberts.

Motion passed 5-2.
(Austin, Roberts, Gardenhire, Boden, Simmons-Lee – yay; Brady, McNeer – nay)
PROJECT NUMBER / TITLE: Z-19-01(PDP-19-01) Rezoning from CP-2 and RP-3 to CP-2 and RP-3 and a new associated development plan for Waverly Plaza

PROCESS INFORMATION
Type of Request: Rezoning and Preliminary Development Plan
Date Received: January 16, 2019

APPLICATION INFORMATION
Applicant: Phelps Engineering, Inc, (Judd Claussen, PE)
Owner: Bristol partners XIX, LLC
Location: Northeast corner of Waverly Road and W. Santa Fe Street

REQUESTED ACTION
The applicant has requested approval of a rezoning from CP-2 and RP-3 to CP-2 and RP-3, which changes the boundaries of the districts and associated development plan for Waverly Plaza to accommodate retail, office, apartments and an associated clubhouse.

EXISTING ZONING AND LAND USE
Currently the large property is entirely zoned CP-2 (Planned General Business) District and smaller property to the east is zoned RP-3 (Garden Apartment) District. The large commercially zoned property is associated with a preliminary development plan named Waverly Pointe, and the multi-family parcel is associated with preliminary development plan named The Reserve at Waverly Pointe.
SURROUNDING ZONING AND LAND USE

<table>
<thead>
<tr>
<th>Zoning</th>
<th>Use(s)</th>
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<tbody>
<tr>
<td>North of subject property</td>
<td></td>
</tr>
<tr>
<td>RP-3 (Garden Apartment) District</td>
<td>Vacant land and townhouse structures</td>
</tr>
<tr>
<td>East of subject property</td>
<td></td>
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<tr>
<td>RP-3 District</td>
<td>Townhouse structures</td>
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<tr>
<td>South of subject property</td>
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<tr>
<td>C-2 (General Business) District</td>
<td>Gas station, retail store, vacant land</td>
</tr>
<tr>
<td>R-1 (Single-Family Residential) District</td>
<td>Single-family structure</td>
</tr>
<tr>
<td>West of subject property</td>
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</tr>
<tr>
<td>R-1 District</td>
<td>Single-family structures</td>
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</tbody>
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EXISTING CONDITIONS

Currently the property is undeveloped. There is an existing 8” gravity sewer main that runs through the large parcel at the east quarter. Overhead electric runs along the western property line, along Waverly Road.
BACKGROUND / HISTORY

The property was annexed into the City with a larger 160 acres of land on May 19, 1976. The entirety was designated Zone A, Residence district upon annexation. That same month, a request to rezone portions of the 160 acres, including the subject properties, to Zone C, Neighborhood Business district and Zone D, Business & Industry was filed. In 1978, with the adoption of a new Zoning Ordinance, the districts were converted as follows: Zone A to R-1 Single-Family Residential District, Zone C to C-2 Central Business District, and Zone D to M-1 Restricted Industrial District.

In May of 2005, a rezoning, Z-05-01, for approximately 42 acres was rezoned to RP-2, Planned Two Family Residential District and CP-2, Planned General Business District and an associated preliminary development plan for a larger area which is called Waverly Pointe (PDP-05-01). In 2007, a revision to the zoning, Z-07-01, to change the RP-2 to RP-3 to allow for townhomes on the development plan was approved. See attached development plan. In 2014 revisions to the RP-3 portion of the development plan were approved to show the intention of splitting of the townhomes and a small amount of land around the unit. This revision is titled The Reserve at Waverly Pointe (PDP-14-02) and is attached.

To date the commercial corner remains undeveloped and the residential to the north of the commercial is undeveloped. The property to the north is now owned by the school district and those approximately 91 units will not be constructed. The most western townhome was also not constructed.

After public notice was posted on the subject property, some nearby property owners and neighborhood associations voiced their concerns regarding the proposed rezoning and project. Staff facilitated a meeting on Wednesday, February 13, 2019 at the Senior Center with the developer, the engineer and architect on the project and sent meeting invitations to those within 200’ of the property boundary. Approximately 20 citizens attended. Questions regarding traffic, the clubhouse and pool location and details, apartment design and rents, waste collection, stormwater, streets and street improvements, parking, airport review, project timeline, property management, tax incentives and potential impact on property values were discussed. Some residents speculated about the potential impact to school boundaries.

Thirteen comments have been submitted prior to the printing of this staff report. See Attachment IV.

CONSISTENCY WITH COMPREHENSIVE PLAN

The subject properties are identified in the Gardner Comprehensive Plan as Community Commercial and Medium Density Residential within the New Residential Growth Area, with the large area being commercial and the smaller lot to the east medium density residential (see map next page). The “Community Commercial areas consist of smaller commercial nodes that are intended to meet the needs of residents. Community Commercial areas are generally located within or adjacent to neighborhoods and may consist of standalone structures, or small shopping centers with multiple commercial uses.” This section encourages pedestrian and bicycle connections to adjacent neighborhoods along with on-site sidewalks and bicycle parking, providing additions to the existing street system to create a safe, efficient and connected roadway network, and including high architectural design.
The New Residential Growth Areas “includes undeveloped land that provides a “clean slate” for future residential development. Gardner is projected to grow in terms of both its residential population, and its employment opportunities; the New Residential Growth Areas represent an opportunity to create a full spectrum of housing options for a range of income levels.” This section encourages development patterns that provide a variety of housing types and allow aging residents to “downsize” and stay in the neighborhood or subdivision, provide trail and sidewalk connections within their design, and provide connection to existing trails.

The proposed development includes many of the elements outlined in the Plan for each land use and is generally consistent with the Plan.

**STAFF ANALYSIS - ZONING MAP AMENDMENT**

17.03.030 (B) Review Criteria:

1. The character of the neighborhood, including the design of streets, civic spaces and other open spaces; the scale, pattern and design of buildings; and the operation and uses of land and buildings;

**Staff Comment:** The character of the area is a mix of one- and two-story single-family to the west, two-and-a-half story multi-family to the east and a small amount of commercial and one-story single-family to the south of the site. To the north of the site is vacant property that is owned by the school district, and further to the north is the Gardner Edgerton High School. The southwest corner of this site is the intersection of two arterial streets, Waverly Road and W. Santa Fe Street, which are set for improvements beginning this year, including raising, widening, and stormwater and pedestrian enhancements. This project was funded to improve the management of stormwater and traffic increases in this area.

2. The zoning and use of properties nearby, and the compatibility with potential uses in the proposed district with these zoning districts;

**Staff Comment:** The property to the west is zoned R-1 Single-Family Residential district (developed with single-family). The property to the north and east is zoned RP-3 Garden Apartment district (north is undeveloped land that is potential outdoor recreation for the school district, east is developed with townhomes). The property to the south is mainly R-1 district (developed with single-family) with the southwest corner being C-2 General Business district (developed strip commercial center). The proposed zoning districts and potential uses were found to be compatible with the surrounding zoning districts in 2005 and 2007 with the approval of a
development plan for commercial and multi-family uses. This proposal involves the same districts and potential uses. The proposed development plan extends the multi-family residential boundary further west, providing for a beneficial transition of densities adjacent to neighborhood commercial uses.

3. The suitability of the subject property for the uses to which it has been restricted;

**Staff Comment:** Currently the property is zoned for CP-2, a planned commercial district with an approved preliminary development plan for Waverly Pointe for roughly 128,500 square feet of retail and office uses. The eastern property (east across N. Laurel St. extended) is zoned RP-3 for multi-family residential with an approved preliminary development plan for The Reserve at Waverly Pointe, for a six unit townhome structure and open space. These zonings districts are appropriate, though are not as appropriate in the current configuration as they once were based on market changes. The Waverly Pointe development plan was approved in 2007, prior to the recession and at that time, 128,500 sf of commercial development at that location was realistic. Twelve years later, the developer has stated that it is not realistic for the development of an 80,000 sf retail building as they have been unsuccessful in trying to secure a tenant that large since approval of the development plan. Additionally the current housing trends have shown a large demand for apartments for those that are choosing to rent instead of purchasing a house. Multi-family housing is not permitted in the C-2 or CP-2 districts, so the request is to relocate the commercial and multi-family zoning boundary lines to include more multi-family and less commercial. With the plans being 12 years old, the uses are potentially no longer appropriate in the current configuration.

4. The extent to which removal of the restrictions will detrimentally affect nearby property;

**Staff Comment:** The commercial uses are considered to be more intense uses that are typically more impactful to nearby residential properties in terms of traffic, lighting and noise than multi-family uses. The multi-family zoning would provide a transition in residential densities from the existing multi-family and single-family uses to the proposed commercial. Substituting additional multi-family uses for the planned large box retail use should have reduced impact on adjacent properties. The vacant subject parcel directly adjacent to the developed multi-family would not have a zoning district change, only a change in building type for the lot. The residential zoning is more restrictive than the commercial zoning and the proposal would not likely be detrimental to nearby properties.

5. The length of time the subject property has remained vacant as zoned;

**Staff Comment:** The subject properties have never been developed.

6. The relative gain to economic development, public health, safety and welfare by the current restrictions on the applicant's property as compared to the hardship imposed by such restrictions upon the property;

**Staff Comment:** The relative gain to economic development, safety, and welfare associated with the currently adopted plan is eclipsed by the hardship imposed by current restrictions on the property. The developer has negotiated for years to try to develop the property as provided for on the approved development plan, but has been unsuccessful in attracting the necessary anchor tenant for the large commercial building. Thus, the developer proposes to change the development plan based on market demand for additional multi-residential residential housing types. This development will also provide for additional vehicular connections out of the Waverly Pointe neighborhood which only has one access onto W. Santa Fe St. via Pear St. This will
increase safety not only for police and fire response but will ease traffic by providing multiple ways in and out of the neighborhood. Additionally the property will be developed, creating tax income from both property taxes and sales tax. This rezoning will result in a relative gain to the economic development, public health, safety and welfare of the community.

7. The recommendations of professional staff;

**Staff Comment:** Staff recommends approval of the rezoning application.

8. The conformance of the requested change to the Comprehensive Plan, and in particular the relationship of the intent statement for the proposed district and how the specific application further the intent statement in relation to the Comprehensive Plan;

**Staff Comment:** The request is to rezone a portion of the area identified for commercial to medium density residential, which is not consistent with the map however staff finds that this is an acceptable change. The Code in Section 17.05.010.B Relationship to Comprehensive Plan associates future land use categories with typically applicable zoning districts. For the medium density residential land use, the Code provides R-2, R-3 and R-4 as appropriate districts (the code does not provide guidelines for specific densities). The property to the north of the subject property is identified as medium density residential, however it is owned by the school district and is unlikely to be developed with any other use than school facilities. The plan approved for this site in 2007 showed 92 additional residential units at a density of approximately 17 dwelling units per acre in the area north of the subject property in addition to the 6 units not constructed in the triangle parcel on the east side of the subject property. Ninety-eight units were planned for but were not constructed. The proposed preliminary development plan provides 144 dwelling units, which is an additional 46 units more than originally proposed. The increase of 46 units from what was previously approved in the development is less of an impact to the development than 144 units proposed with the new development plan. The increase in density is positive for the support of commercial development and also provides for a transition of density from the commercial to the lower density multi-family, and then the single-family residential. The resulting densities from full build-out of the area would range from the single-family density of approximately 4.3 dwelling units per acre, to the multi-family townhomes of approximately 11.8 dwelling units per acre, to the proposed multi-family apartments of approximately 21.7 dwelling units per acre. The Comprehensive Plan is a guide document and the map is shown in generalities. With the shifting of the shown medium-density residential further to the west, the slight increase in residential density, and the reduction in commercial space, the overall intensity of the area hasn't significantly changed. Staff finds that this rezoning is generally in conformance with the Comprehensive Plan.

9. The extent to which the proposed use would adversely affect the capacity or safety of any utilities, infrastructure or public services serving the vicinity; and

**Staff Comment:** The proposed uses would not adversely affect the capacity or safety of any utilities, infrastructure or public services serving the vicinity. The utilities and adjacent streets will be improved by the City regardless of this project. Two additional public streets will be added by the developer which will increase safety in the area by providing a second access into the Waverly Pointe development and provide for alternate access to both Waverly Rd. and W. Santa Fe St., thus relieving traffic at the Pear St. and W. Santa Fe St. intersection. This is currently the only street into the development. Any public service impact as far as police and fire safety would increase just for the fact that the property is currently vacant. The original proposed development of this area and the newly proposed development rearrangement will be very similar. There will be minimal impact on services within the vicinity with this development.
10. Other factors relevant to a particular proposed amendment or other factors which support other adopted policies of the City.

**Staff Comment:** No other relevant factors or policies are relevant to this amendment.

**STAFF ANALYSIS - PRELIMINARY DEVELOPMENT PLAN**

The intent of the planned zoning districts is to encourage innovation in development, unique and distinctive places, and efficient use of land, buildings and infrastructure. Specifically, planned zoning and development plans to support the flexibility offered through planned zoning should accomplish one or more of the following:

1. Preservation of distinct natural features on the land and integration of them into amenities for the project.
2. Reduction in potential environmental impacts from the development, whether through disturbance of land, location of streets and infrastructure or operation of sites and buildings.
3. Create broader community benefits through the better integration of multiple projects, resulting in designs that could not have otherwise been accomplished through the base zoning districts and standards.
4. Improved public realm designs, including streetscapes, open space, civic spaces and the relationship of buildings and sites to those spaces.
5. Creation of unique projects and places that are particularly suited for the planned location based on the characteristics of the land or the context and relationship to surrounding areas.

Departures from the standards associated with all zoning districts may be considered through planned zoning, and approved provided they are based upon a comprehensive and well-integrated development plan for the area. These departures shall not be justified for simply wanting flexibility or deviations from standards based upon a site plan.

A preliminary development plan represents an overall plan for a development to include the specific land uses and their density/intensity, block and lot patterns, building types and scale, design characteristics, and other building and site design elements that reflect the proposed character of the plan. This plan shall have a particular emphasis on how these elements relate to the public realm plan and where transitions between these elements occur at a parcel or block scale, both within the development and in coordination with abutting property. The development plan shall specifically identify where development standards may differ from those otherwise applicable through the base zoning districts and general development requirements of this Code.

A final development plan provides specific details of the portion or entirety of the approved preliminary development plan. This includes elevations, building materials, landscaping and other specific details. The final development plan has the same review criteria as a site plan.

**17.03.040 (C) Review Criteria:**

1. The plan represents an improvement over what could have been accomplished through strict application of otherwise applicable base zoning district standards, based on the goals of the Comprehensive Plan, and based upon generally accepted planning and design practice.
Staff Comment: This plan could not have been accomplished through the strict application of the base zoning district. The accessory structure standards are very strict and targeted more towards single-family residential property. With the planned district, deviations for the proposed 50 stalls of garage space within 5 structures is possible. This is part of the higher end amenities for the apartment complex. No other apartment complexes in Gardner have garages (this does not include townhomes). The plan is based upon generally accepted planning and design practices by continuing a transition of density between commercial uses and single-family units. This overall development, as constructed and with the proposed, provides for a range of residential densities including the single-family density of approximately 4.3 dwelling units per acre, multi-family townhomes of approximately 11.8 dwelling units per acre, and the proposed multi-family apartments of approximately 21.7 dwelling units per acre. The approved but not constructed townhomes to the north equaled approximately 17 dwelling units per acre. An increase in density also supports a commercial area.

2. The benefits from any flexibility in the standards proposed in the plan promote the general public health, safety and welfare of the community, and in particular of the areas immediately near or within the proposed project, and are not strictly to benefit the applicant.

Staff Comment: The benefits from any flexibility in the standards proposed in the plan promote the general public health, safety and welfare of the community, and in particular of the areas immediately near or within the proposed project as discussed in the next section regarding deviations.

3. The benefits from any flexibility in the standards proposed in the plan allow the project to better meet or exceed the intent statements of the base zoning district(s) and the standards proposed to be modified when applied to the specific project or site.

Staff Comment: The benefits from any flexibility in the standards allows the project higher end amenities for the residential including five garage structures. It also proposes some reduced sidewalk widths to provide for less impervious surface. The proposed development plan has significantly less impervious surface that the current approved plan, which has less impact on the adjacent stormwater detention.

4. The plan reflects generally accepted and sound planning and urban design principles with respect to applying the Comprehensive Plan and any specific plans to the area;

Staff Comment: The plan reflects generally accepted and sound planning and urban design principles by providing a variety of housing types in the area and specifically the neighborhood. Also the plan provides for an appropriate transition between more intense and less intense uses from the commercial to the low-density residential. It provides for walkability between commercial amenities and residential uses by providing sidewalks and connectivity to the trails. This allows for people to leave their vehicles at home and walk to nearby commercial with minimal vehicle interaction. It also provides for safer pedestrian connections between the existing residential and the school.

Some comments from adjacent and nearby property owners are the concern regarding the use of the lot across N. Laurel St where the clubhouse and pool are proposed to be located. This is an accessory use to the apartment complex. Section 17.05.040 of the Code states, “Accessory uses are clearly incidental to and customarily associated with an otherwise permitted or conditionally allowed use, and generally do not need any specific enabling or development standards, other than the generally applicable standards.” No additional use standards are
provided for a clubhouse and pool. Some comments regarding the proposal initially submitted included that a proposed fence on the property line would cause adjacent townhome owners to not be able to directly access the outside of their rear yard fence (located on the property line) or the nearby common open space within their subdivision without crossing over private property, the pool and clubhouse were too large for the lot, the pool would cause a lot of noise, and adjacent property owners would not have access to the recreation facility that is right in their backyard (although they do have access to similar recreation amenities in their subdivision). In response, the developer has reduced the size of the clubhouse by 1,500 square feet and also reduced the size of the pool. The amended design moved the structure as far to the west as possible, moved the proposed fence from the property line to the edge of the pool patio to allow for adjacent neighbors to have access across this private property to their rear fence and their subdivision’s common open space. The preliminarily rendering indicates a significant amount of landscaping surrounding the pool. At the preliminary development plan level of review, the general building size and location are provided for. Details regarding elevations, fencing, and landscaping are provided at the final development plan level of review. Landscaping is an excellent buffer and noise absorber that will help mitigate the potential impacts to the adjacent properties. Pool hours and access are not details that can be regulated with a development plan, but outdoor pools are generally utilized seasonally, roughly four months a year. While the pool and clubhouse are appropriate accessory uses to the apartments, staff believes that the modifications to the site that have already been made and the details that will be reviewed and worked out in the final development plan review, meets accepted and sound planning and urban design principles.

5. The plan meets all of the review criteria for a zoning map amendment.

**Staff Comment:** The plan generally meets all of the review criteria for a zoning map amendment as outlined in the section above, with the exception of deviations discussed below that require Planning Commission approval.

**DEVIATIONS**

The standards outlined below are standards from the Land Development Code that are not met. The planned district allows for departures from the standards associated with all zoning districts provided they are based upon a comprehensive and well-integrated development plan for the area. Below are the standards not met and the applicant’s justification for such deviation.

**Specific Use Standards**

1. **Section 17.05.020.C.3.a General Zoning Standards, Accessory Buildings**

   **Standard:** No more than one per lot.

   **Proposed:** Five garage structures.

   **Applicant Response:** These are garage buildings for the use and enjoyment of the tenants of the apartments. This is an amenity which is much better than not providing any garages.

   **Staff Comment:** The standard appears to be intended to address single-family residential uses. It is not realistic to limit an apartment complex to one accessory building over 120 square feet. Deviating from this standard would not impact surrounding property and would be an amenity for storage of vehicles and other items for tenants of the complex, reducing visual impact of vehicles. Staff supports this deviation.
2. Section 17.05.020.C.3.f General Zoning Standards, Accessory Buildings

Standard: Shall not exceed 250 square feet for each 3,000 square feet of lot area up to a maximum of 1,200 square feet.

Proposed: Five 2,400 square foot garages.

*Applicant Response:* These are for garages which are a desired amenity in Class A apartment building projects.

*Staff Comment:* The standard appears to be intended to address single-family residential uses. It is not realistic to limit an apartment complex to one accessory building over with a maximum of 1,200 square feet. Deviating from this standard would not impact surrounding property and would be an amenity for storage of vehicles and other items for tenants of the complex. Staff supports this deviation.


Standard: Neighborhood Street Type allows for Courtyard, Terrace, and Neighborhood Yard Frontage Types.

Proposed: Neighborhood Street Type with a Buffer Edge Frontage Type (Along Waverly Rd. and W. Santa Fe St.).

*Applicant Response:* W. Santa Fe Street has a 25’ easement along it and putting a lot of landscaping and other hardscape and furniture in an easement is not appropriate.

*Staff Comment:* While we do have trees that have shallow root systems that are appropriate for placement in easements, putting too many landscaping amenities and hardscape features within the easements is not optimal. Street trees, foundation plantings, sidewalk connections and front entry features will all be addressed at the final development plan phase. With the proposed building locations provided and the landscaping and building design standards implemented at a future phase, staff supports this deviation.

4. Section 17.07.050.B Frontage Design, Applicability

Standard: Activity Street Type allows for Enhanced Streetscape, Plaza, Courtyard, Terrace Frontage Types.

Proposed: Activity Street Type with a Buffer Edge Frontage Type (Along N. Laurel St. for both the Apartment – Garden and Small Civic Building Types).

*Applicant Response:* With the on-street parking on N. Laurel St. along with the standards for the setback range and building frontage on top of landscaping requirement, it will be difficult to meet the intent of the Terrace Frontage Type.

*Staff Comment:* N. Laurel St. has on-street, 60° parking proposed which is half in the right-of-way and half on the subject property. This is necessary to achieve the street design standards, yet provide the parking. With the parking and the sidewalks provided, it is difficult to provide for requirements of the standards of the frontage type. Specifically the frontage landscaping and street trees while maintaining the required depth of the frontage. Staff supports this deviation.

5. Section 17.07.040 Specific Building Type Standards, Small Civic

Standard: Frontage Type: Neighborhood Yard; Terrace

Proposed: Buffer Edge
Applicant Response: The other parts of the development are being requested for the Buffer Edge Frontage Type and in order to keep consistency with the development, we are requesting the Buffer Edge Frontage for all building types.

Staff Comment: For consistency reasons and for the difficulty of providing building frontage along a curved lot line for this specific lot, staff supports this deviation if deviation #4 is approved.

6. Section 17.09.020.C.2 Block and Lot Access, Sidewalks

Standard: Along any parking with vehicle overhangs, a minimum of 8’ wide (residential portion)

Proposed: 6’ wide

Applicant Response: Internally to the site we are proposing 6’ wide sidewalks, this includes adjacent to car parking spaces. 6’ provides adequate width for car overhang and still have passable space. It also maximizes greenspace on the back side of the sidewalk to the building.

Staff Comment: Parking directly adjacent to sidewalks allows for a vehicle overhang of approximately 2.5’. With the reduction in the sidewalk from 8’ to 6’, the usable portion of the sidewalks are narrowed down 3.5’-4’ wide. This is the intent of the Code at requiring 8’ sidewalks abutting parking stalls is to provide for the vehicle overhang and provide for 6’ for pedestrians. The proposed 6’ with the vehicle overhang is a further reduction from the Code required minimum, generally for sidewalks to be 5’ wide. Staff does not support this deviation to reduce sidewalks along parking with vehicle overhangs to 6’ wide. This will be a recommended condition of approval.

7. Section 17.09.020.C.2 Block and Lot Access, Sidewalks

Standard: A primary route between the street or parking area and the building entrance, a minimum of 8’ wide (overall project)

Proposed: 5’-6’ wide

Applicant Response: We have shown this all at 6’ wide as this best matches our door widths entering the building. We agree to re-visit this again at time of final and may choose to widen, but would not be less than 6’.

Staff Comment: Connections from the street are shown at 5’ wide across the development along with sidewalks to doors in the residential area range from 5’-6’ wide. Five feet is the minimum general width provided for in the Code. However, the Code requires for the primary route from the public streetscape to the building entrance to be 8’ wide and from a parking area to the building entrance to be 8’ wide. Sidewalks to the building entrances are intended to be wider to allow for people to pass and the door to be opened while people are passing in order to not have to step off the sidewalk. In order to maintain that additional space, staff recommends a minimum of 8’ wide to allow for space to either side of the door. This will be a recommended condition of approval.

8. Section 17.09.030.C.2 Required Parking, Parking Reductions

Standard: On-Street Parking Credit. All on-street parking within 600 feet of any lot frontage shall count towards the parking requirement at a rate of one space for every three on-street spaces.

Proposed: 70 on-street parking stalls

Applicant Response: We are requesting that all of the parking on the west side of Laurel and the south side of Washington be allowed to be counted towards the apartment project.
There is no other competing use along the street for these spaces. The spaces on the east side of Laurel are allocated for the clubhouse. Therefore, the ask is that this is 1 space for every 1 spaces provided.

**Staff Comment:** The on-street parking on Laurel St. and Washington St. are unlikely to be utilized by adjacent properties. The property to the north is undeveloped open space for the school district and the multi-family to the east accesses the properties from Shawnee Ct. There potentially would be a vehicle or two from the residences north on N. Laurel St. that may utilize the on-street parking but it’s likely to not significantly impact the development. If the standard was required to be met, the applicant could count 18 out of the 55 stalls along the west side of N. Laurel St. and Washington St. and 5 out of the 15 stalls on the east side of N. Laurel St. for a total of 23 of the 70 on-street parking stalls. The first parking block from the north, on the east side of N. Laurel St., shows a count of 9 spaces. There are 7 shown. This needs to be updated and reflected in the summary on the development plan. This helps to address the expressed neighborhood concern that apartment residents may overflow the parking into their neighborhood. Staff supports this deviation.

9. **Section 17.09.030.E Required Parking, Bicycle Parking**

   **Standard:** Residential: 1 per dwelling unit (144 bicycle parking)
   **Proposed:** 80 spaces (50 in garage and 30 outside)

   **Applicant Response:** We have determined that this number of spaces should more than adequately address need for bicycle parking. However, if the need arises for more spaces, we can easily add more outdoor parking pads for bicycles.

   **Staff Comment:** Staff has found that this standard of 1 bicycle parking space per dwelling unit might be excessive. With this development proposing to have 50 garage spaces and there is a potential that a bicycle owner would bring their bicycle into their unit for storage that providing the 80 spaces, 30 of which are outside, is acceptable. This is providing for 55% of the required, 20% outdoor spaces. Staff supports this deviation.

**STAFF ANALYSIS – INFRASTRUCTURE / OTHER**

**WATER –**

Water will be provided to the site from various locations including an existing line on the south side of W. Santa Fe Street and an existing line on the west side of Waverly Road. A new public water line will be constructed along Washington St. which will connect to existing lines on Waverly and N. Laurel St.

**SANITARY SEWER –**

Sanitary sewer is currently provided to the site on the eastern side of the large parcel. New lines will be provided off this and from an existing manhole on N. Laurel St.

**STORM WATER –**

Storm water detention for the site is provided for in an existing detention pond north of the site. Inlets will be provided with the development to get the stormwater onsite to the detention area.

**ELECTRIC, GAS –**

Electric will be extended onsite from the south side of W. Santa Fe St, through the middle of the site, and then service lines will be provided off that.
Gas can be connected to existing facilities on the east side of the site.

**ROADWAY NETWORK, VEHICULAR ACCESS –**

N. Laurel St. will be extended from the existing terminus south to W. Santa Fe St., and Washington St. will be constructed from Waverly Rd. to N. Laurel St. by the developer for this development. This road will be called Washington St. because the streets on the east side of Waverly Rd. are named based on a Gardner naming convention and the properties to the west of Waverly Rd. are named based on the Kansas City street naming guide. Waverly and W. Santa Fe Streets are to be improved by the City beginning this year.

Access to the site will be provided as follows: one drive off W. Santa Fe St. that provides access to both the commercial and multi-family site; one right-in, right-out drive off Waverly Rd. that provides access mainly to the commercial site; and one individual access for each site from Washington St.

**SIDEWALKS**

A 10’ trail will be provided along the north side of W. Santa Fe St. and the east side of Waverly Rd. Sidewalks will be provided along both sides of Laurel Street and the south side of Washington St.

**ATTACHMENTS**

I. Preliminary development plan document  
II. PDP-07-02 Waverly Pointe preliminary development plan  
III. PDP-14-02 The Reserve at Waverly Pointe preliminary development plan  
IV. Public comments  
V. Meeting notice letters  
VI. Applications

**RECOMMENDATION**

Staff recommends approval of Z-19-01 and PDP-19-01 for Waverly Plaza and recommends forwarding the application to the Governing Body with the conditions outlined below.

**Recommended Motion:**

After review of applications Z-19-01 and PDP-19-01 for Waverly Plaza, a rezoning and associated preliminary development plan for property located at the northeast corner of Waverly Road and W. Santa Fe Street (Tax Ids CF221423-2004, CF221423-2001, CF221423-2011) and preliminary development plan document dated February 14, 2019, and staff report dated February 26, 2019, the Planning Commission recommends the Governing Body approve the applications subject to the following conditions:

1. Remove the greyed fence off the property of the proposed Tract A shown on page C1 and C4.
2. Update the on-street parking count on the first parking block from the north, on the east side of Laurel St from 9 to 7 and then update the parking data on the page.
3. Update the parking count of the center east parking block along the drive on the east side of the property from 10 to 9 and then update the parking data on the page.
4. Revise any sidewalks along any parking with vehicle overhangs to be a minimum of 8' wide in the residential area. (Deviation 6)

5. Revise sidewalks which are primary routes between the street or parking area to the building entrance to be a minimum of 8' wide. (Deviation 7)
Know what's below. Call before you dig.
I, Derek Groshong, oppose the rezoning of Z-19-01 (PDP-19-01) REZONING FROM CP-2 TO CP-2 & RP3 and associated development plan for Waverly Plaza.

In my opinion this will not only reduce the value of our single family homes in the area, but it will also cause a mass amount of traffic in our areas, that is unwanted by many in our Waverly Pointe neighborhood and surrounding neighborhoods. Please take this into consideration for the people who actually live here in these surrounding neighborhoods that will be affected.

Sincerely,
Derek Groshong
I, Jordan Groshong, oppose the rezoning of Z-19-01 (PDP-19-01) REZONING FROM CP-2 TO CP-2 & RP3 and associated development plan for Waverly Plaza.

In my opinion this will not only reduce the value of our single family homes in the area, but it will also cause a mass amount of traffic in our areas, that is unwanted by many in our Waverly Pointe neighborhood and surrounding neighborhoods. Please take this into consideration for the people who actually live here in these surrounding neighborhoods that will be affected.

Sincerely,
Jordan Groshong

Sent from my iPhone
To: Gardner Planning Commission  
From: Taylor Castro & Diane Stewart; 712 W Shawnee Court  
Re: Rezoning Proposal for Waverly Plaza  
Date: February 17, 2019  

Our townhouses were built close together, on narrow lots, with small backyards. The trade off was having a common green space for recreation and breathing room. New homeowners who bought on the south side, including us, paid a premium for it. It was our understanding it would remain accessible indefinitely. We were stunned to hear that our builder mislead us, and sold the last lot to a developer. It felt like a sudden encroachment upon our neighborhood.

Prior decisions about backyard size, fencing, and landscaping were based on guidelines from the builder. There may now be a small overlap of property lines. How would the rezoning plan affect what is already established? Would all of it be covered by a grandfather clause? Could we get written assurance that our property investments will be protected in the future?

No surprise, we do not want a pool/clubhouse for apartments behind our building! Would anyone like that? We are concerned about noise and lighting. What type of fencing would be used? How well would the landscape screening work? Would it be designed for all four seasons? What about trash blowing into our yards? How would lawn care work with two different property owners? HOA properties have no irrigation systems.

Three-story apartment buildings seem out of place in this part of town. Is there really a need for that many in this location? High-end apartments look good on paper, but what if renters need to have several roommates in order to afford them? Will there be enough parking spaces?

We recognize the need for economic development in Gardner. But, we do not want to become victims of it! If rezoned, we would be looking at the pool/clubhouse every day of the year, instead of the quiet green space we were promised. (We would not have moved to Gardner from Overland Park if we had known this might happen.) We wish there could be a more inclusive and attractive alternative, like a playground or pocket park instead.

However, we can appreciate the pedestrian-friendly, mixed-use concept of Waverly Plaza. We like the idea of having shops and restaurants nearby. We would love to have an accessible coffeehouse in walking distance. But, would there be enough apartment renters to feed into the retail component? Has research been done to show their target market would actually move here? What income level is needed to afford the rent? Has the developer done the math?

What would happen if the apartment complex does not fill up? Is there a Plan B? We do not want to end up living next to empty buildings, or failed businesses. If it is built out, we want it to become an asset to our community. Before we are forced to go through such a drastic change of our neighborhood, we would like assurances that the new plan is based on facts, not wishful thinking. Thank you.
I, Demetri A Gonzales am oppose the rezoning of Z-19-01 (PDP-19-01) REZONING FROM CP-2 TO CP-2 & RP3 and associated development plan for Waverly Plaza. I believe that it will significantly lower property value for the waverly pointe subdivision. I purchased our home coming up on three years, buying into equity is hard enough to find these days and rezoning property that will decrease home values is not fair to any home owner in waverly pointe. We live right by the high school and we already have enough problems, adding waverly plaza will increase both foot traffic and vehicle traffic through the waverly pointe subdivision.

Demetri A Gonzales
I oppose the rezoning of Z-19-01 (PDP-19-01) REZONING FROM CP-2 TO CP-2 & RP3 and associated development plan for Waverly Plaza.
If you have questions, please contact me.
Thank you
Michael Bruss
Ms. Leininger:

The proposed apartment complex plan provided by the city to our neighbor, Deanna Moriarty, in Waverly Pointe is an eye opener. Her suggestion to the city that the location of the pool and clubhouse be flipped in order to provide greater privacy to apartment dwellers and reduce the impact of noise from the pool to our townhomes is a good one. We have home owners who work early shifts and retire hours prior to the likely closing time for the proposed pool.

An equally concerning issue is how on earth W. Santa Fe Street will accommodate the additional traffic flow. Turning left from Pear Street onto W. Santa Fe could prove to be daunting. Dangerous even! I am asking that you include our concerns in the package for the Planning Commissioner’s packet. I understand their meeting will take place on Tuesday, February 26th, and is open to the public. We plan on attending.

Deborah Roehl
708 W. Shawnee Court
Gardner, KS. 66203
I, Wanda Hinkle, oppose the rezoning of Z-19-01 (PDP-19-01) REZONING FROM CP-2 TO CP-2 & RP3 and associated development plan for Waverly Plaza.

~Wanda~
913-707-9529
To my fellow Gardner citizens and councilmen & women,

My name is Jessica Strom and I am the co-owner of 720 W. Shawnee CT, Gardner KS 66030, and I am writing this in regards to the Waverly Plaza development rezoning proposal and the concerns that I have with one crucial portion of the proposed development. I believe that development is important for the growth and sustainability of any community but I also believe that to do so successfully it must be done with integrity. The proposal as a whole to rezone Z-19-01 (PDP-10-01) from CP-2 to include RP3 zoning for the apartment complex is not something I object to, again as a whole, however I am adamantly against the proposed placement of the apartment pool directly on not only my property line, but that of over 34 of my neighbors as well, all homeowners with investments in our community.

My husband and I chose to move to and invest in Gardner out of every other city in the Kansas City metro just last April. We moved from an hour away and my husband still commutes an hour to work in Leavenworth each way every single weekday. We saved for 3 years to purchase our first home to raise our two small children, we could have moved anywhere, but again, we chose Gardner. Just like the builder, just like the city council, we believe Gardner is a great little town with massive potential and we bought knowing that the land next to our subdivision would eventually be developed. Up until last month (yes even after the sale of the land where the clubhouse & pool are slated to go) our community was told by Ken Rogler, who sold the land, that the lot was going to have one last townhome developed there, it is even on our subdivision lot map on our website. We were lied to as he sold it knowing the plans for the land, a complete loss of integrity for the very homeowners who invested in his business.

Build the apartments, build the commercial, honestly at the end of the day everyone will be fine, things will work out. BUT, I beg of the city planners and the builders themselves, to build with integrity and move the location of the pool to the green space in between the apartment buildings themselves. There is zero precedent of an apartment pool backing directly onto the property line of private homeowners anywhere in the Kansas City metro. At the meeting on Feb 13, the homeowners who attended were completely disregarded and our concerns essentially blown off, told the pool would 'look nice' and 'it was unfortunate' that we bought our homes and then now this pool would be developed there. That the builders didn’t want the rental customers to have to deal with the noise and disruption of the pool. How is it that renters, who have no vested interest in our community by way of long term investment, have more right to enjoy peace and quiet than that of 34+ property owners who have a combined total investment of approx or more than 6.8 million dollars on a single block that surrounds this proposed clubhouse and pool? 6.8+ million dollars that the city of Gardner reaps property taxes on in perpetuity. 6.8+ million dollars that these homeowners CHOSE to invest in Gardner when they could have invested elsewhere. The builder will bring added growth and income to Gardner
sure, but where is the integrity in regards to the investors who already live here? Having a rental property pool directly in our backyards not only impedes on our right to peace but will also make it incredibly difficult to resell our property when the time comes for any of us. Renters come and go, we as property owners are here to stay.

In closing I believe that this can be a harmonious development if the builders can respect the adjacent townhome property owners around the clubhouse property and show integrity in moving the pool elsewhere. Leave the clubhouse there, no problem, make it a big beautiful two story clubhouse, no problem. **But please, the pool does not belong where it is proposed to go.**

"The greatness of a man is not in how much wealth he acquires, but in his integrity and his ability to affect those around him positively."

Thank you for submitting this letter with the official project documents.

With highest regard,

Mrs. Jessica Strom  
as well as on behalf of Mr. Daniel Strom, Charles Strom, and Rachel Strom

720 W. Shawnee Court  
Gardner, KS 66030  
913-620-6295
Good morning, Michelle!

I, Casey L Nigro, oppose the rezoning of Z-19-01 (PDP-19-01) REZONING FROM CP-2 TO CP-2 & RP3 and associated development plan for Waverly Plaza.

Thank you for your time.

--

*Casey Nigro*
Good morning,

I, Ross Nigro, oppose the rezoning of Z-19-01 (PDP-19-01) REZONING FROM CP-2 TO CP-2 & RP3 and associated development plan for Waverly Plaza.

Thank you for your time.

Thanks,
Ross Nigro
As a recent transplant from New York State to Gardner Kansas, I was shocked and surprised to learn that the land directly behind my town home, which I was told would be a common green space for our townhouse community, had been sold. My understanding was that our development was planned for individual town homes to have small lots, and the buildings set close together to allow for a shared green space in the back of our units.

To hear that a clubhouse and pool are planned to be developed in our back yard was rather shocking.

That said, I would like our community and the new community to coexist harmoniously. I would like to see nice fencing and plants around the pool, and green grass for us all to use. I am concerned about the operating hours of the pool and clubhouse, including outdoor lighting, barbecuing, music/noise, trash and fencing. What is planned to be in the interior of the clubhouse? How many people would it accommodate? What is the plan for the operating hours of the pool and clubhouse? What type of fence and landscaping is planned?

Regarding the location and position of the pool and clubhouse, the majority of the noise will come from the pool area. Would it be possible to flip the position of the pool and the clubhouse and place the pool next to the new road and the clubhouse behind it to help buffer the noise and give more privacy to both the apartments and the town homes?

My last issue about the pool and clubhouse is, since it will be a large “white elephant”
in my back yard, I think the residents of the town homes whose rear entrances butt up against the facility should have free access to use the facility.

One of my other big concerns is traffic and parking. If rent should be approximately \( \frac{1}{4} \) of one’s gross income, a $1000 apartment would require an income of $4000 per month, or $25/hour. Employees at the logistics facilities are earning between $12 and $15 an hour. To rent these apartments, they would require approximately 2 working adults to pay the rent. With accommodations for 1.8 cars per unit, where will the additional .2 people per unit park? Will they use much of the parking designated for the retail space? If so, the retail will go out of business if there is insufficient parking.

If the apartments are luxury units, why not sell them as condos to provide affordable ownership to residents of the Gardner community. If the units sold for approximately $130,000, the mortgage payment would be approximately $660/mo plus taxes and HOA fees. Ownership would be less expensive than rent and would create pride in the community.

If you do opt to rent the units, based on the projected figures, what is your plan if you are unable to rent them at the projected price? How low will the prices go to fill the vacant units? How many non-related adults will be permitted to sign the lease to live in a one-bedroom or two-bedroom unit? I am concerned with the builder's lack of experience with residential communities.

We hope that we can come to an agreement about these issues so that we can all live peacefully and harmoniously together.

Deanna J. Moriarty
845-GO-PAINT
www.paintbrushesandparty.com
info@paintbrushesandparty.com
To: Gardner Planning Commission  
From: Steven Laing, Waverly Pointe Reserve Resident  
Re: Waverly Plaza Development  
Date 2/18/2019

As a resident of Waverly Pointe Reserve townhomes, I was not surprised to learn of the proposed development planned for the vacant lot to our west. We had heard rumors and assumed it would be developed at some time in the future. What DID shock me was that the area in my back yard, which, when we purchased our home, we were told would remain as green space. It is now proposed as the site of a club house and pool. I understand that due to unforeseen circumstances, the builder of our development was forced to sell the lot directly behind our house. I had originally understood that that parcel of land would be used to build one more building of town homes and that Laurel Road would be extended to 175th Street.

My main concern with the current plan is the noise coming from the pool area. If the plan were to be modified to position the pool area along the Laurel Road extension with the clubhouse to the east of the pool, it would help isolate the noise from the pool and direct it more towards the apartments, where it should clearly belong. This would also afford the apartment residents a better view of their own pool area while affording Waverly Pointe Reserve residents more privacy. I for one would prefer to look at the rear of a tastefully landscaped clubhouse that to look out over a pool that we cannot use.

Another concern of mine is the ability of the apartment management company to fill the units to a sufficient level without reducing the rental prices. The developers have plenty of experience building and operating retail plazas, but this will be their first foray into residential development. I am concerned that they have high hopes to be able to fill 144 high-end units in Gardner. What is their proposed minimum occupancy rate to be able to maintain the complex? What happens if they are not able to meet that goal? They claim to be catering to management level employees at the various logistics parks in the area, but how many management level workers are there? The majority of logistics park employees will not be able to afford these apartments.
William and Debra McGee
729 W Shawnee Ct
Gardner KS 66030

We ask that this zoning change be denied. We are not opposed to developing Gardner by planning and encouraging development. We want to do this with the right timing. We believe if this is approved there will be several consequences that are impacts to our area.
1. Additional traffic on the existing roads which are already overcrowded; Gardner budgets have slowed providing a correction.
   A. Direct impact on N WAVERLY RD, W SANTA FE ST, and W 175TH ST,
   B. Direct impact on intersections at W MAIN ST and N WAVERLY RD, W MAIN ST and W SANTA FE ST, and N WAVERLY RD, W SANTA FE ST, and W 175TH ST,
   C. Property value impact due to over loaded traffic in area.
2. We realize that providing and alternative access to Waverly Pointe and Waverly Place is desirable.
   A. Provides some distribution of traffic getting into and out of the subdivision.
3. We believe that the noise offered by the use of property on East side of N LAUREL ST as a Pool and Clubhouse for this Apartment complex is not acceptable.
   A. The Pool/Clubhouse will introduce noise and hurt Townhouse property values.
   B. Will not allow our residence, at least for the immediate surrounding Town homes, to use these facilities.
   C. It will make it difficult to explain to future buyers why it is not a resource they can use.
4. We don't see commitment to noise and visibility compromises in the plan.
To my fellow Gardner citizens and councilmen & women,

My name is Jessica Strom and I am the co-owner of 720 W. Shawnee CT, Gardner KS 66030, and I am writing this in regards to the Waverly Plaza development rezoning proposal and the concerns that I have with one crucial portion of the proposed development. I believe that development is important for the growth and sustainability of any community but I also believe that to do so successfully it must be done with integrity. The proposal as a whole to rezone Z-10-01 (PDP-10-01) from CP-2 to include RPD zoning for the apartment complex is not something I object to, again as a whole, however I am adamantly against the proposed placement of the apartment pool directly on not only my property line, but that of over 34 of my neighbors as well, all homeowners with investments in our community.

My husband and I chose to move to and invest in Gardner out of every other city in the Kansas City metro just last April. We moved from an hour away and my husband still commutes an hour to work in Leavenworth each way every single weekday. We saved for 3 years to purchase our first home to raise our two small children, we could have moved anywhere, but again, we chose Gardner. Just like the builder, just like the city council, we believe Gardner is a great little town with massive potential and we bought knowing that the land next to our subdivision would eventually be developed. Up until last month (yes even after the sale of the land where the clubhouse & pool are slated to go) our community was told by Ken Rogler, who sold the land, that the lot was going to have one last townhome developed there, it is even on our subdivision lot map on our website. We were lied to as he sold it knowing the plans for the land, a complete loss of integrity for the very homeowners who invested in his business.

Build the apartments, build the commercial, honestly at the end of the day everyone will be fine, things will work out, BUT, I beg of the city planners and the builders themselves, to build with integrity and move the location of the pool to the green space in between the apartment buildings themselves. There is zero precedent of an apartment pool banking directly onto the property line of private homeowners anywhere in the Kansas City metro. At the meeting on Feb 13, the homeowners who attended were completely disregarded and our concerns essentially blown off, told the pool would ‘look nice’ and ‘it was unfortunate’ that we bought our homes and then now this pool would be developed there. That the builders didn’t want the rental customers to have to deal with the noise and disruption of the pool. How is it that renters, who have no vested interest in our community by way of long term investment, have more right to enjoy peace and quiet than that of 34+ property owners who have a combined total investment of approx more than 6.8+ million dollars on a single block that surrounds this proposed clubhouse and pool? 6.8+ million dollars that the city of Gardner reaps property taxes on in perpetuity. 6.8+ million dollars that these homeowners CHOOSE to invest in Gardner when they could have invested elsewhere. The builder will bring added growth and income to Gardner sure, but where is the integrity in regards to the investors who already live here? Having a rental property pool directly in our backyards not only impedes on our right to peace but will also make it incredibly difficult to resell our property when the time comes for any of us. Renters come and go, we as property owners are here to stay.

In closing I believe that this can be a harmonious development if the builders can respect the adjacent townhome property owners around the clubhouse property and show integrity in moving the pool elsewhere. Leave the clubhouse there, no problem, make it a big beautiful two story clubhouse, no problem. **But please, the pool does not belong where it is proposed to go.**

*"The greatness of a man is not in how much wealth he acquires, but in his integrity and his ability to affect those around him positively."*
Thank you for submitting this letter with the official project documents.

With highest regard,

Mrs. Jessica Strom
as well as on behalf of Mr. Daniel Strom, Charles Strom, and Rachel Strom

720 W. Shawnee Court
Gardner, KS 66030
913-620-6295
February 2018

Dear Gardner City Planning Commission and Gardner City Council,

Amy Fawer, property owner at 700 W. Shawnee St, Gardner KS 66030, would like to submit this letter of concern and objection to the proposed apartment pool placement in the Waverly Plaza development rezoning application concerning Z-19-01 (PDP-10-01) from CP-2 to include RP3. I do not object to growth & development, however the pool placement on land that is directly adjacent to 34 private homeowner properties is completely inappropriate with zero precedent anywhere in the Kansas City Metro. We as homeowners with a combined total investment of nearly 7 million dollars, reserve the right to enjoy peace and quiet behind our homes without the intrusion of a pool for another development.

Areas of concern include, but are not limited to, the following:
   - Excessive noise amplified further by the surrounding buildings
   - Loss of privacy
   - Constant bright lights throughout the night shining directly into our homes
   - Security, safety and high foot traffic
   - Chemical odor
   - Direct and negative impact on our property resale ability

I have asked the board members of the Reserve at Waverly Pointe HOA to speak on my behalf at the City Planning Commission meeting on Tues, Feb 26th. We as a community ask that the plans be re-evaluated to move the pool off the adjacent property to a more appropriate location across Laurel Street within the apartment complex itself. We are open to exploring other options by moving puzzle pieces within the development to accommodate all parties involved and affected.

Thank you for your attention to this very important matter.

Signed:

Name (print): Amy Fawer Date: 2/24/19
To: Gardner Planning Commission

From: Deanna Moriarty, Resident of the Reserve at Waverly Point

Re: Rezoning Proposal for Waverly Plaza

Date: 2/19/2019

As a recent transplant from New York State to Gardner Kansas, I was shocked and surprised to learn that the land directly behind my town home, which I was told would be a common green space for our townhouse community, had been sold. My understanding was that our development was planned for individual town homes to have small lots, and the buildings set close together to allow for a shared green space in the back of our units.

To hear that a clubhouse and pool are planned to be developed in our back yard was rather shocking.

I would like the apartment complex to be re-designed so their pool and clubhouse are not in my backyard.

We hope that we can come to an agreement about these issues so that we can all live peacefully and harmoniously together.

Deanna J. Moriarty
February 24, 2019

Dear Gardner City Planning and Gardner City Council,

As the property owners of 732 W Shawnee Ct in Gardner, we would like to voice our concern for a new building project that is being developed literally in our backyard. We have serious reservations about the proposed apartment pool placement in the Waverly Plaza development rezoning application of Z-19-01 (PDP-10-01) from CP-2 to include RP3. While we understand the need for the growth and development of residential space in Gardner, the placement of the pool on land that is directly adjacent to 34 private homeowner properties (our neighbors) is completely inappropriate with absolutely no precedent anywhere in the Kansas City Metro area, let alone Gardner. As homeowners who could potentially share our backyard with an apartment pool, we would be very disappointed with any government body who would grant permission for such an obtrusive development.

Not only does the potential placement of the pool worry us, but we have reservations about the following:
- Excessive noise amplified further by the surrounding buildings
- Loss of privacy
- Constant bright lights throughout the night shining directly into our homes
- Security, safety and increased foot traffic
- Chemical odors
- Direct and negative impact on our property resale value

We have asked the board members of the Reserve at Waverly Pointe HOA to speak on our behalf at the City Planning Commission meeting on Tuesday, February 26. We support the HOA’s request to re-evaluate this new development’s plans and move the pool off the adjacent property to a more appropriate location across Laurel Street within the apartment complex itself. We want welcome new neighbors to the area and hope we can come to an arrangement that benefits all parties involved.

Thank you for your attention to this very important matter.

John & Ruby Ary
732 W Shawnee Ct.
Gardner, KS 66030
February 2018

Dear Gardner City Planning Commission and Gardner City Council,

1. **Marlene Abbey**, property owner at 1316 N. Doris, Gardner KS 66030, would like to submit this letter of concern and objection to the proposed apartment pool placement in the Waverly Plaza development rezoning application concerning Z-19-01 (PDP-10-01) from CP-2 to include RP3. I do not object to growth & development, however the pool placement on land that is directly adjacent to 34 private homeowner properties is completely inappropriate with zero precedent anywhere in the Kansas City Metro. We as homeowners with a combined total investment of nearly 7 million dollars, reserve the right to enjoy peace and quiet behind our homes without the intrusion of a pool for another development.

Areas of concern include, but are not limited to, the following:

• Excessive noise amplified further by the surrounding buildings
• Loss of privacy
• Constant bright lights throughout the night shining directly into our homes
• Security, safety and high foot traffic
• Chemical odor
• Direct and negative impact on our property resale ability

I have asked the board members of the Reserve at Waverly Pointe HOA to speak on my behalf at the City Planning Commission meeting on Tues, Feb 26th. We as a community ask that the plans be re-evaluated to move the pool off the adjacent property to a more appropriate location across Laurel Street within the apartment complex itself. We are open to exploring other options by moving puzzle pieces within the development to accommodate all parties involved and affected.

Thank you for your attention to this very important matter.

Signed: **Marlene Abbey**

Name (print): **Marlene Abbey**  Date: 2/24/19
February 2018

Dear Gardner City Planning Commission and Gardner City Council,

I, Mary Scott, property owner at 725 W. Jefferson St., Gardner KS 66030, would like to submit this letter of concern and objection to the proposed apartment pool placement in the Waverly Plaza development rezoning application concerning Z-19-01 (PDP-10-01) from CP-2 to include RP3. I do not object to growth & development, however the pool placement on land that is directly adjacent to 34 private homeowner properties is completely inappropriate with zero precedent anywhere in the Kansas City Metro. We as homeowners with a combined total investment of nearly 7 million dollars, reserve the right to enjoy peace and quiet behind our homes without the intrusion of a pool for another development.

Areas of concern include, but are not limited to, the following:

- Excessive noise amplified further by the surrounding buildings
- Loss of privacy
- Constant bright lights throughout the night shining directly into our homes
- Security, safety and high foot traffic
- Chemical odor
- Direct and negative impact on our property resale ability

I have asked the board members of the Reserve at Waverly Pointe HOA to speak on my behalf at the City Planning Commission meeting on Tues, Feb 26th. We as a community ask that the plans be re-evaluated to move the pool off the adjacent property to a more appropriate location across Laurel Street within the apartment complex itself. We are open to exploring other options by moving puzzle pieces within the development to accommodate all parties involved and affected.

Thank you for your attention to this very important matter.

Signed: Mary Scott

Name (print): Mary Scott Date: 2/24/2019
February 2018

Dear Gardner City Planning Commission and Gardner City Council,

I, [Redacted], property owner at 210 W Pearl, Gardner KS 66030, would like to submit this letter of concern and objection to the proposed apartment pool placement in the Waverly Plaza development rezoning application concerning Z-19-01 (PDP-10-01) from CP-2 to include RP3. I do not object to growth & development, however the pool placement on land that is directly adjacent to 34 private homeowner properties is completely inappropriate with zero precedent anywhere in the Kansas City Metro. We as homeowners with a combined total investment of nearly 7 million dollars, reserve the right to enjoy peace and quiet behind our homes without the intrusion of a pool for another development.

Areas of concern include, but are not limited to, the following:

- Excessive noise amplified further by the surrounding buildings
- Loss of privacy
- Constant bright lights throughout the night shining directly into our homes
- Security, safety and high foot traffic
- Chemical odor
- Direct and negative impact on our property resale ability

I have asked the board members of the Reserve at Waverly Pointe HOA to speak on my behalf at the City Planning Commission meeting on Tues, Feb 26th. We as a community ask that the plans be re-evaluated to move the pool off the adjacent property to a more appropriate location across Laurel Street within the apartment complex itself. We are open to exploring other options by moving puzzle pieces within the development to accommodate all parties involved and affected.

Thank you for your attention to this very important matter.

Signed: [Redacted]

Name (print): [Redacted] Date: 3/24/19
February 5, 2019

Dear Property Owner:

The Gardner Planning Commission will hold their regular meeting on Tuesday, February 26, 2019, beginning at 7:00 p.m., in the Gardner City Hall, 120 E Main Street. The following items may be of interest to you:

Z-19-01(PDP-19-01): Rezoning for approximately 13.10 acres from CP-2 (Planned General Business) and RP-3 (Planned Garden Apartment) Districts to CP-2 (Planned General Business) and RP-3 (Planned Garden Apartment) Districts [due to district boundary and development plan change] and associated preliminary development plan for Waverly Plaza. (Tax IDs F221423-2004 and CF221423-2011)

Rezoning requests are considered public hearing items and the public will be given the opportunity to make oral comments on such requests at the meeting. Written comments are welcome and encouraged.

A complete legal description for this property is available at the City of Gardner Business & Economic Development Department at Gardner City Hall, 120 E. Main Street, Monday - Friday from 8:00 a.m. - 5:00 p.m. If you have questions relating to this matter, please contact me at 913-856-0909.

After the Planning Commission makes a recommendation, property owners within 200' of the subject area, 1000' in the county, may submit a protest petition against such recommendation. The protest petition must be filed with the City Clerk, within 14 days of the conclusion of the public hearing. For more information, contact the Business & Economic Development Department.

PLEASE NOTE: If you have recently transferred ownership of your property in the area of this request, or if such property is under a contract purchase agreement, we ask you to please forward this letter to the new owner or the contract purchaser.

Sincerely,

Michelle Leininger, AICP
Principal Planner

Enclosure
Gardner Planning Commission

Waverly Plaza
Meeting Date: February 26, 2019

GARDNER KANSAS
Blazing New Trails
February 7, 2019

Dear Property Owner:

Recently you should have received a notice about a public hearing on a rezoning request to take place on Tuesday, February 26, 2019 at City Hall. This involves the following properties:

**Z-19-01(PDP-19-01):** Rezoning for approximately 13.10 acres from CP-2 (Planned General Business) and RP-3 (Planned Garden Apartment) Districts to CP-2 (Planned General Business) and RP-3 (Planned Garden Apartment) Districts [due to district boundary and development plan change] and associated preliminary development plan for Waverly Plaza. (Tax IDs F221423-2004 and CF221423-2011)

After receiving numerous inquiries about the rezoning and development plan requests, the Business and Economic Development Department has decided to arrange a meeting between interested residents and the property owner to facilitate discussion in advance of the Planning Commission meeting.

This informal application meeting is scheduled for Wednesday, February 13, 2019 from 6 pm to 7 pm at the Gardner Senior Center located at 128 E. Park St. in Gardner, KS. City staff will also be available to answer questions pertaining to the Gardner Land Development Code in relation to this application.

Please don’t hesitate to call me with any questions. I can be reached at (913) 856-0909.

Sincerely,

Michelle Leininger, AICP
Principal Planner
ZONING MAP AMENDMENT (REZONING) APPLICATION

OWNER INFORMATION
Name(s)  Bristol Partners XIX LLC
Contact  Phillip DiVilbiss / Greg DiVilbiss
Address  11216 Delmar St
City  Leawood  State  KS  Zip  66211
Phone  913.221.5651(Phillip), 785.218.5655 (Greg)  Email  gregd@bristolgroupe.com

APPLICANT/AGENT INFORMATION
Name(s)  Phelps Engineering, Inc.
Contact  Judd D. Claussen, P.E.
Address  1270 N Winchester
City  Olathe  State  KS  Zip  66061
Phone  913.393.1155  Email  jclaussen@phelpsengineering.com

SITE INFORMATION
Property Address/Location:  NE Corner of S. Santa Fe St & S Waverly Rd.
Legal Description (Attach If Necessary)  Lengthy, See Attached.
Total Site Area  6.63 Ac.
Present Zoning  CP-2  Proposed Zoning  RP-3
Present Land Use  Vacant / Agricultural  Proposed Land Use  Multi-family / Apartments
Proposed Building Type(s)

Please indicate a reason for the request:
To create an apartment community on the property that will complement the proposed new commercial center.

SIGNATURE
I/We, the undersigned am/are the (owner(s), (duly authorized agent) (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for rezoning as indicated above.

Signature(s):  /s/ Judd D. Claussen  Phelps Engineering, Inc.
Date  1/16/2019

Revised 10/24/16  Rezoning Application  Page 1 of 4
ZONING MAP AMENDMENT (REZONING) APPLICATION CHECKLIST

APPLICATION SUBMITTAL REQUIREMENTS

Yes  No
1. Complete application packet
2. Application fee
3. Digital copies (PDF) of the completed application and legal description (Word)
4. Sign posting affidavit
5. Preliminary Development Plan application and plans (if rezoning to a planned development)

Please respond to the following statements:

Anticipated relationship of proposed zoning to economic development or public health, safety and welfare:

The new apartment project will provide additional residents to the proposed commercial center and help its overall success. The apartments will provide a much needed residential living option for residents of Gardner and provide living options for the growth of the community.

Anticipated impact of proposed zoning/use on existing public infrastructure:

Street improvements to W Santa Fe and Waverly are on City CIP.

Public street improvements to N. Laurel & 174th Street will be completed with the project.

Public utility line extensions will be completed with the project.

I hereby submit all information required for rezoning application review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted.

Signature of Applicant: [Signature]
Date: [Date]

Rev 10/24/16  Rezoning Application
OWNER AFFIDAVIT

I/WE, Bristol Partners XIX, LLC, hereby referred to as the "Undersigned", being of lawful age, do hereby on this 16th day of January, 2019, make the following statements to wit:

1.  I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

   See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2.  I/We the undersigned, have previously authorized and hereby authorize Judd Claussen, P.E., of Phelps Engineering, Inc. (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding NE Corner of W Santa Fe & S Waverly Rd. (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.

3.  It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

[Signature]
Owner

[Signature]
Owner

STATE OF Kansas
COUNTY OF Douglas

The foregoing instrument was acknowledged before me on this 16th day of January, 2019 by

[Signature]
Greg Divillbiss

My Commission Expires:

[Stamp]
Lindsey Thompson
Notary Public

Revised 10/24/16
Reissuing Application
PRELIMINARY DEVELOPMENT PLAN APPLICATION

OWNER INFORMATION
Name(s) Bristol Partners XIX LLC
Contact Phillip DiVilbiss / Greg DiVilbiss
Address 11216 Delmar St
City Leawood State KS Zip 66211
Phone 913.221.5651 (Phillip), 785.218.5655 (Greg) Email gregd@bristolgroupe.com

APPLICANT/AGENT INFORMATION
Name(s) Phelps Engineering, Inc.
Contact Judd D. Claussen, P.E.
Address 1270 N Winchester
City Olathe State KS Zip 66061
Phone 913.393.1155 Email jclaussen@phelpsengineering.com

SITE INFORMATION
Property Address/Location NE Corner of S. Santa Fe St & S Waverly Rd.

Legal Description (Attach if Necessary) Lengthy, See Attached.

Number of Existing Lots None (unplatted) Number of Proposed Lots 5
Total Site Area CP-2 Present Zoning RP-3

Present Land Use Vacant / Agricultural Proposed Use(s) Multi-family / Apartments

Proposed Street Design Type(s) & Class
Proposed Type(s) Open & Civic Space
Proposed Frontage Type(s)
Proposed Building Types(s)

SIGNATURE
I/we, the undersigned am/are the (owner(s)) (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for a preliminary development plan as indicated above.

Signature(s): Judd Claussen, Phelps Engineering Inc
Date 1/16/2019
PRELIMINARY DEVELOPMENT PLAN
APPLICATION CHECKLIST

APPLICATION SUBMITTAL REQUIREMENTS

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<td>1. Complete application packet</td>
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<td>3. 10 complete sets of plans printed</td>
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<td>4. Digital copies (PDF) of the completed application, plans, and legal description</td>
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<td>5. Sign posting affidavit</td>
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<td>6. Preliminary Stormwater Management Plan (2 printed and 1 digital copy)</td>
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<td>7. Preliminary Traffic Assessment See Access Management Code. (2 printed and 1 digital copy)</td>
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PRELIMINARY DEVELOPMENT PLAN REQUIREMENTS

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<td>1. Public Realm Plan</td>
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<td>A plan outlining the general location, design characteristics, and functions of all proposed streets, storm water management, open spaces, civic spaces, and circulation networks – whether public, common or private – that will create the public realm for the plan.</td>
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<td>2. Development Plan</td>
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<td>A plan indicating the specific land uses and their density/intensity, block and lot patterns, building types and scale, design characteristics, and other building and site design elements that reflect the proposed character of the plan. This plan shall have a particular emphasis on how these elements relate to the public realm plan and where transitions between these elements occur at a parcel or block scale, both within the development and in coordination with abutting property. The development plan shall specifically identify where development standards may differ from those otherwise applicable through the base zoning districts and general development requirements of this Code.</td>
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<td>3. Existing Conditions</td>
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<td>Analysis identifying the general layout of any existing structures, streets or infrastructure and the location of natural features such as watercourses, steep grades, significant stands of trees, specimen trees or other features.</td>
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<td>4. Phasing or Implementation</td>
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<td>A strategy indicating the estimated timing of development, and any other administrative details of implementing the plan through future final site plans.</td>
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<td>5. Names, addresses, and phone numbers of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).</td>
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Yes  No
6. Date of preparation and/or revisions.
7. Vicinity map (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the
section of land, including township and range, section street names, and a north arrow.)
8. A legal boundary description with angular bearings and linear distances, referenced to section
or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of
the plat in acres.
9. Location of monuments, shown in reference to existing official monuments or the nearest
established ¼ section corner, including the bearings and distances to such reference points or
monuments.
10. Boundary lines of the subdivision shall be enclosed with one continuous bold line, showing
approximate dimensions (bearings and distances).
11. Lots and tracts identified clearly, with blocks numbered or lettered boldly and clearly in the center
of the block, and lot dimensions with bearings and distances, and area in square feet.
12. Building setback lines along public and private streets with dimensions in feet.
13. Existing streets and driveways which abut, touch upon or extend through the subdivision
and/or streets located within 400 feet of the plat. The description shall include types and widths of
existing surfaces, right-of-way widths, and dimensions of any bridges and culverts.
14. Location of existing open space, alleys, parks, streams, ponds, or other similar features
within plat, and whether they are to be retained or removed.
15. Location of existing buildings and structures within 200 feet of the plat.
16. Existing utilities, including sanitary sewer, force main, water main, gas mains, culverts and storm
sewer pipe, street lights, electric conduits, and invert elevations of sewers at points of proposed
connection.
17. Topography of the area contained in the plat and within 20 feet of the plat boundary shown by 2-
foot contour intervals and proposed preliminary grading. Contour lines shall be legible but not
overpowering.
18. Proposed street network, including right-of-way, bearings, tangents, and horizontal and vertical
curvature data (use of flow direction arrows and percent of grade is permitted at preliminary for
vertical curve data, unless otherwise specified/required) along the centerline of each street.
19. Proposed sidewalks and/or trail locations including proposed widths.
20. Proposed utilities, including approximate location of sanitary sewer, water main, street lights,
and storm sewer.
21. Existing and proposed easements with dimensions. Existing easements shall be labeled with
book and page number. A 10-foot utility easement shall be shown adjacent to arterial streets.
22. Any area within a federally designated floodplain. Location, stations, and elevations of the
100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and
Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled
(example: FIRM, Map #20091C0041D, September 27, 1991).
23. Stream corridor boundary and dimensions.

24. Intersection site distance analysis.

25. Vehicle maneuvering/turning templates reflecting the site can accommodate a minimum SU-30 class vehicles (for emergency access to all areas of the site), and the appropriate site-design vehicle for any other special areas of the site (such as delivery or dock areas, etc.), as necessary.

26. All public streets within the plat conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.

I hereby submit all information required for preliminary development plan review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted.

[Signature of Applicant]

Date: 1/16/2019
OWNER AFFIDAVIT

I/WE, Bristol Partners XIX, LLC, hereby referred to as the "Undersigned", being of lawful age, do hereby on this ______________, day of January, 2019, make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

   See “Exhibit A, Legal Description” attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize Judd Claussen, P.E., of Phelps Engineering, Inc. (Herein referred to as “Applicant”), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding NE Corner of W Santa Fe & S Waverly Rd. (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

__________________________
Owner

__________________________
Owner

STATE OF Kansas
COUNTY OF Douglas

The foregoing instrument was acknowledged before me on this ______________, day of January, 2019 by Greg Divillbiss

__________________________
Greg Divillbiss

My Commission Expires:

__________________________
LINDSEY THOMPSON
State of Kansas
Notary Public

Revised 10/24/15
Rezoning Application
Page 3 of 4
Agenda Item: Consider adopting an ordinance amending Chapter 2.05.040, of the Municipal Code of the City of Gardner, Kansas, entitled “Governing Body Rules Of Procedure”

Strategic Priority: Infrastructure and Asset Management, Quality of Life, Fiscal Stewardship, Economic Development

Department: Administration

Background/Description of Item:

Governing Body Rules of Procedure (GBROP) was first adopted on March 18, 2013 by Ordinance 2424 and provides the necessary guidelines for the conduct of orderly meetings of the Governing Body. It contains rules and procedures found in City ordinances and includes best practices used by municipalities throughout the Kansas City area. Since then, the document has been updated four separate times:

- The adoption of Charter Ordinance No. 26 on May 19, 2014 necessitated updating portions of the GBROP in order to align both documents. This update occurred on August 4, 2014 with the passage of Ordinance 2415 with the changes being made to Chapters 1, 2, and 5.

- At the December 15, 2014 City Council Meeting, the City Council adopted Ordinance 2474 changing the Electric Utility Advisory Board to a Utility Advisory Commission. Additional revisions to GBROP regarding an update to the applicable nomenclature and an update regarding the commission interview process were made with the passage of Ordinance 2477 on January 20, 2015.

- The most recent major revision to GBROP occurred with the passage of Ordinance 2490 on July 13, 2015. With this revision, updates were made to Chapters 2, 3, and 5. These updates included the clarification that an Interview Team was to be utilized for Board and Commission appointments, the additional definition of multiple new item-types for the agenda, and various housekeeping items.

- On September 18, 2017, Ordinance 2556, an ordinance amending Chapter 2(D) of the GBROP to provide for an appeal of the Mayor’s determination relating to order of a meeting and determination of matters relating to the conduct of a meeting to the City Council was passed. This was related to a concern regarding live-streaming.

The Governing Body requested that staff review GBROP and make recommendations for changes. Staff completed an initial review of the document and presented the Governing Body with the findings on September 4, 2018.

- Twenty-two “housekeeping” items were identified, with necessary changes for reasons including the following: aligning the document with current City ordinances and/or state statutes, removing redundancies, correction or removal of outdated language, adjustment
of language or word order for consistency or clarity, and the removal of unnecessary or extraneous wording.

- The Governing Body was asked to provide input on additional items. Utilizing this input, additional changes were made to the final document. The Governing Body requested further information on five additional items at this time.

At the February 4, 2019 City Council meeting, staff provided a presentation on the five additional items as requested by the Governing Body. These items included conflict of interest language, social media usage, clarification of attendance expectations, options for reprimand or censure, and clarification of the agenda item submission process. Staff also requested that a “Planning and Zoning Consent Agenda” subsection be added, and provided the Governing Body with an opportunity to provide any additional input before the creation of the final document.

Staff has completed the revisions to GBROP based on the input provided by the Governing Body. The updated version of GBROP will be effective upon the passage of the attached ordinance and its subsequent publication in the paper of record.

As the appointment process for Boards and Commissions was removed from GBROP, an additional ordinance concerning Boards and Commissions of the City of Gardner will be presented for the Council’s Consideration following the passage of this ordinance.

**Attachments:**

- Summary of suggested edits to *Governing Body Rules of Procedure* previously presented to / directed by the Governing Body
- Redline version of 2015 edition of *Governing Body Rules of Procedure* reflecting suggested edits
  - Please note there may be some formatting issues with this document as it was created utilizing previous versions of word processing programs that are not compatible with current versions
- Clean version of March 18, 2019 *Governing Body Rules of Procedure* reflecting input from the Governing Body
- Ordinance 2605

**Suggested Motion:**

Adopt Ordinance 2605, an ordinance amending Chapter 2.05.040, of the Municipal Code of the City of Gardner, Kansas, entitled “Governing Body Rules Of Procedure” and incorporating by reference the *Governing Body Rules Of Procedure*, under the provisions of K.S.A. 12-3009 through 12-3012
Edits Directed by the Governing Body:

- **Chapter 2(D), bullet 1:**
  - Provide additional clarity on when the Mayor votes

- **Chapter 2(H):**
  - Remove this section and create a separate ordinance

- **Chapter 3(A), paragraph 2, bullet 5:**
  - Alter language to read “City Clerk” only

- **Chapter 3(A), paragraph 2:**
  - Clarify expectations regarding attending Council meetings via telephone
  - Add language that preference is in person attendance

- **Chapter 3(A), paragraph 2, bullet 4:**
  - Add conflict of interest language, including language on recusal

- **Chapter 3(A), paragraph 2, bullet 5:**
  - Provide clarification of attendance expectations, including the definition of attendance

- **Chapter 3(C):**
  - Amend language for clarification

- **Chapter 3(D), bullets 5 and 6:**
  - Add the phrase “including on Social Media” as appropriate

- **Chapter 3(G), bullet 2:**
  - Add “in conjunction with the Public Information Officer”

- **Chapter 5(A), “Quorum” subsection:**
  - Leave quorum at four
  - Leave language as is (do not add censure/reprimand)

- **Chapter 5(B):**
  - Clarify the process for agenda item submission

- **Chapter 5(D):**
  - Add “Planning and Zoning Consent Agenda” subsection

- **Chapter 5(D), “Public Comments” subsection:**
  - Include language regarding rules for public submission of items needing to utilize the audiovisual system

Housekeeping Edits:

- **Cover Page**
  - Update logo/photo/text

- **Table of Contents**
  - Edit to match final content / form / page numbers

- **Chapter 1(C):**
  - Remove
    - Unnecessary commentary regarding how the document was created

- **Chapter 2(A):**
  - Remove language regarding term expirations
    - This language expired in 2017

- **Chapter 2(B):**
  - Adjust language to match current statutes (K.S.A. 25-2120)
• Chapter 2(D), bullet 3:
  o Adjust language to match current ordinance (Ordinance 2556)
• Chapter 2(D), bullet 7:
  o Adjust language to match current ordinance (Ordinance 2556)
• Chapter 2(E):
  o Adjust language to match current statutes (K.S.A. 25-2120)
• Chapter 2(F):
  o Adjust language to match current statutes (K.S.A. 25-2120)
• Chapter 4(B), paragraph 3, bullet 3:
  o Remove redundant language regarding notifications
• Chapter 4(B), paragraph 4:
  o Remove redundant language regarding “acting mayor”
    ▪ Duties and limitations of the acting mayor are previously outlined
  o Remove redundant language regarding Governing Body notifications
    ▪ Restated in paragraphs below
• Chapter 4(B), paragraph 5:
  o Remove language regarding “alternate” locations and times
    ▪ There is no set time or location for Special meetings; therefore there can be no alternate time or location
• Chapter 4(C):
  o Remove “work session” from special meetings and make this its own separate section
    ▪ Eliminates confusion between special meetings and work sessions
    ▪ Clarifies the process for requesting work sessions following current practices
• Chapter 4(D; formerly C);, paragraph 3:
  o Reorder language to reflect current technology usage (email before phone)
• Chapter 4(D; formerly C);, paragraph 4:
  o Reorder language to reflect current technology usage (email before phone)
  o Remove redundant language regarding emergency meetings
    ▪ This entire section is specific to emergency meetings
• Chapter 4(E), paragraph 1:
  o Adjust language to match current statutes (K.S.A. 75-4319(a))
• Chapter 5(A), “Action” subsection, paragraph 2:
  o Reorder language for consistency
• Chapter 5(A), “Sequence of Agenda Items” subsection:
  o Reorder language for clarity
• Chapter 5(1), “Department Director and Staff”:
  o Remove redundant language regarding relaying of information
    ▪ This process is previously outlined
• Chapter 5(D):
  o Reverse order of “Public Hearings” and “Presentations” to reflect most common practice
    ▪ Chair retains the right to reorder the agenda as needed
• Chapter 5(D), “Old Business” subsection:
  o Add additional language to provide clarity
Governing Body Rules of Procedure
City of Gardner, Kansas

Passed on 7-13-2015 by Ordinance No. 2490

Commented [AN1]: Change cover to reflect new logo and simplify for easier electronic uploading.
# TABLE OF CONTENTS

## CHAPTER 1 – AUTHORITY OF RULES

A. **AUTHORITY** .................................................................................................................. 3
B. **APPLICATION** .................................................................................................................. 3
C. **CONTENTS** ..................................................................................................................... 3
D. C. **DEFINITIONS** ............................................................................................................. 3

## CHAPTER 2 – COUNCIL ORGANIZATION AND DUTIES

A. **GOVERNING BODY** ....................................................................................................... 4
B. **NEWLY ELECTED MEMBERS** ....................................................................................... 4
C. **DUTIES OF THE GOVERNING BODY** .......................................................................... 4
D. **DUTIES OF THE MAYOR** ............................................................................................. 4
E. **DUTIES OF THE PRESIDENT OF THE COUNCIL** ....................................................... 5
F. **DUTIES OF THE VICE-PRESIDENT OF THE COUNCIL** ............................................. 5
G. **SUCCESSION IN OFFICE** ............................................................................................. 5

**Appointment Process** ....................................................................................................... 6

## CHAPTER 3 – CONDUCT OF THE GOVERNING BODY

A. **GENERAL CONDUCT** .................................................................................................. 7
B. **CONDUCT WITH MEMBERS** ..................................................................................... 7
C. **CONDUCT WITH CITY ADMINISTRATOR AND STAFF** ............................................ 9
D. **CONDUCT WITH THE PUBLIC** ................................................................................... 9
E. **CONDUCT WITH OTHER AGENCIES** ....................................................................... 9
F. **CONDUCT WITH COMMISSION, BOARDS AND COMMITTEES** ............................... 10
G. **CONDUCT WITH THE MEDIA** .................................................................................. 10
H. **LITIGATION AND CONFIDENTIAL INFORMATION** .................................................. 10
I. **ETHICAL CONDUCT** .................................................................................................... 10

## CHAPTER 4 – CITY COUNCIL MEETINGS AND SCHEDULES

A. **REGULAR MEETINGS** ................................................................................................. 12
B. **SPECIAL MEETINGS** .................................................................................................. 12
C. D. **EMERGENCY MEETINGS** ..................................................................................... 13
D. E. **EXECUTIVE SESSIONS** .......................................................................................... 13
CHAPTER 5 - MEETING GUIDELINES & PROCEDURES

A. GENERAL
   Authority
   Meetings to be Public
   Quorum
   Location
   Action
   Sequence of Agenda Items
   Minutes
   Right of Floor
   City Administrator
   City Attorney
   City Clerk

B. REQUIREMENTS FOR AGENDA ITEM SUBMISSION

C. AGENDA PACKET PREPARATION

D. AGENDA FORMAT
   Call to Order
   Pledge of Allegiance
   Presentations
   Public Hearings
   Appearances
   Public Comments
   Consent Agenda
   Planning and Zoning Consent Agenda
   Committee Recommendations
   Old Business
   New Business
   Council Updates
   Executive Session

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Commented [AN11]: Updated to reflect correct page numbers
Commented [AN12]: Updated to reflect addition of section numbers
Commented [AN13]: Updated to reflect correct page numbers
CHAPTER 1 – AUTHORITY OF RULES

A. AUTHORITY

The Governing Body shall establish its own Rules of Procedure in a clear and concise manner to assist them in the general conduct of City business. For those matters not covered by these rules, the procedure shall be decided by a majority vote of the Governing Body. These rules (with the exception of those included in Charter Ordinance No. 19 and Charter Ordinance No. 26) may be altered, amended or repealed by ordinance at any time by a majority vote of the entire Governing Body. Until such time as they are amended or new rules adopted by ordinance, these rules shall prevail to govern the order and conduct of business of the Governing Body. The rules may not be suspended by the Governing Body during any meeting.

During City Council discussions, deliberations, and proceedings, the Mayor has been designated with the primary responsibility to ensure that the Governing Body and members of the public adhere to the Council’s norms and procedures.

B. APPLICATION

These procedures shall be applicable to all members of the Governing Body.

C. CONTENTS

This publication consists of an accumulation of practices developed and utilized by Johnson County Government and neighboring municipalities over the years as well as excerpts taken from the Gardner Municipal Code.

D. DEFINITIONS

Chair: When the term Chair is referred to in this publication, it is understood to mean the Mayor or President of the Council.

City Council: The five (5) elected Council Members.

Governing Body: The five (5) Council Members and Mayor, collectively.

City Council: The five (5) elected Council Members.
CHAPTER 2 – COUNCIL ORGANIZATION AND DUTIES

A. GOVERNING BODY

The Mayor and five Councilmembers shall constitute the Governing Body of the City and shall be elected at-large for four-year terms or until their successors are qualified. Those members of the governing body elected in the year 2011 shall have a term expiring in 2015. Those members of the governing body elected in 2013 shall have terms expiring in 2017. (Charter Ordinance No. 19, Sec. 3, Ordinance No. 2046, and Charter Ordinance No. 26, Sec. 4)

The officers elected hereunder shall be qualified pursuant to the laws of the State of Kansas. The removal from the City of any officer elected hereunder, who is required to be a qualified elector thereof, shall occasion a vacancy in such office. (Charter Ordinance No. 19, Sec. 3 and Charter Ordinance No. 26, Sec. 4)

B. NEWLY ELECTED MEMBERS

Newly elected Council Members are sworn into office at the second regular Council meeting in April following a regular municipal election on the second Monday in January following certification of the regular municipal election held November of each odd year.

C. DUTIES OF THE GOVERNING BODY

City Council Members and City staff shall conduct the business of the City of Gardner:

- Recognizing that the stewardship of the public interest must be of primary concern.
- Working for the common good of the people of Gardner.
- Ensuring fair and equal treatment of all persons, claims and transactions coming before the City Council and City Council established boards and commissions.

D. DUTIES OF THE MAYOR

The Mayor shall:

- Preside at all meetings of the Council and shall have a tie-breaking vote when the Council is equally divided and in instances where Kansas Statutes specifically dictate a vote of the Governing Body. The Mayor shall have the power to approve or veto any ordinance as the laws of the state shall prescribe. (Ordinance No. 2046)
- Be responsible for the control, debate and order of speakers.
- Decide all questions of order, subject to an appeal by any Member to the Governing body’s parliamentarian City Council (Ordinance 2556)
- Confine debate to matters under discussion.
- Put to a vote all matters properly presented before the City Council and to declare the result thereof for the record.
- Authenticate by signature all acts made by the authority of the City Council.
- Have the authority necessary to enforce the rules and prevent the misuse of motions or established procedure, the abuse of privileges, or obstruction of the business of the City Council, subject to the appeal by any Member to the Governing body’s parliamentarian City Council (Ordinance 2556).

Commented [AN16]: Remove language regarding expired terms; this language became irrelevant in 2017 (approved 09/04/2018)

Commented [AN17]: Adjust language to match current statutes (K.S.A. 25-2120) (approved 09/04/2019)

Commented [AN18]: Updated to reflect Ordinance 2556 (Approved 09/04/2018)

Commented [AN19]: Updated to reflect Ordinance 2556 (Approved 09/04/2018)
E. DUTIES OF THE PRESIDENT OF THE COUNCIL

The President of the Council shall:

- Serve as the representative of the City Council at ceremonial functions and may, at his/her own discretion, ask another Council Member to represent the Council at the function.

F. DUTIES OF THE VICE-PRESIDENT OF THE COUNCIL

The Vice-President of the Council shall:

- Be appointed from members of the City Council by a majority vote at its first regular Council meeting in April-January following a regular municipal election.
- In the absence of the Mayor, preside at City Council meetings. (Ordinance No. 2046)
- When occupying the place of Mayor, have the same privileges as other members. (Ordinance No. 2046)

G. SUCCESSION IN OFFICE

In case of a vacancy in the Council occurring by reason of resignation, death, or removal from office or from the City, the Governing Body shall appoint a qualified elector to fill the vacancy until the next election for that office. In case any person elected as a Councilmember neglects or refuses to qualify within 30 days after the election, the Councilmember shall be deemed to have refused to accept the office and a vacancy shall exist. The Governing Body may appoint a qualified elector to fill the vacancy. (Charter Ordinance No. 19, Sec. 3 and Charter Ordinance No. 26, Sec. 4)

Appointment Process

The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on the City Council. Openings will be advertised for two weeks via the City’s official newspaper, the City’s website (www.gardnerkansas.gov), and other social media outlets.

Appointments to the City Council shall be based upon applications filed in the City Clerk’s Office. Members of the public are encouraged to visit the City’s website where they can choose one of two options to apply for an appointed position as a City Council Member. The first option offers a printable Public Service Application which can be

Commented [AN20]: Adjust language to match current statutes (K.S.A. 25-2120) (Approved 09/04/2018)

Commented [AN21]: Adjust language to match current statutes (K.S.A. 25-2120) (Approved 09/04/2018)
accessed directly through the City’s website, completed, and returned to the City Clerk’s Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City’s website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the City Council opening has been advertised for two weeks, the City Clerk shall provide to the Governing Body a list of the applicants who are qualified pursuant to the laws of the State of Kansas. The Council will then be given one week to advise the City Clerk of any potential issues with any of the candidates.

The applicants will then be invited to the next regularly scheduled City Council Meeting for interview with the Governing Body. The Governing Body will interview the applicants at the City Council Meeting and vote to appoint one of the applicants to fill the vacant City Council position until the next election. The Governing Body may conduct second interviews or start the appointment process over if they believe none of the applicants are qualified. A copy of the nominee’s Public Service Application will be included in the Council packet for the meeting at which the interviews will be conducted.

H. APPOINTMENTS TO BOARDS AND COMMISSIONS

The City of Gardner utilizes direct citizen input through the voluntary appointment of individuals to various boards and commissions (i.e. Planning Commission, Board of Zoning Appeals, Utility Advisory Commission, and the Airport Board).

The Mayor and two Councilmembers are charged with the responsibility of recommending individuals, by unanimous consent, to serve on City boards and commissions, subject to the approval of the Council. The Mayor and two Councilmembers shall serve as the Interview Team for applicant interviews.

Vacancies

A vacancy on a board or commission shall be effective on the date stated in the individual’s written notice of resignation filed with the Mayor or the date they become ineligible to serve in such position, whichever comes first. All vacancies shall be filled by the Interview Team, subject to the approval of the Council. No vacancy on a board or commission shall impair the right of the remaining members to exercise all powers of the body.

In the event of a vacancy on a board or commission, the Interview Team shall submit to the City Council a recommendation to fill the vacancy within sixty (60) days from the date the office became vacant. In addition to the sixty (60) days, for good cause and upon a majority vote of the Council members present and voting, the Interview Team may extend for up to an additional thirty (30) days, the time stated to make the recommendation to fill a vacancy. Good cause shall be determined by the City Council and include but not be limited to such events as a death in office, illness, insufficient or inadequate candidates, legal holidays, or the timing of the next regular Council meeting at which a nominee would be considered for appointment.
Candidate Qualifications

Preferred candidates for appointment shall be at least 18 years of age or older, a registered voter, and a resident of the City of Gardner or be otherwise connected to the community in terms of property ownership, business affairs, or by offering a unique and necessary expertise.

Candidates interested in serving on the Utility Advisory Commission must be a resident of the City and a customer of one of the City's utilities.

Candidates interested in serving on the Airport Board have no residency requirement; however, they must have a vested interest and working knowledge of the Gardner Airport.

Prior to submitting an application, interested individuals are encouraged to attend at least one meeting of the board or commission for which they are applying so as to understand the mission of the body and the time commitment involved.

An individual is only eligible for appointment to and may serve as a member of only one board or commission at any given time.

Appointment Process

The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on all boards and commissions. Openings will be advertised for two weeks via the City’s official newspaper, the City’s website (www.gardnerkansas.gov), and other social media outlets.

Appointments to boards and commissions are based upon recommendation by the Interview Team followed by a majority vote by the Council. Consideration for appointment shall be based upon a completed Public Service Application, meeting basic qualifications, and interview results. Members of the public are encouraged to visit the City’s website where they can choose one of two options to apply for an appointed position on a board or commission. The first option offers a printable Public Service Application which can be accessed directly through the City’s website, completed, and returned to the City Clerk’s Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City’s website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the board and/or commission opening(s) have been advertised for two weeks, the City Clerk shall provide to the Governing Body the applications on file for the specified opening. The Council will then be given one week to advise the City Clerk of any personally known potential issues with any of the candidates or to offer a personal recommendation for a candidate or candidates.

An additional two weeks will be set aside for the conducting of candidate interviews by the Interview Team. A Board/Commission representative and the City Administrator (of
The City Administrator’s designee can participate in the interviews as their schedules allow.

The Interview Team will have one week after the conclusion of candidate interviews to choose a nominee which they will bring forward to the City Council for consideration.

The City Council will consider the appointment at their first regular meeting after the Interview Team has selected a nominee. A copy of the nominee’s Public Service Application will be included in the Council packet for the meeting at which the recommendation will be presented for consideration.

Appointment Records

The City Clerk shall keep the official records pertaining to the appointment process, which include: Public Service Applications on all appointees, excerpts from Council meetings at which the appointments were approved, official oaths, membership rosters for all boards and commissions, attendance records, and other records that may be required.

Compensation

Appointees serve on a volunteer basis and shall not be compensated for their services but may be reimbursed for expenses in carrying out their duties.

Removal

A majority of the Governing Body may remove any appointed board or commission member at any time for good and sufficient cause. Cause shall include but not be limited to, any violation of any applicable law, regulation or policy; neglect of duty; and failure to comply with the appointive body attendance policy. If such removal occurs, the vacancy shall be filled by Mayoral appointment, subject to the approval of the Council.

Attendance

Attendance shall be recorded by the Department Director or a staff member designated by the Department Director of the Board or Commission and member attendance tracked by the same. Appointees violate the City's boards and commissions attendance policy if they receive notice of meetings and without excuse miss three (3) consecutive meetings or attend fewer than two-thirds (2/3) of the regular or special meetings of the board or commission on which they serve within the twelve (12) month period following the member’s appointment, or an anniversary date thereof. “Excuse” shall mean more than inconvenience and includes illness or family emergency. Business commitments shall not be a good excuse. Violation of the attendance policy will be reported to the City Clerk and the Mayor.

Terms

Terms of office for boards and commissions shall be as stated in the Gardner Municipal Code pertaining to the specific body.

Reappointment

Board or commission members wishing to be considered for reappointment after their term has expired shall follow the process as outlined above.

Commented [AN24]: Removed; will become separate ordinance (approved 09/04/2018)
When a member of a board or commission has served for a period of eight consecutive years on one particular body, that member generally will not be eligible for reappointment until the member has vacated the position for one full term. Board or commission members may be reappointed beyond the eight-year limit under exceptional circumstances.

Commented [AN25]: Removed; will become separate ordinance (approved 09/04/2018)
CHAPTER 3 – CONDUCT OF THE GOVERNING BODY

A. GENERAL CONDUCT

These rules are intended to facilitate, and not obstruct, the orderly conduct of meetings of the Gardner City Council. The purpose of these rules is to provide an orderly and consistent procedure for conducting such meetings. These rules should be followed as necessary to conduct the meetings of the Gardner City Council.

All members have and share equal rights, privileges, responsibilities and obligations which include but are not limited to the following:

- All Members present and participating in meetings have the right to make, second, or amend motions.
- All Members present and participating have the right to participate in debate when discussion is permitted.
- All Members have the right to make inquiries and seek clarification or further information on pending matters.
- All Members present for meetings have the right to vote on matters, unless prevented by a conflict of interest. Governing Body members are encouraged to recuse themselves from participating in discussion about or voting on matters relating to items for which they have a conflict of interest. Conflict of interest shall be defined as having substantial interest in a topic being considered by the Governing Body. Substantial interest shall include the following:
  - A Governing Body member and/or his/her spouse (individually or collectively) owns a legal or equitable interest exceeding $5,000 or 5% of any business, whichever is less.
  - A Governing Body member and/or his/her spouse (individually or collectively) has received taxable compensation of $2,000 or more from a business.
  - A Governing Body member and/or his/her spouse holds a position of officer, director, associate, partner, or proprietor of any business, other than organizations exempt from federal taxation of corporations under section 501(C)(3), Chapter 26, of the United States Code, regardless of the amount of compensation received from such a position.
  - It is important that all Members commit to attending meetings to ensure that the business of the City can be conducted effectively and to ensure fairness to the public, other Council Members, and staff that attend the meetings. Members expecting to be absent from a meeting should notify the City Administrator prior to the meeting or, alternatively, the City Clerk, who will be responsible for notifying the Mayor prior to the start of any meeting. Proper attendance shall be defined as the following:
    - Not missing three consecutive meetings without an excuse.
    - “Excuse” shall mean more than inconvenience and includes illness or family emergency.
    - Not failing to attend a minimum of 2/3 of regular meetings in a rolling period.
12 month period

While in person attendance is preferred, Governing Body members needing to attend the meeting via telephone shall contact the City Clerk in advance of the meeting to make arrangements to do so. Attendance via telephone is limited to one (1) member of the Governing Body, and shall be determined on a first come, first served basis. It is the responsibility of the Governing Body member attending via telephone to notify the City Clerk immediately if the connection is lost in order to ensure accurate record keeping.

B. CONDUCT WITH MEMBERS

Members shall conduct themselves in a proper, businesslike manner during all proceedings of the City Council, and shall respect and follow the rules. Each Member shall demonstrate courtesy and respect for the Council, for the public, for staff and for other Members. No Member shall conduct themselves in a manner that is unbecoming of a Member of the Governing Body.

Governing Body Members shall:

- Value each other’s time.
- Treat each other and everyone with courtesy and refrain from inappropriate behavior and derogatory comments.
- Preserve order and decorum during the meeting.
- Support the laws established by the City Council.
- Abide by the Governing Body Rules of Procedure in conducting the business of the City of Gardner.
- Govern themselves as to the length of their comments.
- Limit their comments to the subject matter, item, or motion being currently considered.
- Not delay or interrupt the proceedings or the peace of City Council meetings, nor disturb any Member while speaking, by conversation or otherwise, nor disobey the orders of the City Council or the presiding officer, except as otherwise herein provided.
- Attempt to build consensus on an item through an opportunity for dialogue; but when this is not possible, the majority vote shall prevail and the majority shall show respect for the opinion of the minority.
- Have the right to dissent from, protest, or comment upon any action of the City Council.
- Respect each other’s opportunity to speak and, if necessary, agree to disagree.
- Avoid offensive negative comments and shall practice civility.
- Assist the Mayor’s exercise of duty to maintain order.

C. CONDUCT WITH CITY ADMINISTRATOR AND STAFF

Governing Body Members shall:

- Communicate with the City Administrator and the appropriate Department Director directly on issues, and concerns, requests for information or research on a given topic, and questions on City Council agenda items. Responses will be copied to all Governing Body members. The City Administrator will then forward this information on to the appropriate City staff member for disposition.
- Not direct staff to initiate any action, change a course of action, or prepare any report that is significant in nature or initiate any project or study without the approval of a majority of the City Council.
- Direct the City Administrator to implement City Council’s policy decisions through the administrative functions of the City.
- Treat staff professionally and refrain from publicly criticizing individual employees.
- Avoid involvement in personnel issues except during City Council executive sessions regarding City Council appointed staff such as the City Administrator, including hiring, firing, promoting, disciplining and other personnel matters.
- Discuss directly with the City Administrator privately, as appropriate, any displeasure over work or behavior with a department or staff member.
- Request information or research on a given topic from the City Administrator for response. Responses will be copied to all Councilmembers.
- Request answers to questions on City Council agenda items from the City Administrator. Questions and responses will be copied to all Councilmembers.
- Present citizen complaints to the City Administrator so the complaint and request for information can be disseminated to staff for appropriate action.
D. **CONDUCT WITH THE PUBLIC**

Governing Body Members shall:

- Make the public feel welcome.
- Be impartial, respectful and without prejudice toward the public.
- Listen courteously and attentively to public comments.
- Represent official policies or positions of the City Council first.
- Explicitly state when their opinions and positions do not represent the City Council when representing their individual opinions and positions, including on social media.
- Make no promises to the public on behalf of the Council, including on social media.

E. **CONDUCT WITH OTHER AGENCIES**

Governing Body Members shall:

- Project a positive image of the City when dealing with other agencies.
- Show tolerance and respect for other agencies' opinions and issues and, if necessary, agree to disagree.
- Represent official policies or positions of the City Council first when designated as delegates of a legislative body.
- Explicitly state when their opinions and positions do not represent the City Council when representing their individual opinions and positions.
- Have the ability to lobby or discuss issues that have been adopted by the legislative bodies or are standing policies of the legislative body with other legislators, government officials or developers.

F. **CONDUCT WITH COMMISSION, BOARDS AND COMMITTEES**

Governing Body Members shall:

- Treat all members of boards, committees and commissions with appreciation and respect.
- Refrain from participation in committee and commission meetings for the purpose of influencing the outcome of said meetings.

G. **CONDUCT WITH THE MEDIA**

Governing Body Members shall:

- Not discuss or go “off the record” with the media to discuss confidential or privileged information pertaining to executive sessions, attorney-client privileged or attorney work product communications including without limitation personnel, litigation or real property negotiations.
In conjunction with the Public Information Officer, provide non-confidential, non-privileged background information when acceptable.

Press releases will be prepared by City staff and routed to the City Administrator for approval before release to the media.

Police responses and/or press releases regarding emergencies may be reported directly to the media by the Police Department’s Public Information Officer.

H. LITIGATION AND CONFIDENTIAL INFORMATION

Governing Body Members shall:

- Keep all written materials and verbal information provided to them on matters that are confidential under state law in complete confidence to ensure that the City’s position is not compromised.
- Not disclose or mention any information in these materials to anyone other than City Council Members, the City Administrator or City Attorney.

I. ETHICAL CONDUCT

Governing Body Members shall:

- Receive at least two hours of training in ethics, conflicts of interest, open meeting laws, bias prohibitions, etc., every year to be coordinated through the City Clerk’s Office.
- Conduct themselves in accordance with such training.
CHAPTER 4 – CITY COUNCIL MEETINGS AND SCHEDULES

A. REGULAR MEETINGS

Regular meetings of the Council shall be held on the first and third Mondays of each month at the hour of seven (7:00) o’clock P.M., at the Gardner City Hall, 120 East Main, Gardner, Kansas, or at such other locations within the City as determined by a majority of the council members. (Ordinance No. 2046)

In the event the first or third Monday is a legal holiday, the regular meeting shall be held on the next day thereafter that is not a legal holiday. (Ordinance No. 2046)

Any alternate location or change in meeting time shall be specified in the notice for the meeting. All meeting notices are to be posted by the City Clerk on the City’s website and in the public notice case in the lobby of City Hall 72-hours prior to the meeting.

B. SPECIAL MEETINGS

All meetings that are not spelled out in the regular meeting ordinance are considered “special meetings.” Only the business for which the special meeting is called may be considered and acted upon by the governing body.

Special meetings may be called by the Mayor or acting Mayor on the written request of any three members of the Council, specifying the object and purpose of such meeting, which request shall be read at the meeting. (Ordinance No. 2046)

The process to request a special meeting will be as follows:

- The Councilmember seeking a special meeting shall email the Mayor or acting Mayor requesting such meeting, specifying the object and purpose.
- The Mayor or acting Mayor will then inform the City Administrator and the City Clerk of the special meeting request.
- The City Clerk initiates an email to the entire governing body explaining that a councilmember would like to call a special meeting to discuss a specific topic. The email will instruct the councilmembers to reply only to the City Clerk ([not to other councilmembers]) with a “Yes” or a “No” answer as to whether they are in agreement with holding a special meeting.

The acting Mayor may also sign the request as one of the three councilmembers. No other business shall be transacted except that mentioned in the call. All governing body members will be notified of the special meeting, including those who sign the request.

Special meetings shall be held at Gardner City Hall or at such other locations as determined by a majority of the Councilmembers. Any alternate location or change in meeting time shall be specified in the notice for the meeting.

The City Clerk shall provide written notice to all Members, local news media and to any person having requested in writing notification of such meetings pursuant to state law. The
notice shall include the date, time, and location of the special meeting. All special meeting notices are to be sent via email blast, posted on the City’s website and posted in the public notice case in the lobby of City Hall.

C. WORK SESSIONS

Work sessions are scheduled on an as needed basis and can be scheduled at any time during the day or evening. No action may be taken during a work session.

Work sessions may be requested by any Councilmember by orally making the request during Council Updates or by submitting a written request to the City Administrator or the Mayor. The City Administrator may also request a work session.

Upon receiving the request for a work session, the City Clerk will initiate an email to the entire Governing Body explaining that a work session has been requested for a specific topic. The email will instruct the Councilmembers to reply only to the City Clerk with a “Yes” or “No answer as to whether they are in agreement with holding a work session.

Work sessions shall be held at Gardner City Hall or at such other locations as determined by a majority of the Councilmembers.

The City Clerk shall provide written notice to all Governing Body members, local news media, and to any person having requested in writing notification of such meetings pursuant to state law. The notice shall include the date, time, and location of the work session. All work session notices are to be sent via email blast, posted on the City’s website and posted in the public notice case in the lobby of City Hall.

C.D. EMERGENCY MEETINGS

In the event of an emergency involving injury or damage to persons or property or which impacts the service or operation of the City, a special meeting may be called with less than 24-hours notice provided a majority of the Members waive notice requirements and reasonable effort is taken to notify local news media. The City Council may hold an emergency meeting without complying with the 72-hour posting requirement, for regular and special meetings, but shall otherwise comply with the Kansas Open Meetings Act procedures.

The City’s official newspaper and radio or television station that has requested notice of special meetings shall be notified by the Mayor, or designee thereof, at least one hour prior to the emergency meeting, or in the case of a dire emergency, at or near the time that the Mayor or designee notifies the Councilmembers of the emergency meeting.

This notice shall be given by telephone, or email, or telephone and all email addresses or telephone numbers and email addresses provided in the most recent request for notification of special meetings shall be used.

In the event that telephone or Internet services are not functioning, the notice requirements of this section shall be deemed waived, and the Mayor, or designee of the City Council, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.[1] during an emergency meeting.

The minutes of an emergency meeting, a list of persons who the Mayor, or designee of the City Council, notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for a minimum of ten (10) days in a public place as soon after the meeting as possible.

D.E. EXECUTIVE SESSIONS

Executive sessions shall generally be conducted as needed. In accordance with the Kansas...
Open Meetings Act (KOMA), an executive session may only take place once an open meeting is convened. A formal motion must be made, seconded and carried by a majority vote to recess into the executive session. The motion must contain three parts: (1) A statement describing the subjects to be discussed during the closed or executive meeting; (2) The justification listed in K.S.A. 75-4317(b) for closing the meeting; and (3) The time and place at which the open meeting shall resume. The justification (a brief description of the topic to be discussed without revealing confidential information), the subject (a reference to one of the permitted topics for executive session as contained in KOMA) and the time and place at which the open meeting will resume. If necessary, additional motions must be made to extend executive session discussion. The complete motion shall be recorded in the minutes of the meeting and shall be maintained as part of the permanent records of the public body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion (e) and the resulting vote(s) must be entered into the minutes. (See K.S.A. 75-4317 et seq.)
Executive sessions are closed to the public. All persons attending executive sessions should be admonished that the purpose of the executive session is to protect important privacy interests and subjects discussed during these sessions should not be shared outside of the executive session.

No executive session will be held without the presence of the City attorney. No binding action may be taken during an executive session. However, entities covered by KOMA may discuss the issue and reach a consensus during an executive session.

E.F. PUBLIC HEARINGS

The Governing Body shall hold public hearings when required by federal, state or municipal law. Public hearings are officially opened and closed by the Chair.

The City Clerk will set City Council public hearing dates and notify the City Council via the agenda on all matters that require a notice and public hearing before the City Council. Scheduled public hearings may be withdrawn or continued at the request of the City Council, staff and/or applicant with a motion and majority vote without further published notice if at the time and place for which notice originally was given the Chair specifies the time and place where the hearing will reconvene.

The general procedure for a public hearing shall be as follows:

- **Presentations:** Staff presents its report; Councilmembers may ask questions of staff. The applicant has the opportunity to present his/her comments, testimony, or arguments
- **Opening of the Public Hearing:** The Chair opens the public hearing.
- **Public Testimony:** Members of the public may present their comments.
- **Close of the Public Hearing:** The Chair closes the public hearing after everyone wishing to speak has had the opportunity to do so.
- **Action:** Council proceeds with discussion and takes action.

The foregoing procedure may be modified, as needed, to accommodate the interests of the public and the operation of the City Government.

E.G. CONTINUANCES

Any person (applicant, appellant or designated representative) scheduled for a public hearing before the City Council:

- **May** obtain one continuance as a matter of right, without personally appearing before the Council on the scheduled hearing date. A written request for the continuance must be delivered to the City Clerk by noon on the day prior to the scheduled public hearing. Any person, who has once obtained a continuance by any procedure, may not obtain any subsequent continuance without appearing before the City Council, pursuant to the subsection below.
• Whoever has once obtained a continuance of a hearing either by notice to the City Clerk as provided in the subsection above may obtain a further continuance only by appearing before the City Council at the scheduled hearing and satisfying the City Council that circumstances exist which would justify an additional continuance.

City staff may obtain a continuance based on the need of the originating department or on behalf of a Council Member. Department staff may request, via the City Clerk, as many continuances as needed to complete and ready the project or appeal for the hearing process; however, staff may not serve as a requestor on behalf of an applicant or appellant.

The City Council may refuse to grant a continuance of any public hearing if there is no valid legal reason why the hearing must be continued.
CHAPTER 5 - MEETING GUIDELINES & PROCEDURES

A. GENERAL

Authority
The City Council acts as a body and policy is established by majority vote. A decision of the majority binds the Council to a course of action. No Councilmember has any extraordinary powers beyond those of other members and all members have equal votes.

Meetings to be Public
All meetings of the Governing Body are required to be open to the public with the exception of executive sessions. All meeting notices are to be posted by the City Clerk on the City’s website and in the public notice case in the lobby of City Hall 72-hours prior to the meeting. Notice shall also be provided to those persons having requested, in writing, notification of such meetings.

Quorum
In all cases, it shall require four (4) members of the Council to constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such a manner and under such penalties as the Council by ordinance may have previously prescribed. In the event of a vacancy on the Council, the number of members of the council required to constitute a quorum shall be reduced from four (4) members to three (3). (Ordinance No. 2046 and Charter Ordinance No. 26, Sec. 5)

Location
All public meetings shall be held at Gardner City Hall, or at such other locations as determined by a majority of the Councilmembers. Any alternate location or change in meeting time shall be specified in the notice for the meeting.

Action
Action by the City Council shall be taken by means of ordinance, resolution, or oral motion duly made and passed by the majority as a body or unit. The City Clerk shall call the roll of votes for ordinances and resolutions.

Public actions of the City Council shall be recorded in the minutes of all regular meetings of the Council. Resolutions shall also be recorded separately, serially numbered, and filed sequentially in the office of the City Clerk. Ordinances shall also be serially numbered, separately recorded, and so remain until amended or voided.

The City Council cannot take action on items not included on the posted agenda except in the case of emergency meetings where urgent items will be discussed.

Sequence of Agenda Items
The Chair may request at anytime during the meeting a change in the sequence of discussion of items on the agenda. This exception is particularly used when a large crowd is in attendance for a particular item.
Minutes

It is the responsibility of the City Clerk or designated recording secretary secured by the City Clerk to keep and enter a written account of all Council meetings in the official City record books. Audio recordings will be destroyed after the minutes have been approved by the City Council. Video recordings will be retained for 10 years. The official record of the meeting is the minutes after they have been approved by the City Council.

It is the policy of the Governing Body that only the Mayor and Councilmembers have the authority to make revisions to the minutes subject to a majority vote of the City Council. Governing Body members having only typographical corrections to minutes are encouraged to provide such corrections to the City Clerk directly and need not wait to submit such corrections at a meeting.

Right of Floor

The Chair will recognize members of the Council, staff or audience desiring to speak, and confine remarks to one subject under consideration.

City Administrator

The City Administrator or designee attends all Council meetings and work sessions and may make recommendations to the Governing Body.

City Attorney

The City Attorney or designee attends all Council meetings and may give written or oral opinions on questions of law. The City Attorney acts as the Governing Body’s parliamentarian.

City Clerk

The City Clerk or designee shall attend all Council meetings, keep the official minutes, call the roll of votes, and perform other duties as requested by the Governing Body.

Department Directors and Staff

The Director or their representative shall attend the meetings unless excused by the City Administrator. The Governing Body shall speak to the City Administrator directly on issues and concerns. The City Administrator will then forward this information to the appropriate City staff member for disposition.

B. REQUIREMENTS FOR AGENDA ITEM SUBMISSION

Councilmembers may submit items for inclusion on future agendas by orally making the request during Council Comments or by submitting a written request to the City Administrator and the Mayor. All items should be submitted by noon five (5) calendar days in advance of the City Council meeting for which they are to be included on the agenda. Any time sensitive or urgent items that cannot be submitted prior to this deadline should be submitted for inclusion as soon as possible in order to avoid changes to a published agenda.

C. AGENDA PACKET PREPARATION

The City Administrator reviews and approves all items for the Council agenda and shall submit to the Mayor and City Council a proposed agenda for each Council meeting at least 72 hours in advance of the regular Council meeting.

The agenda and agenda packets are compiled and distributed through the Administration Department. Packet information that is unable to be electronically transferred will be provided in paper form or will be on file in the City Clerk’s office.
The Governing Body is encouraged to contact the City Administrator with questions and clarifications prior to the meeting.

D. AGENDA FORMAT

The Mayor and Council may reorder the agenda items to expedite the agenda or for the benefit of the public.

Call to Order
The Mayor shall open each regular meeting at the appointed hour.

Pledge of Allegiance
The Mayor shall lead the recitation of the Pledge of Allegiance. The Mayor may invite or designate others to perform this duty.

Presentations
This time may be used as necessary to present awards, proclamations, other honors or to receive remarks by distinguished guests.

Public Hearings
The Public Hearings portion of the meeting is reserved for any items requiring a formal public hearing.

Presentations
This time may be used as necessary to present awards, proclamations, other honors or to receive remarks by distinguished guests.

Public Comments
Time shall be set aside at every regular meeting and work session to allow the public to address the City Council on matters that are not listed on the printed agenda, but which relate to the business of the City. Those wishing to speak may do so during the “Public Comments” period at the beginning of the meeting. Interested persons may also speak to individual new business agenda items (other than the consideration of minutes and appointments), not part of a public hearing, and will be allowed to do so following staff’s presentation and preceding the Council’s discussion of any given item. In both cases, public comments will be limited to 5 minutes. Speakers will not be allowed to concede any part of their allotted time to another speaker.

Ordinarily, no person other than the applicant or proponent of an agenda item will be permitted to address any item before the City Council more than twice during the same meeting, and shall limit their comments to no more than five minutes each time.

Each person addressing the Governing Body must approach the podium when recognized by the Mayor, communicate his or her name and address and, if acting as spokesperson for a group, must name such group for the record. Lobbyists must identify themselves and their client(s), business or organization they represent before speaking to the Council.

Any individual wishing to use the City’s audiovisual equipment to display content as part of his or her public comments must make arrangements with the City Clerk to do so by no later than 12:00 noon on the day of the meeting.

The City Council may not deliberate or take action on any request/item brought before them during the Public Comments period. The Council may ask clarifying questions and refer the request/item to staff for follow-up or they may request that it be added to a future meeting agenda.
Members of the Governing Body are discouraged from engaging in debate with a member of the public at Council meetings since these debates seldom resolve concerns and may inflame feelings at a public meeting.

Consent Agenda

Those items on the Council agenda, which are considered to be of a routine and non-controversial nature by the City Administrator, shall be listed on the consent agenda. These items shall be acted upon collectively under a single motion. A member of the City Council may remove any item from the consent agenda for discussion. Any item removed will be heard immediately following action on the remaining consent agenda items. The agenda item for all consent agenda items resulting from committee or commission recommendations shall include the results of the vote taken by the committee or commission.

Planning and Zoning Consent Agenda

Those items on the Council agenda which have already received a recommendation from the Planning Commission and do not require a roll call vote shall be listed on the Planning and Zoning consent agenda. These items shall be acted upon collectively under a single motion. A member of the City Council may remove any item from the planning and zoning consent agenda for discussion. Any item removed will be heard immediately following action on the remaining planning and zoning consent agenda items. The agenda item for all planning and zoning consent agenda items shall include the results of the vote taken by the Planning Commission.

Committee Recommendations

Committee Recommendations contain items being brought forward for consideration by recommendation from a City board, commission or committee.

Old Business

Old Business contains items which have been previously discussed and formally tabled at a previous City Council meeting. All items the Council has voted to table will be brought forward at the next regular City Council meeting or at a date determined by majority vote of the City Council requiring City Council direction.

New Business

New Business contains items which may not have been previously discussed, require City Council direction or are considered controversial.

Council Updates

The Council Updates portion of the meeting is reserved for updates to the Council on City business, operations, projects, and other items of Council interest. It is also a time to allow Council Members to comment on matters related to the business and operation of the City.

Executive Session

The Executive Session portion of the meeting is reserved for times when the Council determines it necessary to enter into Executive Session as allowed by State Statute. It does not preclude the Council from entering into Executive Session at any point during an open meeting as the Council deems necessary.

Adjournment

Before there can be an adjournment, the Council must, by proper action, move and vote
for adjournment. Upon adjournment, the meeting is ended and no further business can be conducted.
Governing Body
Rules of Procedure

2019 Edition
Passed on March 18, 2019
# Table of Contents

Chapter 1 – Authority of Rules ........................................................................................................ 3
   A. Authority .................................................................................................................................. 3
   B. Application ............................................................................................................................. 3
   C. Definitions ............................................................................................................................. 3

Chapter 2 – Council Organization and Duties ................................................................................ 4
   A. Governing Body ....................................................................................................................... 4
   B. Newly Elected Members .......................................................................................................... 4
   C. Duties of the Governing Body ................................................................................................. 4
   D. Duties of the Mayor .................................................................................................................. 4
   E. Duties of the President of the Council ..................................................................................... 5
   F. Duties of the Vice-President of the Council ............................................................................. 5
   G. Succession in Office .................................................................................................................. 5
      Appointment Process ................................................................................................................ 6

Chapter 3 – Conduct of the Governing Body .................................................................................. 7
   A. General Conduct ...................................................................................................................... 7
   B. Conduct with Members ............................................................................................................ 8
   C. Conduct with City Administrator and Staff ........................................................................... 9
   D. Conduct with the Public ......................................................................................................... 9
   E. Conduct with Other Agencies ............................................................................................... 9
   F. Conduct with Commissions, Boards, and Committees ......................................................... 10
   G. Conduct with the Media ......................................................................................................... 10
   H. Litigation and Confidential Information ................................................................................ 10
   I. Ethical Conduct ...................................................................................................................... 10

Chapter 4 – City Council Meetings and Schedules ....................................................................... 12
   A. Regular Meetings ................................................................................................................... 12
   B. Special Meetings ................................................................................................................... 12
   C. Work Sessions ....................................................................................................................... 13
   D. Emergency Meetings ............................................................................................................. 13
   E. Executive Sessions ................................................................................................................ 14
   F. Public Hearings ...................................................................................................................... 14
   G. Continuances ......................................................................................................................... 15

Chapter 5 – Meeting Guidelines and Procedures ......................................................................... 16
   A. General .................................................................................................................................. 16
      Authority .................................................................................................................................. 16
      Meetings to be Public .............................................................................................................. 16
      Quorum ................................................................................................................................... 16
      Location .................................................................................................................................. 16
      Action .................................................................................................................................... 16
Sequence of Agenda Items .............................................................................................................. 17
Minutes ........................................................................................................................................... 17
Right of Floor ................................................................................................................................. 17
City Administrator .......................................................................................................................... 17
City Attorney ................................................................................................................................... 17
City Clerk ....................................................................................................................................... 17
Department Directors .................................................................................................................... 17
B. Requirements for Agenda Item Submission ................................................................................. 17
C. Agenda Packet Preparation .......................................................................................................... 18
D. Agenda Format ............................................................................................................................. 18
  Call to Order ................................................................................................................................. 18
  Pledge of Allegiance ..................................................................................................................... 18
  Presentations .................................................................................................................................. 18
  Public Hearings ............................................................................................................................... 18
  Public Comments ........................................................................................................................... 18
  Consent Agenda .............................................................................................................................. 19
Planning and Zoning Consent Agenda ........................................................................................... 19
Committee Recommendations ......................................................................................................... 20
Old Business ................................................................................................................................... 20
New Business ................................................................................................................................. 20
Council Updates .............................................................................................................................. 20
Executive Session ............................................................................................................................ 20
Adjournment ................................................................................................................................. 20
A. AUTHORITY

The Governing Body shall establish its own Rules of Procedure in a clear and concise manner to assist them in the general conduct of City business. For those matters not covered by these rules, the procedure shall be decided by a majority vote of the Governing Body. These rules (with the exception of those included in Charter Ordinance No. 19 and Charter Ordinance No. 26) may be altered, amended or repealed by ordinance at any time by a majority vote of the entire Governing Body. Until such time as they are amended or new rules adopted by ordinance, these rules shall prevail to govern the order and conduct of business of the Governing Body. The rules may not be suspended by the Governing Body during any meeting.

During City Council discussions, deliberations, and proceedings, the Mayor has been designated with the primary responsibility to ensure that the Governing Body and members of the public adhere to the Council’s norms and procedures.

B. APPLICATION

These procedures shall be applicable to all members of the Governing Body.

C. DEFINITIONS

Chair: When the term Chair is referred to in this publication, it is understood to mean the Mayor or President of the Council

City Council: The five (5) elected Council Members

Governing Body: The five (5) Council Members and Mayor, collectively
CHAPTER 2 – COUNCIL ORGANIZATION AND DUTIES

A. GOVERNING BODY

The Mayor and five Councilmembers shall constitute the Governing Body of the City and shall be elected at-large for four-year terms or until their successors are qualified. (Charter Ordinance No. 19, Sec. 3, Ordinance No. 2046, and Charter Ordinance No. 26, Sec. 4)

The officers elected hereunder shall be qualified pursuant to the laws of the State of Kansas. The removal from the City of any officer elected hereunder, who is required to be a qualified elector thereof, shall occasion a vacancy in such office. (Charter Ordinance No. 19, Sec. 3 and Charter Ordinance No. 26, Sec. 4)

B. NEWLY ELECTED MEMBERS

Newly elected Council Members are sworn into office on the second Monday in January following certification of the regular municipal election held in November of each odd year.

C. DUTIES OF THE GOVERNING BODY

City Council Members and City staff shall conduct the business of the City of Gardner:

- Recognizing that the stewardship of the public interest must be of primary concern
- Working for the common good of the people of Gardner
- Ensuring fair and equal treatment of all persons, claims and transactions coming before the City Council and City Council established boards and commissions

D. DUTIES OF THE MAYOR

The Mayor shall:

- Preside at all meetings of the Council and shall have a tie-breaking vote when the Council is equally divided and in instances where Kansas Statutes specifically dictate a vote of the Governing Body. The Mayor shall have the power to approve or veto any ordinance as the laws of the state shall prescribe (Ordinance No. 2046)
- Be responsible for the control, debate and order of speakers
- Decide all questions of order, subject to an appeal by any Member to the City Council (Ordinance No. 2556)
- Confine debate to matters under discussion
- Put to a vote all matters properly presented before the City Council and to declare the result thereof for the record
- Authenticate by signature all acts made by the authority of the City Council
- Have the authority necessary to enforce the rules and prevent the misuse of motions or established procedure, the abuse of privileges, or obstruction of the business of the City Council, subject to the appeal by any Member to the City Council  *(Ordinance No. 2556)*
- Serve as the representative of the City Council at ceremonial functions and may, at his/her own discretion, ask another Council Member to represent the Council at the function

E. DUTIES OF THE PRESIDENT OF THE COUNCIL

The President of the Council shall:

- Be appointed from members of the City Council by a majority vote at its second regular Council meeting in January following a regular municipal election
- In the absence of the Mayor, preside at City Council meetings  *(Ordinance No. 2046)*
- When occupying the place of Mayor, have the same privileges as other members  *(Ordinance No. 2046)*

F. DUTIES OF THE VICE-PRESIDENT OF THE COUNCIL

The Vice-President of the Council shall:

- Be appointed from members of the City Council by a majority vote at its second regular Council meeting in January following a regular municipal election
- In the absence of both the Mayor and the President of the Council, the Vice-President of the Council shall be styled “Acting President of the Council.”  *(Ordinance No. 2046)*
- When occupying the place of Mayor, have the same privileges as other members  *(Ordinance No. 2046)*

G. SUCCESSION IN OFFICE

In case of a vacancy in the Council occurring by reason of resignation, death, or removal from office or from the City, the Governing Body shall appoint a qualified elector to fill the vacancy until the next election for that office. In case any person elected as a Councilmember neglects or refuses to qualify within 30 days after the election, the Councilmember shall be deemed to have refused to accept the office and a vacancy shall exist. The Governing Body may appoint a qualified elector to fill the vacancy.  *(Charter Ordinance No. 19, Sec. 3 and Charter Ordinance No. 26, Sec. 4)*

In case of a vacancy in the office of Mayor, the President of the Council shall become Mayor until the next regular election for that office and a vacancy shall
occurs in the office of the Councilmember becoming Mayor. (Charter Ordinance No. 19, Sec. 3 and Charter Ordinance No. 26, Sec. 4)

Appointment Process

The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on the City Council. Openings will be advertised for two weeks via the City’s official newspaper, the City’s website (www.gardnerkansas.gov), and other social media outlets.

Appointments to the City Council shall be based upon applications filed in the City Clerk’s Office. Members of the public are encouraged to visit the City’s website where they can choose one of two options to apply for an appointed position as a City Council Member. The first option offers a printable Public Service Application which can be accessed directly through the City’s website, completed, and returned to the City Clerk’s Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City’s website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the City Council opening has been advertised for two weeks, the City Clerk shall provide to the Governing Body a list of the applicants who are qualified pursuant to the laws of the State of Kansas. The Council will then be given one week to advise the City Clerk of any potential issues with any of the candidates.

The applicants will then be invited to the next regularly scheduled City Council Meeting for an interview with the Governing Body. The Governing Body will interview the applicants at the City Council Meeting and vote to appoint one of the applicants to fill the vacant City Council position until the next election. The Governing Body may conduct second interviews or start the appointment process over if they believe none of the applicants are qualified. A copy of the nominee’s Public Service Application will be included in the Council packet for the meeting at which the interviews will be conducted.
CHAPTER 3 – CONDUCT OF THE GOVERNING BODY

A. GENERAL CONDUCT

These rules are intended to facilitate, and not obstruct, the orderly conduct of meetings of the Gardner City Council. The purpose of these rules is to provide an orderly and consistent procedure for conducting such meetings. These rules should be followed as necessary to conduct the meetings of the Gardner City Council.

All members have and share equal rights, privileges, responsibilities and obligations which include but are not limited to the following:

- All Members present and participating in meetings have the right to make, second, or amend motions
- All Members present and participating have the right to participate in debate when discussion is permitted
- All Members have the right to make inquiries and seek clarification or further information on pending matters
- All Members present for meetings have the right to vote on matters, unless prevented by a conflict of interest. Governing Body members are encouraged to recuse themselves from participating in discussion about or voting on matters relating to items for which they have a conflict of interest. Conflict of interest shall be defined as having substantial interest in a topic being considered by the Governing Body. Substantial interest shall include the following:
  - A Governing Body member and/or his/her spouse (individually or collectively) owns a legal or equitable interest exceeding $5,000 or 5% of any business, whichever is less
  - A Governing Body member and/or his/her spouse (individually or collectively) has received taxable compensation of $2,000 or more from a business
  - A Governing Body member and/or his/her spouse, holds a position of officer, director, associate, partner, or proprietor of any business, other than organizations exempt from federal taxation of corporations under section 501(c)(3), Chapter 26, of the United States Code, regardless of the amount of compensation received from such a position
- It is important that all Members commit to attending meetings to ensure that the business of the City can be conducted effectively and to ensure fairness to the public, other Council Members, and staff that attend the meetings. Members expecting to be absent from a meeting should notify the City Clerk prior to the meeting, who will be responsible for notifying the Mayor prior to the start of any meeting. Proper attendance shall be defined as the following:
  - Not missing three consecutive meetings without an excuse
“Excuse” shall mean more than inconvenience and includes illness or family emergency
Failing to attend a minimum of 2/3 of regular meetings in a rolling 12 month period

- While in person attendance is preferred, Governing Body members needing to attend the meeting via telephone shall contact the City Clerk in advance of the meeting to make arrangements to do so. Attendance via telephone is limited to one (1) member of the Governing Body, and shall be determined on a first come, first served basis. It is the responsibility of the Governing Body member attending via telephone to notify the City Clerk immediately if the connection is lost in order to ensure accurate record keeping.

B. CONDUCT WITH MEMBERS

Members shall conduct themselves in a proper, businesslike manner during all proceedings of the City Council, and shall respect and follow the rules. Each Member shall demonstrate courtesy and respect for the Council, for the public, for staff and for other Members. No Member shall conduct themselves in a manner that is unbecoming of a Member of the Governing Body.

Governing Body Members shall:

- Value each other’s time
- Treat each other and everyone with courtesy and refrain from inappropriate behavior and derogatory comments
- Preserve order and decorum during the meeting
- Support the laws established by the City Council
- Abide by the Governing Body Rules of Procedure in conducting the business of the City of Gardner
- Govern themselves as to the length of their comments
- Limit their comments to the subject matter, item, or motion being currently considered
- Not delay or interrupt the proceedings or the peace of City Council meetings, nor disturb any Member while speaking, by conversation or otherwise, nor disobey the orders of the City Council or the presiding officer, except as otherwise herein provided
- Attempt to build consensus on an item through an opportunity for dialogue, but when this is not possible, the majority vote shall prevail and the majority shall show respect for the opinion of the minority
- Have the right to dissent from, protest, or comment upon any action of the City Council
- Respect each other’s opportunity to speak and, if necessary, agree to disagree
- Avoid offensive negative comments and shall practice civility
• Assist the Mayor’s exercise of duty to maintain order

C. CONDUCT WITH CITY ADMINISTRATOR AND STAFF

Governing Body Members shall:

• Communicate with the City Administrator and the appropriate Department Director(s) directly on issues and concerns, requests for information or research on a given topic, and questions on City Council agenda items. Responses will be copied to all Governing Body members
• Not direct staff to initiate any action, change a course of action, or prepare any report that is significant in nature or initiate any project or study without the approval of a majority of the City Council
• Direct the City Administrator to implement City Council’s policy decisions through the administrative functions of the City
• Treat staff professionally and refrain from publicly criticizing individual employees
• Avoid involvement in personnel issues except during City Council executive sessions regarding City Council appointed staff such as the City Administrator, including hiring, firing, promoting, disciplining and other personnel matters
• Discuss directly with the City Administrator privately, as appropriate, any displeasure over work or behavior with a department or staff member
• Present citizen complaints to the City Administrator so the complaint and request for information can be disseminated to staff for appropriate action

D. CONDUCT WITH THE PUBLIC

Governing Body Members shall:

• Make the public feel welcome
• Be impartial, respectful and without prejudice toward the public
• Listen courteously and attentively to public comments
• Represent official policies or positions of the City Council first
• Explicitly state when their opinions and positions do not represent the City Council when representing their individual opinions and positions, including on social media
• Make no promises to the public on behalf of the Council, including on social media

E. CONDUCT WITH OTHER AGENCIES

Governing Body Members shall:

• Project a positive image of the City when dealing with other agencies
• Show tolerance and respect for other agencies' opinions and issues and, if necessary, agree to disagree
• Represent official policies or positions of the City Council first when designated as delegates of a legislative body
• Explicitly state when their opinions and positions do not represent the City Council when representing their individual opinions and positions
• Have the ability to lobby or discuss issues that have been adopted by the legislative bodies or are standing policies of the legislative body with other legislators, government officials or developers

F. CONDUCT WITH COMMISSIONS, BOARDS AND COMMITTEES

Governing Body Members shall:

• Treat all members of boards, committees and commissions with appreciation and respect.
• Refrain from participation in committee and commission meetings for the purpose of influencing the outcome of said meetings.

G. CONDUCT WITH THE MEDIA

Governing Body Members shall:

• Not discuss or go “off the record” with the media to discuss confidential or privileged information pertaining to executive sessions, attorney-client privileged or attorney work product communications including without limitation personnel, litigation or real property negotiations
• In conjunction with the Public Information Officer, provide non-confidential, non-privileged background information when acceptable

Press releases will be prepared by City staff and routed to the City Administrator for approval before release to the media.

Police responses and/or press releases regarding emergencies may be reported directly to the media by the Police Department’s Public Information Officer.

H. LITIGATION AND CONFIDENTIAL INFORMATION

Governing Body Members shall:

• Keep all written materials and verbal information provided to them on matters that are confidential under state law in complete confidence to ensure that the City’s position is not compromised
• Not disclose or mention any information in these materials to anyone other than City Council Members, the City Administrator or City Attorney

I. ETHICAL CONDUCT

Governing Body Members shall:
- Receive at least two hours of training in ethics, conflicts of interest, open meeting laws, bias prohibitions, etc., every year to be coordinated through the City Clerk’s Office
- Conduct themselves in accordance with such training
CHAPTER 4 – CITY COUNCIL MEETINGS AND SCHEDULES

A. REGULAR MEETINGS

Regular meetings of the Council shall be held on the first and third Mondays of each month at the hour of seven (7:00) o’clock P.M., at the Gardner City Hall, 120 East Main, Gardner, Kansas, or at such other locations within the City as determined by a majority of the council members. (Ordinance No. 2046)

In the event the first or third Monday is a legal holiday, the regular meeting shall be held on the next day thereafter that is not a legal holiday. (Ordinance No. 2046)

Any alternate location or change in meeting time shall be specified in the notice for the meeting. All meeting notices are to be posted by the City Clerk on the City’s website and in the public notice case in the lobby of City Hall 72-hours prior to the meeting.

B. SPECIAL MEETINGS

All meetings that are not spelled out in the regular meeting ordinance are considered “special meetings.” Only the business for which the special meeting is called may be considered and acted upon by the Governing Body.

Special meetings may be called by the Mayor or acting Mayor on the written request of any three members of the Council, specifying the object and purpose of such meeting, which request shall be read at the meeting. (Ordinance No. 2046)

The process to request a special meeting will be as follows:

- The Councilmember seeking a special meeting shall email the Mayor or acting Mayor requesting such meeting, specifying the object and purpose
- The Mayor or acting Mayor will then inform the City Administrator and the City Clerk of the special meeting request
- The City Clerk initiates an email to the entire Governing Body explaining that a Councilmember would like to call a special meeting to discuss a specific topic. The email will instruct the Councilmembers to reply only to the City Clerk with a “Yes” or a “No” answer as to whether they are in agreement with holding a special meeting

No other business shall be transacted except that mentioned in the call.

Special meetings shall be held at Gardner City Hall or at such other locations as determined by a majority of the Councilmembers.

The City Clerk shall provide written notice to all Members, local news media and to any person having requested in writing notification of such meetings pursuant to state law. The notice shall include the date, time, and location of the special
meeting. All special meeting notices are to be sent via email blast, posted on the City’s website and posted in the public notice case in the lobby of City Hall.

C. WORK SESSIONS

Work sessions are scheduled on an as needed basis and can be scheduled at any time during the day or evening. No action may be taken during a work session.

Work sessions may be requested by any Councilmember by orally making the request during Council Updates or by submitting a written request to the City Administrator or the Mayor. The City Administrator may also request a work session.

Upon receiving the request for a work session, the City Clerk will initiate an email to the entire Governing Body explaining that a work session has been requested for a specific topic. The email will instruct the councilmembers to reply only to the City Clerk with a “Yes” or a “No” answer as to whether they are in agreement with holding a work session.

Work sessions shall be held at Gardner City Hall or at such other locations as determined by a majority of the Councilmembers.

The City Clerk shall provide written notice to all Members, local news media and to any person having requested in writing notification of such meetings pursuant to state law. The notice shall include the date, time, and location of the work session. All work session notices are to be sent via email blast, posted on the City’s website and posted in the public notice case in the lobby of City Hall.

D. EMERGENCY MEETINGS

In the event of an emergency involving injury or damage to persons or property or which impacts the service or operation of the City, a special meeting may be called with less than 24 hours notice provided a majority of the Members waive notice requirements and reasonable effort is taken to notify local news media. The City Council may hold an emergency meeting without complying with the 72-hour posting requirement, for regular and special meetings, but shall otherwise comply with the Kansas Open Meetings Act procedures.

The City’s official newspaper and radio or television station that has requested notice of special meetings shall be notified by the Mayor, or designee thereof, at least one hour prior to the emergency meeting, or in the case of a dire emergency, at or near the time that the Mayor or designee notifies the Councilmembers of the emergency meeting.

This notice shall be given by email or telephone, and all email and addresses or telephone numbers provided in the most recent request for notification of special meetings shall be used.
In the event that internet or telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the Mayor, or designee of the City Council, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

The minutes of an emergency meeting, a list of persons who the Mayor, or designee of the City Council, notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for a minimum of ten (10) days in a public place as soon after the meeting as possible.

E. EXECUTIVE SESSIONS

Executive sessions shall generally be conducted as needed. In accordance with the Kansas Open Meetings Act (KOMA), an executive session may only take place once an open meeting is convened. A formal motion must be made, seconded and carried by a majority vote to recess into the executive session. The motion must contain three parts: (1) a statement describing the subjects to be discussed during the closed or executive meeting; (2) the justification listed in subsection (b) for closing the meeting; and (3) the time and place at which the open meeting shall resume. The complete motion shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the public body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion (See K.S.A. 75-4317 et seq)

Executive sessions are closed to the public. All persons attending executive sessions should be admonished that the purpose of the executive session is to protect important privacy interests and subjects discussed during these sessions should not be shared outside of the executive session.

No executive session will be held without the presence of the City attorney. No binding action may be taken during an executive session. However, entities covered by KOMA may discuss the issue and reach a consensus during an executive session.

F. PUBLIC HEARINGS

The Governing Body shall hold public hearings when required by federal, state or municipal law. Public hearings are officially opened and closed by the Chair.

The City Clerk will set City Council public hearing dates and notify the City Council via the agenda on all matters that require a notice and public hearing before the City Council. Scheduled public hearings may be withdrawn or continued at the request of the City Council, staff, and/or applicant with a motion and majority vote without further published notice if at the time and place for which notice originally was given the Chair specifies the time and place where the hearing will reconvene.
The general procedure for a public hearing shall be as follows:

- Presentations: Staff presents its report; Councilmembers may ask questions of staff. The applicant has the opportunity to present his/her comments, testimony, or arguments
- Opening of the Public Hearing: The Chair opens the public hearing
- Public Testimony: Members of the public may present their comments
- Close of the Public Hearing: The Chair closes the public hearing after everyone wishing to speak has had the opportunity to do so
- Action: Council proceeds with discussion and takes action

The foregoing procedure may be modified as needed to accommodate the interests of the public and the operation of the City Government.

G. CONTINUANCES

Any person (applicant, appellant or designated representative) scheduled for a public hearing before the City Council:

- May obtain one continuance as a matter of right, without personally appearing before the Council on the scheduled hearing date. A written request for the continuance must be delivered to the City Clerk by noon on the business day prior to the scheduled public hearing. Any person, who has once obtained a continuance by any procedure, may not obtain any subsequent continuance without appearing before the City Council, pursuant to the subsection below:
  o Who has once obtained a continuance of a hearing either by notice to the City Clerk as provided in the subsection above may obtain a further continuance only by appearing before the City Council at the scheduled hearing and satisfying the City Council that circumstances exist which would justify an additional continuance
  o City staff may obtain a continuance based on the need of the originating department or on behalf of a Council Member. Department staff may request, via the City Clerk, as many continuances as needed to complete and ready the project or appeal for the hearing process. However, staff may not serve as a requestor on behalf of an applicant or appellant

The City Council may refuse to grant a continuance of any public hearing if there is no valid legal reason why the hearing must be continued.
CHAPTER 5 - MEETING GUIDELINES & PROCEDURES

A. GENERAL

Authority

The City Council acts as a body and policy is established by majority vote. A decision of the majority binds the Council to a course of action. No Councilmember has any extraordinary powers beyond those of other members and all members have equal votes.

Meetings to be Public

All meetings of the Governing Body are required to be open to the public with the exception of executive sessions. All meeting notices are to be posted by the City Clerk on the City’s website and in the public notice case in the lobby of City Hall 72-hours prior to the meeting. Notice shall also be provided to those persons having requested, in writing, notification of such meetings.

Quorum

In all cases, it shall require four (4) members of the Council to constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such a manner and under such penalties as the Council by ordinance may have previously prescribed. In the event of a vacancy on the Council, the number of members of the council required to constitute a quorum shall be reduced from four (4) members to three (3). (Ordinance No. 2046 and Charter Ordinance No. 26, Sec. 5)

Location

All public meetings shall be held at Gardner City Hall, or at such other locations as determined by a majority of the Councilmembers. Any alternate location or change in meeting time shall be specified in the notice for the meeting.

Action

Action by the City Council shall be taken by means of ordinance, resolution, or oral motion duly made and passed by the majority as a body or unit. The City Clerk shall call the roll of votes for ordinances and resolutions.

Public actions of the City Council shall be recorded in the minutes of all regular meetings of the Council. Resolutions shall also be recorded separately, serially numbered, and filed sequentially in the office of the City Clerk. Ordinances shall also be separately recorded, serially numbered, codified in the Municipal Code, and so remain until amended or voided.

The City Council cannot take action on items not included on the posted agenda except in the case of emergency meetings where urgent items will be discussed.
Sequence of Agenda Items

At any time during the meeting, the Chair may request a change in the sequence of discussion of items on the agenda. This exception is particularly used when a large crowd is in attendance for a particular item.

Minutes

It is the responsibility of the City Clerk or designated recording secretary secured by the City Clerk to keep and enter a written account of all Council meetings in the official City record books. Audio recordings will be destroyed after the minutes have been approved by the City Council. Video recordings will be retained for 10 years. The official record of the meeting is the minutes after they have been approved by the City Council.

It is the policy of the Governing Body that only the Mayor and Councilmembers have the authority to make revisions to the minutes subject to a majority vote of the City Council. Governing Body members having only typographical corrections to minutes are encouraged to provide such corrections to the City Clerk directly and need not wait to submit such corrections at a meeting.

Right of Floor

The Chair will recognize members of the Council, staff or audience desiring to speak, and confine remarks to the subject under consideration.

City Administrator

The City Administrator or designee attends all Council meetings and work sessions and may make recommendations to the Governing Body.

City Attorney

The City Attorney or designee attends all Council meetings and may give written or oral opinions on questions of law. The City Attorney acts as the Governing Body’s parliamentarian.

City Clerk

The City Clerk or designee shall attend all Council meetings, keep the official minutes, call the roll of votes, and perform other duties as requested by the Governing Body.

Department Directors and Staff

The Director or their representative shall attend the meetings unless excused by the City Administrator.

B. REQUIREMENTS FOR AGENDA ITEM SUBMISSION
Councilmembers may submit items for inclusion on future agendas by orally making the request during Council Updates or by submitting a written request to the City Administrator and the Mayor. All items should be submitted by noon five (5) calendar days in advance of the City Council meeting for which they are to be included on the agenda. Any time-sensitive or urgent items that cannot be submitted prior to this deadline should be submitted for inclusion as soon as possible in order to avoid changes to a published agenda.

C. AGENDA PACKET PREPARATION

The City Administrator reviews and approves all items for the Council agenda and shall submit to the Mayor and City Council a proposed agenda for each Council meeting at least 72 hours in advance of the regular Council meeting.

The agenda and agenda packets are compiled and distributed through the Administration Department. Packet information that is unable to be electronically transferred will be provided in paper form or will be on file in the City Clerk’s office.

The Governing Body is encouraged to contact the City Administrator with questions and clarifications prior to the meeting.

D. AGENDA FORMAT

The Mayor and Council may reorder the agenda items to expedite the agenda or for the benefit of the public.

Call to Order

The Mayor shall open each regular meeting at the appointed hour.

Pledge of Allegiance

The Mayor shall lead the recitation of the Pledge of Allegiance. The Mayor may invite or designate others to perform this duty.

Presentations

This time may be used as necessary to present awards, proclamations, other honors or to receive remarks by distinguished guests.

Public Hearings

The Public Hearings portion of the meeting is reserved for any items requiring a formal public hearing.

Public Comments

Time shall be set aside at every regular meeting and work session to allow the public to address the City Council on matters that are not listed on the printed agenda, but which relate to the business of the City. Those wishing to speak may
do so during the “Public Comments” period at the beginning of the meeting. Interested persons may also speak to individual new business agenda items (other than the consideration of minutes and appointments), not part of a public hearing, and will be allowed to do so following staff’s presentation and preceding the Council’s discussion of any given item. In both cases, public comments will be limited to 5 minutes. Speakers will not be allowed to concede any part of their allotted time to another speaker.

Ordinarily, no person other than the applicant or proponent of an agenda item will be permitted to address any item before the City Council more than twice during the same meeting, and shall limit their comments to no more than five minutes each time.

Each person addressing the Governing Body must approach the podium when recognized by the Mayor, communicate his or her name and address and, if acting as spokesperson for a group, must name such group for the record. Lobbyists must identify themselves and their client(s), business, or organization they represent before speaking to the Council.

Any individual wishing to use the City’s audiovisual equipment to display content as part of his or her public comments must make arrangements with the City Clerk to do so by no later than 12:00 noon on the day of the meeting.

The City Council may not deliberate or take action on any request/item brought before them during the Public Comments period. The Council may ask clarifying questions and refer the request/item to staff for follow-up or they may request that it be added to a future meeting agenda.

Members of the Governing Body are discouraged from engaging in debate with a member of the public at Council meetings since these debates seldom resolve concerns and may inflame feelings at a public meeting.

**Consent Agenda**

Those items on the Council agenda which are considered to be of a routine and non-controversial nature by the City Administrator shall be listed on the consent agenda. These items shall be acted upon collectively under a single motion. A member of the City Council may remove any item from the consent agenda for discussion. Any item removed will be heard immediately following action on the remaining consent agenda items. The agenda item for all consent agenda items resulting from committee or commission recommendations shall include the results of the vote taken by the committee or commission.

**Planning and Zoning Consent Agenda**

Those items on the Council agenda which have already received a recommendation from the Planning Commission and do not require a roll call
vote shall be listed on the Planning and Zoning consent agenda. These items shall be acted upon collectively under a single motion. A member of the City Council may remove any item from the planning and zoning consent agenda for discussion. Any item removed will be heard immediately following action on the remaining planning and zoning consent agenda items. The agenda item for all Planning and Zoning consent agenda items shall include the results of the vote taken by the Planning Commission.

Committee Recommendations

Committee Recommendations contain items being brought forward for consideration by recommendation from a City board, commission or committee.

Old Business

Old Business contains items which have been previously discussed and formally tabled at a previous City Council meeting. All items the Council has voted to table will be brought forward at the next regular City Council meeting or at a date determined by majority vote of the Governing Body.

New Business

New Business contains items which may not have been previously discussed, require City Council direction, or are considered controversial.

Council Updates

The Council Updates portion of the meeting is reserved for updates to the Council on City business, operations, projects, and other items of Council interest. It is also a time to allow Council Members to comment on matters related to the business and operation of the City.

Executive Session

The Executive Session portion of the meeting is reserved for times when the Council determines it necessary to enter into Executive Session as allowed by State Statute. It does not preclude the Council from entering into Executive Session at any point during an open meeting as the Council deems necessary.

Adjournment

Before there can be an adjournment, the Council must, by proper action, move and vote for adjournment. Upon adjournment, the meeting is ended and no further business can be conducted.
ORDINANCE NO. 2605

AN ORDINANCE AMENDING CHAPTER 2.05.040, OF THE MUNICIPAL CODE OF THE CITY OF GARDNER, KANSAS, ENTITLED “GOVERNING BODY RULES OF PROCEDURE” AND INCORPORATING BY REFERENCE THE GOVERNING BODY RULES OF PROCEDURE, UNDER THE PROVISIONS OF K.S.A. 12-3009 THROUGH 12-3012

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

SECTION ONE: Chapter 2.05.040 of the Municipal Code of the City of Gardner, Kansas entitled “Governing Body Rules of Procedure” is hereby amended to read as follows.

2.05.040 Governing Body Rules of Procedure.


SECTION TWO: All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

SECTION THREE: This Ordinance shall take effect and be in force after its passage, approval and publication as provided by law.

PASSED by the City Council on this 18th day of March, 2019.

SIGNED by the Mayor on this 18th day of March, 2019.

CITY OF GARDNER, KANSAS

(SEAL)

___________________
Mayor Steve Shute

Attest:

___________________
Amy Nasta, City Clerk

Approved as to form:

___________________
Ryan Denk, City Attorney

{K0421375.DOCX; 1}
COUNCIL ACTION FORM  
MEETING DATE: MARCH 18, 2019  
STAFF CONTACT: AMY NASTA, CITY CLERK

**Agenda Item:** Consider adopting an ordinance amending ordinance no. 2497 of the City of Gardner, Kansas

**Strategic Priority:** Infrastructure and Asset Management, Quality of Life

**Department:** Administration

**Background/Description of Item:**

The Governing Body requested that staff review Governing Body Rules of Procedure (GBROP) and make recommendations for changes. Staff completed an initial review of the document and presented the Governing Body with the findings on September 4, 2018.

One of the changes requested by the Governing Body at this time was the removal of Section 2(H) as this section concerned procedures for Boards and Commissions of the City of Gardner rather than procedures specific to the Governing Body.

In order to facilitate the removal of Section 2(H) of GBROP, Section Two of the ordinance governing the Airport Advisory Board has been to include the information originally included in GBROP. Please note that information contained in Section 2(H) of GBROP but not in the proposed amended ordinance was already included in the original creation ordinance.

The following is a list of changes made when incorporating GBROP Section 2(H) into the proposed amended ordinance.

- Minor housekeeping changes have been made to the structure of the original GBROP text in order to make the text suitable for the legal format of an ordinance. (*Multiple subsections*)
- Portions of the original text in GRBOP that read “boards or commissions” (or similar) have been altered to read “the Board” as they are now specific to the Airport Advisory Board within the context of this Ordinance. (*Multiple subsections*)
- Clarification has been added to sections of text as necessary. (*Multiple subsections*)
- The explanation of the application process has been simplified for the purpose of brevity and to reflect the commonality of the usage of electronic applications rather than paper applications. (*Proposed subsection 2(g)(ii]*)
  - Please note paper applications are still available and accepted, as stated in the amended ordinance as proposed.
- The requirement to publish notification in the official City newspaper for two weeks has been removed. The notification requirement is now the publication of notification on the City’s official website and social media sites. (*Proposed subsection 2(g)(iii]*)
  - Please note this is for the purpose of allowing the City to act more quickly when a vacancy occurs. Having to publish notification in the paper limits the process start date to one day per week. The delay of notification may be longer than a week depending when a vacancy occurs, due to submission deadlines for the paper.
- Clarification that interviews may take place via phone conference has been added. (*Proposed subsection 2(g)(v]*)
- A stipulation has been added stating “Should the number of qualified applicants for a position be less than or equal to the number of positions available, the interview team may make a unanimous decision to nominate the applicant or applicants without an interview.” (Proposed subsection 2(g)(v))
  - Please note this is not a KOMA violation as the interview team is less than a quorum of the Governing Body.
- Agenda placement for the consideration of nominees for appointment has been moved to the Consent Agenda. (Proposed subsection 2(g)(vii))
- The requirement for including the nominee’s application has been removed as applications contain personal information, much of which had to be redacted prior to inclusion in the packet and is not subject to KORA

**Attachments:**

- Ordinance 2606
- Ordinance 2497 (Airport Advisory Board creation ordinance)
- GBROP Section 2(H)

**Suggested Motion:**

Adopt Ordinance 2606, an ordinance amending ordinance 2497 of the City of Gardner, Kansas
ORDINANCE NO. 2606

AN ORDINANCE AMENDING ORDINANCE NO. 2497 OF THE CITY OF GARDNER, KANSAS,

WHEREAS, the Governing Body of the City has determined that it is necessary to amend Ordinance No. 2497, an ordinance creating an Airport Advisory Board of the City of Gardner Kansas.

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

SECTION ONE. Section 2 of Ordinance 2497 is hereby repealed and replaced by the following:

Section 2. Same - Organization

(a) Number of Board Members. The Board shall consist of five members, hereafter referred to as Members.

(b) Appointment and tenure. The Members shall be nominated by the Mayor and confirmed by the City Council. Members shall be appointed to serve three year terms. In the event of vacancies, the appointments shall be for the unexpired terms.

(c) Vacancies. A vacancy on the board shall be effective on the date stated in the individuals’ written notice of resignation filed with the Mayor or the date they become ineligible to serve in such position, whichever comes first. No vacancy on the board shall impair the right of the remaining members to exercise all powers of the body.

(d) Interview Team. The Mayor and two Councilmembers selected by the Mayor (the Interview Team) are charged with the responsibility of recommending individuals, by unanimous consent, to serve on the board, subject to the approval by majority vote of the Council.

(e) Time for filling vacancies. In the event of a vacancy the board, the Interview Team shall submit to the City Council a recommendation to fill the vacancy within sixty (60) days from the date the office became vacant. In addition to the sixty (60) days, for good cause and upon a majority vote of the Council members present and voting, the Interview Team may extend for up to an additional thirty (30) days, the time stated to make the recommendation to fill a vacancy. Good cause shall be determined by the City Council and include but not be limited to such events as a death in office, illness, insufficient or inadequate candidates, legal holidays, or the timing of the next regular Council meeting at which a nominee would be considered for appointment.

(f) Eligibility. An individual is only eligible for appointment to and may serve as a member of only one City board or commission at any given time.

(g) Appointment Process

1. Basis for consideration. Consideration for appointment shall be based upon a completed Public Service Application, meeting basic qualifications, and interview results.
II. **Public service applications.** Public Service Applications are available on the City’s website and may be submitted electronically through the website or may be printed and returned to City Hall in person or via the United States Post Office. Paper applications will be available at City Hall via the City Clerk’s office. All Public Service Applications are to be kept on file in the City Clerk’s office for a period of one calendar year from the date of receipt.

III. **Notification of Openings.** The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on all boards and commissions. Openings will be advertised for two weeks via the City’s website (www.gardnerkansas.gov), and other official City social media outlets.

IV. **Application Review.** Following the two week notification period, the City Clerk shall provide to the Governing Body the applications on file for the specified opening. The Council will then be given one week to advise the City Clerk only of any personally known potential issues with any of the candidates or to offer a personal recommendation for a candidate or candidates from the pool of applicants. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

V. **Candidate Interviews.** An additional two weeks will be set aside for the conducting of candidate interviews by the Interview Team. A Board/Commission representative and the City Administrator (or the City Administrator’s designee) may participate in the interviews at the request of the Interview Team. Interviews may take place via telephone conference. Should the number of qualified applicants for a position be less than or equal to the number of positions available, the interview team may make a unanimous decision to nominate the applicant or applicants without an interview.

VI. **Candidate Nomination.** The Interview Team will have one week after the conclusion of candidate interviews to unanimously choose a nominee which they will bring forward to the City Council for consideration.

VII. **Appointment as part of the City Council meeting agenda.** The City Council will consider the appointment as part of the consent agenda at their first regular meeting after the Interview Team has selected a nominee.

(h) **Compensation.** Members serve on a volunteer basis and shall not be compensated for their services. Members may be reimbursed for expenses incurred in carrying out their duties.

(i) **Officers.** The Board by majority vote shall elect from among its Members a Chairperson who shall preside over the meetings of the Commission, and a Vice-Chairperson who shall act for the Chairperson during absences. Election of officers shall be held annually at the first regular meeting of the calendar year. No Member shall serve for more than two consecutive terms as an officer.

(j) **Removal.** A majority of the Governing Body may remove any appointed board member at any time for good and sufficient cause. Cause shall include but not be
limited to, any violation of any applicable law, regulation or policy; neglect of duty; and failure to comply with the appointive body attendance policy. If such removal occurs, the vacancy shall be filled by Mayoral appointment, subject to the approval of the Council.

(k) **Attendance.** Attendance shall be recorded by the Department Director or a staff member designated by the Department Director of the Board and member attendance tracked by the same. Appointees violate the attendance policy if they receive notice of meetings and without excuse miss three (3) consecutive meetings or attend fewer than two-thirds (2/3) of the regular or special meetings of the board or commission on which they serve within the twelve (12) month period following the member’s appointment, or an anniversary date thereof. “Excuse” shall mean more than inconvenience and includes illness or family emergency. Business commitments shall not be a good excuse. Violation of the attendance policy will be reported to the City Clerk and the Mayor.

(l) **Reappointment.** Board members wishing to be considered for reappointment after their term has expired shall follow the process as outlined above. When a member of the Board has served for a period of six consecutive years, that member generally will not be eligible for reappointment until the member has vacated the position for one full term. Board members may be reappointed beyond the six-year limit under exceptional circumstances.

SECTION TWO. Effective Date of Ordinance. This Ordinance shall be in full force and effect after its passage by the Governing Body of the City and publication one time in the official City newspaper.

PASSED BY THE CITY COUNCIL OF THE CITY OF GARDNER, KANSAS AND SIGNED BY THE MAYOR ON this 18th day of March, 2018.

CITY OF GARDNER, KANSAS

(SEAL)

______________________________

Steve Shute, Mayor

Attest:

______________________________

Amy Nasta, City Clerk

Approved as to form:
Ryan B. Denk, City Attorney
ORDINANCE NO. 2497

AN ORDINANCE CREATING AN AIRPORT ADVISORY BOARD OF THE CITY OF GARDNER, KANSAS.

WHEREAS, the Governing Body of the City has determined it to be in the best interest of the City to dissolve the Gardner Airport Committee and to revoke the legal authority granted to the Airport Committee to form a nonprofit corporation to supervise the operation of the airport, all as established by Ordinance No. 701 and amended by Ordinance No. 1637; and

WHEREAS, the Governing Body of the City has determined it to be in the best interest of the City to replace the Gardner Airport Committee and nonprofit corporation with an Advisory Board;

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

SECTION ONE: Airport Advisory Board - Qualifications. An Airport Advisory Board of the City is hereby established consisting of five members to advise the City Council on matters pertaining to the continued growth and improvements of the airport. Preferred members shall be at least 18 years of age, a registered voter, and have a vested and working knowledge of the Gardner Municipal Airport.

SECTION TWO: Same - Terms-Vacancies. One member shall be appointed for a term of one year, two members for a term of two years, and three members for a term of three years. Thereafter, all appointments shall be for three-year terms. In the event of vacancies, the appointments shall be for the unexpired terms. Members shall serve without compensation. Members previously appointed to the Airport Committee created pursuant to the Ordinances and Code sections referenced in Section Six below, which Committee is being dissolved by this Ordinance, shall be deemed to be appointed to the Airport Advisory Board as of the effective date of this Ordinance for a term which is equivalent to what would have been the remainder of their term on the now dissolved Airport Committee.

SECTION THREE: Same – Meetings – Quorum. The Airport Advisory Board herein established shall hold meetings once per month. Special meetings can be held as required following appropriate notice. All meetings of the Airport Advisory Board shall be in conformance with the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. A quorum of the Airport Advisory Board is by a majority of the members. Minutes shall be kept of all Board meetings.

SECTION FOUR: Same – Oaths. Each member of the Airport Advisory Board shall subscribe to an oath before entering upon his/her duties as a member of said Airport Advisory Board.

SECTION FIVE: Same – Duties. The Airport Advisory Board will advise the City Council on matters pertaining to continued growth and improvement of the airport including: acquisition of property, construction and reconstruction of airport facilities, institution of programs and procedures which will increase usage of such facilities, and review and make recommendations regarding the airport master plan.

SECTION SIX: Ordinance No. 701, Ordinance No. 1637, and Gardner Municipal Code sections 2.25.010 – 2.25.040 are hereby repealed. The Airport Committee formed by
these ordinances and referenced code sections is hereby dissolved. The authority granted to
the Airport Committee to form a non-profit corporation to supervise the operation of the airport is
hereby revoked and, to the extent necessary, the Board of Directors of this non-profit
corporation, the Gardner Airport Association, Inc., is hereby directed to take all actions
necessary to accomplish the dissolution and winding down of this corporation and to transfer its
remaining assets to the City of Gardner.

SECTION SEVEN: This ordinance shall take effect and be in force on December 31, 2015.

PASSED by the City Council this 21st day of September, 2015.

SIGNED by the Mayor this 21st day of September, 2015.

(SEAL)                                                     CITY OF GARDNER, KANSAS

/s/ Chris Morrow________________________
Chris Morrow, Mayor

Attest:

/s/ Jeanne Koontz_________________
Jeanne Koontz, City Clerk

Approved as to form:

/s/ Ryan B. Denk__________________
Ryan B. Denk, City Attorney
accessed directly through the City’s website, completed, and returned to the City Clerk’s Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City’s website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the City Council opening has been advertised for two weeks, the City Clerk shall provide to the Governing Body a list of the applicants who are qualified pursuant to the laws of the State of Kansas. The Council will then be given one week to advise the City Clerk of any potential issues with any of the candidates.

The applicants will then be invited to the next regularly scheduled City Council Meeting for interview with the Governing Body. The Governing Body will interview the applicants at the City Council Meeting and vote to appoint one of the applicants to fill the vacant City Council position until the next election. The Governing Body may conduct second interviews or start the appointment process over if they believe none of the applicants are qualified. A copy of the nominee’s Public Service Application will be included in the Council packet for the meeting at which the interviews will be conducted.

H. APPOINTMENTS TO BOARDS AND COMMISSIONS

The City of Gardner utilizes direct citizen input through the voluntary appointment of individuals to various boards and commissions (i.e. Planning Commission, Board of Zoning Appeals, Utility Advisory Commission, and the Airport Board).

The Mayor and two Councilmembers are charged with the responsibility of recommending individuals, by unanimous consent, to serve on City boards and commissions, subject to the approval of the Council. The Mayor and two Councilmembers shall serve as the Interview Team for applicant interviews.

Vacancies

A vacancy on a board or commission shall be effective on the date stated in the individuals’ written notice of resignation filed with the Mayor or the date they become ineligible to serve in such position, whichever comes first. All vacancies shall be filled by the Interview Team, subject to the approval of the Council. No vacancy on a board or commission shall impair the right of the remaining members to exercise all powers of the body.

In the event of a vacancy on a board or commission, the Interview Team shall submit to the City Council a recommendation to fill the vacancy within sixty (60) days from the date the office became vacant. In addition to the sixty (60) days, for good cause and upon a majority vote of the Council members present and voting, the Interview Team may extend for up to an additional thirty (30) days, the time stated to make the recommendation to fill a vacancy. Good cause shall be determined by the City Council and include but not be limited to such events as a death in office, illness, insufficient or inadequate candidates, legal holidays, or the timing of the next regular Council meeting at which a nominee would be considered for appointment.
Candidate Qualifications

Preferred candidates for appointment shall be at least 18 years of age or older, a registered voter, and a resident of the City of Gardner or be otherwise connected to the community in terms of property ownership, business affairs, or by offering a unique and necessary expertise.

Candidates interested in serving on the Utility Advisory Commission must be a resident of the City and a customer of one of the City’s utilities.

Candidates interested in serving on the Airport Board have no residency requirement; however, they must have a vested interest and working knowledge of the Gardner Airport.

Prior to submitting an application, interested individuals are encouraged to attend at least one meeting of the board or commission for which they are applying so as to understand the mission of the body and the time commitment involved.

An individual is only eligible for appointment to and may serve as a member of only one board or commission at any given time.

Appointment Process

The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on all boards and commissions. Openings will be advertised for two weeks via the City’s official newspaper, the City’s website (www.gardnerkansas.gov), and other social media outlets.

Appointments to boards and commissions are based upon recommendation by the Interview Team followed by a majority vote by the Council. Consideration for appointment shall be based upon a completed Public Service Application, meeting basic qualifications, and interview results. Members of the public are encouraged to visit the City’s website where they can choose one of two options to apply for an appointed position on a board or commission. The first option offers a printable Public Service Application which can be accessed directly through the City’s website, completed, and returned to the City Clerk’s Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City’s website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the board and/or commission opening(s) have been advertised for two weeks, the City Clerk shall provide to the Governing Body the applications on file for the specified opening. The Council will then be given one week to advise the City Clerk of any personally known potential issues with any of the candidates or to offer a personal recommendation for a candidate or candidates.

An additional two weeks will be set aside for the conducting of candidate interviews by the Interview Team. A Board/Commission representative and the City Administrator (or
the City Administrator’s designee) can participate in the interviews as their schedules allow.

The Interview Team will have one week after the conclusion of candidate interviews to choose a nominee which they will bring forward to the City Council for consideration.

The City Council will consider the appointment at their first regular meeting after the Interview Team has selected a nominee. A copy of the nominee’s Public Service Application will be included in the Council packet for the meeting at which the recommendation will be presented for consideration.

**Appointment Records**

The City Clerk shall keep the official records pertaining to the appointment process, which include: Public Service Applications on all appointees, excerpts from Council meetings at which the appointments were approved, official oaths, membership rosters for all boards and commissions, attendance records, and other records that may be required.

**Compensation**

Appointees serve on a volunteer basis and shall not be compensated for their services but may be reimbursed for expenses in carrying out their duties.

**Removal**

A majority of the Governing Body may remove any appointed board or commission member at any time for good and sufficient cause. Cause shall include but not be limited to, any violation of any applicable law, regulation or policy; neglect of duty; and failure to comply with the appointive body attendance policy. If such removal occurs, the vacancy shall be filled by Mayoral appointment, subject to the approval of the Council.

**Attendance**

Attendance shall be recorded by the Department Director or a staff member designated by the Department Director of the Board or Commission and member attendance tracked by the same. Appointees violate the City’s boards and commissions attendance policy if they receive notice of meetings and without excuse miss three (3) consecutive meetings or attend fewer than two-thirds (2/3) of the regular or special meetings of the board or commission on which they serve within the twelve (12) month period following the member’s appointment, or an anniversary date thereof. “Excuse” shall mean more than inconvenience and includes illness or family emergency. Business commitments shall not be a good excuse. Violation of the attendance policy will be reported to the City Clerk and the Mayor.

**Terms**

Terms of office for boards and commissions shall be as stated in the Gardner Municipal Code pertaining to the specific body.

**Reappointment**

Board or commission members wishing to be considered for reappointment after their term has expired shall follow the process as outlined above.
When a member of a board or commission has served for a period of eight consecutive years on one particular body, that member generally will not be eligible for reappointment until the member has vacated the position for one full term. Board or commission members may be reappointed beyond the eight-year limit under exceptional circumstances.
Agenda Item: Consider adopting an ordinance amending ordinance no. 2569 of the City of Gardner, Kansas

Strategic Priority: Infrastructure and Asset Management, Quality of Life

Department: Administration

Background/Description of Item:

The Governing Body requested that staff review Governing Body Rules of Procedure (GBROP) and make recommendations for changes. Staff completed an initial review of the document and presented the Governing Body with the findings on September 4, 2018.

One of the changes requested by the Governing Body at this time was the removal of Section 2(H) as this section concerned procedures for Boards and Commissions of the City of Gardner rather than procedures specific to the Governing Body.

In order to facilitate the removal of Section 2(H) of GBROP, Section Two of the ordinance governing the Board of Building Code Appeals has been amended to include the information originally included in GBROP. Please note that information contained in Section 2(H) of GBROP but not in the proposed amended ordinance was already included in the original creation ordinance.

The following is a list of changes made when incorporating GBROP Section 2(H) into the proposed amended ordinance.

- Minor housekeeping changes have been made to the structure of the original GBROP text in order to make the text suitable for the legal format of an ordinance. *(Multiple subsections)*
- Portions of the original text in GBROP that read “boards or commissions” (or similar) have been altered to read “the Board” as they are now specific to the Board of Building Code Appeals within the context of this Ordinance. *(Multiple subsections)*
- Clarification has been added to sections of text as necessary. *(Multiple subsections)*
- The explanation of the application process has been simplified for the purpose of brevity and to reflect the commonality of the usage of electronic applications rather than paper applications. *(Proposed subsection 2(g)(ii))*
  - Please note paper applications are still available and accepted, as stated in the amended ordinance as proposed.
- The requirement to publish notification in the official City newspaper for two weeks has been removed. The notification requirement is now the publication of notification on the City’s official website and social media sites. *(Proposed subsection 2(g)(iii))*
  - Please note this is for the purpose of allowing the City to act more quickly when a vacancy occurs. Having to publish notification in the paper limits the process start date to one day per week. The delay of notification may be longer than a week depending when a vacancy occurs, due to submission deadlines for the paper.
• Clarification that interviews may take place via phone conference has been added. *(Proposed subsection 2(g)(v))*
• A stipulation has been added stating “Should the number of qualified applicants for a position be less than or equal to the number of positions available, the interview team may make a unanimous decision to nominate the applicant or applicants without an interview.” *(Proposed subsection 2(g)(v))*
  o Please note this is not a KOMA violation as the interview team is less than a quorum of the Governing Body.
• Agenda placement for the consideration of nominees for appointment has been moved to the Consent Agenda. *(Proposed subsection 2(g)(vii))*
• The requirement for including the nominee’s application has been removed as applications contain personal information, much of which had to be redacted prior to inclusion in the packet and is not subject to KORA

**Attachments:**

- Ordinance 2607
- Ordinance 2569 (Board of Building Code Appeals creation ordinance)
- GBROP Section 2(H)

**Suggested Motion:**

Adopt Ordinance 2607, an ordinance amending ordinance 2569 of the City of Gardner, Kansas
ORDINANCE NO. 2607

AN ORDINANCE AMENDING ORDINANCE NO. 2569 OF THE CITY OF GARDNER, KANSAS,

WHEREAS, the Governing Body of the City has determined that it is necessary to amend Ordinance No. 2569, an ordinance creating a Board of Building Code Appeals of the City of Gardner Kansas.

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

SECTION ONE. Section 2 of Ordinance 2569 is hereby repealed and replaced by the following:

Section 2. Same - Organization

(a) Number of Board Members. The Board shall consist of five members, hereafter referred to as Members.

(b) Appointment and tenure. The Members shall be nominated by the Mayor and confirmed by the City Council. Members shall be appointed to serve three year terms. In the event of vacancies, the appointments shall be for the unexpired terms.

(c) Vacancies. A vacancy on the board shall be effective on the date stated in the individuals’ written notice of resignation filed with the Mayor or the date they become ineligible to serve in such position, whichever comes first. No vacancy on the board shall impair the right of the remaining members to exercise all powers of the body.

(d) Interview Team. The Mayor and two Councilmembers selected by the Mayor (the Interview Team) are charged with the responsibility of recommending individuals, by unanimous consent, to serve on the board, subject to the approval by majority vote of the Council.

(e) Time for filling vacancies. In the event of a vacancy the board, the Interview Team shall submit to the City Council a recommendation to fill the vacancy within sixty (60) days from the date the office became vacant. In addition to the sixty (60) days, for good cause and upon a majority vote of the Council members present and voting, the Interview Team may extend for up to an additional thirty (30) days, the time stated to make the recommendation to fill a vacancy. Good cause shall be determined by the City Council and include but not be limited to such events as a death in office, illness, insufficient or inadequate candidates, legal holidays, or the timing of the next regular Council meeting at which a nominee would be considered for appointment.

(f) Eligibility. An individual is only eligible for appointment to and may serve as a member of only one City board or commission at any given time.

(g) Appointment Process

1. Basis for consideration. Consideration for appointment shall be based upon a completed Public Service Application, meeting basic qualifications, and interview results.
II. **Public service applications.** Public Service Applications are available on the City’s website and may be submitted electronically through the website or may be printed and returned to City Hall in person or via the United States Post Office. Paper applications will be available at City Hall via the City Clerk’s office. All Public Service Applications are to be kept on file in the City Clerk’s office for a period of one calendar year from the date of receipt.

III. **Notification of Openings.** The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on all boards and commissions. Openings will be advertised for two weeks via the City’s website (www.gardnerkansas.gov), and other official City social media outlets.

IV. **Application Review.** Following the two week notification period, the City Clerk shall provide to the Governing Body the applications on file for the specified opening. The Council will then be given one week to advise the City Clerk only of any personally known potential issues with any of the candidates or to offer a personal recommendation for a candidate or candidates from the pool of applicants. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

V. **Candidate Interviews.** An additional two weeks will be set aside for the conducting of candidate interviews by the Interview Team. A Board/Commission representative and the City Administrator (or the City Administrator’s designee) may participate in the interviews at the request of the Interview Team. Should the number of qualified applicants for a position be less than or equal to the number of positions available, the interview team may make a unanimous decision to nominate the applicant or applicants without an interview.

VI. **Candidate Nomination.** The Interview Team will have one week after the conclusion of candidate interviews to unanimously choose a nominee which they will bring forward to the City Council for consideration.

VII. **Appointment as part of the City Council meeting agenda.** The City Council will consider the appointment as part of the consent agenda at their first regular meeting after the Interview Team has selected a nominee.

(h) **Compensation.** Members serve on a volunteer basis and shall not be compensated for their services. Members may be reimbursed for expenses incurred in carrying out their duties.

(i) **Officers.** The Board by majority vote shall elect from among its Members a Chairperson who shall preside over the meetings of the Commission, and a Vice-Chairperson who shall act for the Chairperson during absences. Election of officers shall be held annually at the first regular meeting of the calendar year. No Member shall serve for more than two consecutive terms as an officer.

(j) **Removal.** A majority of the Governing Body may remove any appointed board member at any time for good and sufficient cause. Cause shall include but not be limited to, any violation of any applicable law, regulation or policy; neglect of duty;
and failure to comply with the appointive body attendance policy. If such removal occurs, the vacancy shall be filled by Mayoral appointment, subject to the approval of the Council.

(k) Attendance. Attendance shall be recorded by the Department Director or a staff member designated by the Department Director of the Board and member attendance tracked by the same. Appointees violate the attendance policy if they receive notice of meetings and without excuse miss three (3) consecutive meetings or attend fewer than two-thirds (2/3) of the regular or special meetings of the board or commission on which they serve within the twelve (12) month period following the member’s appointment, or an anniversary date thereof. “Excuse” shall mean more than inconvenience and includes illness or family emergency. Business commitments shall not be a good excuse. Violation of the attendance policy will be reported to the City Clerk and the Mayor.

(l) Reappointment. Board members wishing to be considered for reappointment after their term has expired shall follow the process as outlined above. When a member of the Board has served for a period of six consecutive years, that member generally will not be eligible for reappointment until the member has vacated the position for one full term. Board members may be reappointed beyond the six-year limit under exceptional circumstances.

SECTION TWO. Effective Date of Ordinance. This Ordinance shall be in full force and effect after its passage by the Governing Body of the City and publication one time in the official City newspaper.

PASSED BY THE CITY COUNCIL OF THE CITY OF GARDNER, KANSAS AND SIGNED BY THE MAYOR ON this 18th day of March, 2018.

CITY OF GARDNER, KANSAS

(SEAL)

______________________________

Steve Shute, Mayor

Attest:

______________________________

Amy Nasta, City Clerk

Approved as to form:
Ryan B. Denk, City Attorney
ORDINANCE NO. 2569

AN ORDINANCE CREATING A BOARD OF BUILDING CODE APPEALS OF THE CITY OF GARDNER, KANSAS.

WHEREAS, The 2012 International Building Code was adopted by the City of Gardner on March 18, 2013 and made effective April 1, 2013, by Ordinance No. 2423.

WHEREAS, Section 113 of the 2012 International Building Code requires the establishment of a Board of Building Code Appeals.

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

SECTION ONE: Board of Building Code Appeals - Qualifications. A Board of Building Code Appeals of the City is hereby established consisting of five members to advise the City Council on matters pertaining to changes and or improvements of the construction and reconstruction of facilities. Preferred members shall be at least 18 years of age, a registered voter, and be a resident of the City of Gardner, or be otherwise connected to the community in terms of property ownership, business affairs or by offering a unique and necessary expertise. One member must have experience in electricity, one member must have experience in plumbing, and one member must have experience in heating and air conditioning. The remaining two members do not need experience in a particular area.

SECTION TWO: Same - Terms-Vacancies. One member shall be appointed for a term of one year, two members for a term of two years, and two members for a term of three years. Thereafter, all appointments shall be for three-year terms. In the event of vacancies, the appointments shall be for the unexpired terms. Members shall serve without compensation. Vacancies shall be filled using the procedures established in the Governing Body Rules of Procedure, Chapter 2, Section H.

SECTION THREE: Same – Meetings – Quorum. The Board of Building Code Appeals herein established shall hold meetings as needed in the City Hall Council Chambers when an application is initiated. All meetings of the Board of Building Code Appeals shall be in conformance with the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. A quorum of the Board of Building Code Appeals is by a majority of the members. Minutes shall be kept of all Board meetings.

SECTION FOUR: Same – Oaths. Each member of the Board of Building Code Appeals shall subscribe to an oath before entering upon his/her duties as a member of said Board of Building Code Appeals.

SECTION FIVE: Same – Duties. The Board of Building Code Appeals will consider and make decisions regarding appeals of the City's actions in administering the Building Code and variances from the specific requirements of the Building Code. The Board will advise the City Council on the following items: matters pertaining to changes and or improvements of the construction and reconstruction of facilities; procedures which will increase the life, health, and safety of such facilities; recommendations regarding the Property Maintenance Code.

SECTION SIX: Applications for Appeal. An application for appeal shall be based on a claim that the true intent of this Building Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the Building Code do not fully apply or an equally good
or better form of construction is proposed. The Board of Building Code Appeals shall have no authority to waive requirements of the Building Code

**SECTION SIX:** Any ordinance not in conformity herewith is hereby repealed or amended to conform hereto

**SECTION SEVEN:** This ordinance shall take effect and be in force on March 5, 2018.

PASSED by the City Council this 5th day of March, 2018.

SIGNED by the Mayor this 5th day of March, 2018.

(SEAL)                      CITY OF GARDNER, KANSAS

_______________________________
Steve Shute, Mayor

Attest:

_______________________________
Amy Waller, City Clerk

Approved as to form:

_______________________________
Ryan B. Denk, City Attorney
accessed directly through the City’s website, completed, and returned to the City Clerk's Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City’s website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the City Council opening has been advertised for two weeks, the City Clerk shall provide to the Governing Body a list of the applicants who are qualified pursuant to the laws of the State of Kansas. The Council will then be given one week to advise the City Clerk of any potential issues with any of the candidates.

The applicants will then be invited to the next regularly scheduled City Council Meeting for interview with the Governing Body. The Governing Body will interview the applicants at the City Council Meeting and vote to appoint one of the applicants to fill the vacant City Council position until the next election. The Governing Body may conduct second interviews or start the appointment process over if they believe none of the applicants are qualified. A copy of the nominee’s Public Service Application will be included in the Council packet for the meeting at which the interviews will be conducted.

H. APPOINTMENTS TO BOARDS AND COMMISSIONS

The City of Gardner utilizes direct citizen input through the voluntary appointment of individuals to various boards and commissions (i.e. Planning Commission, Board of Zoning Appeals, Utility Advisory Commission, and the Airport Board).

The Mayor and two Councilmembers are charged with the responsibility of recommending individuals, by unanimous consent, to serve on City boards and commissions, subject to the approval of the Council. The Mayor and two Councilmembers shall serve as the Interview Team for applicant interviews.

Vacancies

A vacancy on a board or commission shall be effective on the date stated in the individuals’ written notice of resignation filed with the Mayor or the date they become ineligible to serve in such position, whichever comes first. All vacancies shall be filled by the Interview Team, subject to the approval of the Council. No vacancy on a board or commission shall impair the right of the remaining members to exercise all powers of the body.

In the event of a vacancy on a board or commission, the Interview Team shall submit to the City Council a recommendation to fill the vacancy within sixty (60) days from the date the office became vacant. In addition to the sixty (60) days, for good cause and upon a majority vote of the Council members present and voting, the Interview Team may extend for up to an additional thirty (30) days, the time stated to make the recommendation to fill a vacancy. Good cause shall be determined by the City Council and include but not be limited to such events as a death in office, illness, insufficient or inadequate candidates, legal holidays, or the timing of the next regular Council meeting at which a nominee would be considered for appointment.
**Candidate Qualifications**

Preferred candidates for appointment shall be at least 18 years of age or older, a registered voter, and a resident of the City of Gardner or be otherwise connected to the community in terms of property ownership, business affairs, or by offering a unique and necessary expertise.

Candidates interested in serving on the Utility Advisory Commission must be a resident of the City and a customer of one of the City’s utilities.

Candidates interested in serving on the Airport Board have no residency requirement; however, they must have a vested interest and working knowledge of the Gardner Airport.

Prior to submitting an application, interested individuals are encouraged to attend at least one meeting of the board or commission for which they are applying so as to understand the mission of the body and the time commitment involved.

An individual is only eligible for appointment to and may serve as a member of only one board or commission at any given time.

**Appointment Process**

The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on all boards and commissions. Openings will be advertised for two weeks via the City’s official newspaper, the City’s website ([www.gardnerkansas.gov](http://www.gardnerkansas.gov)), and other social media outlets.

Appointments to boards and commissions are based upon recommendation by the Interview Team followed by a majority vote by the Council. Consideration for appointment shall be based upon a completed Public Service Application, meeting basic qualifications, and interview results. Members of the public are encouraged to visit the City's website where they can choose one of two options to apply for an appointed position on a board or commission. The first option offers a printable Public Service Application which can be accessed directly through the City's website, completed, and returned to the City Clerk’s Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City's website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the board and/or commission opening(s) have been advertised for two weeks, the City Clerk shall provide to the Governing Body the applications on file for the specified opening. The Council will then be given one week to advise the City Clerk of any personally known potential issues with any of the candidates or to offer a personal recommendation for a candidate or candidates.

An additional two weeks will be set aside for the conducting of candidate interviews by the Interview Team. A Board/Commission representative and the City Administrator (or
the City Administrator’s designee) can participate in the interviews as their schedules allow.

The Interview Team will have one week after the conclusion of candidate interviews to choose a nominee which they will bring forward to the City Council for consideration.

The City Council will consider the appointment at their first regular meeting after the Interview Team has selected a nominee. A copy of the nominee's Public Service Application will be included in the Council packet for the meeting at which the recommendation will be presented for consideration.

**Appointment Records**

The City Clerk shall keep the official records pertaining to the appointment process, which include: Public Service Applications on all appointees, excerpts from Council meetings at which the appointments were approved, official oaths, membership rosters for all boards and commissions, attendance records, and other records that may be required.

**Compensation**

Appointees serve on a volunteer basis and shall not be compensated for their services but may be reimbursed for expenses in carrying out their duties.

**Removal**

A majority of the Governing Body may remove any appointed board or commission member at any time for good and sufficient cause. Cause shall include but not be limited to, any violation of any applicable law, regulation or policy; neglect of duty; and failure to comply with the appointive body attendance policy. If such removal occurs, the vacancy shall be filled by Mayoral appointment, subject to the approval of the Council.

**Attendance**

Attendance shall be recorded by the Department Director or a staff member designated by the Department Director of the Board or Commission and member attendance tracked by the same. Appointees violate the City’s boards and commissions attendance policy if they receive notice of meetings and without excuse miss three (3) consecutive meetings or attend fewer than two-thirds (2/3) of the regular or special meetings of the board or commission on which they serve within the twelve (12) month period following the member’s appointment, or an anniversary date thereof. “Excuse” shall mean more than inconvenience and includes illness or family emergency. Business commitments shall not be a good excuse. Violation of the attendance policy will be reported to the City Clerk and the Mayor.

**Terms**

Terms of office for boards and commissions shall be as stated in the Gardner Municipal Code pertaining to the specific body.

**Reappointment**

Board or commission members wishing to be considered for reappointment after their term has expired shall follow the process as outlined above.
When a member of a board or commission has served for a period of eight consecutive years on one particular body, that member generally will not be eligible for reappointment until the member has vacated the position for one full term. Board or commission members may be reappointed beyond the eight-year limit under exceptional circumstances.
COUNCIL ACTION FORM

MEETING DATE: MARCH 18, 2019
STAFF CONTACT: AMY NASTA, CITY CLERK

Agenda Item: Consider adopting an ordinance amending ordinance no. 2474 of the City of Gardner, Kansas

Strategic Priority: Infrastructure and Asset Management, Quality of Life

Department: Administration

Background/Description of Item:

The Governing Body requested that staff review Governing Body Rules of Procedure (GBROP) and make recommendations for changes. Staff completed an initial review of the document and presented the Governing Body with the findings on September 4, 2018.

One of the changes requested by the Governing Body at this time was the removal of Section 2(H) as this section concerned procedures for Boards and Commissions of the City of Gardner rather than procedures specific to the Governing Body.

In order to facilitate the removal of Section 2(H) of GBROP, Section Two of the ordinance governing the Utility Advisory Commission has been amended to include the information originally included in GBROP. Please note that information contained in Section 2(H) of GBROP but not in the proposed amended ordinance was already included in the original creation ordinance.

The following is a list of changes made when incorporating GBROP Section 2(H) into the proposed amended ordinance.

- Minor housekeeping changes have been made to the structure of the original GBROP text in order to make the text suitable for the legal format of an ordinance. (Multiple subsections)
- Portions of the original text in GBROP that read “boards or commissions” (or similar) have been altered to read “the Commission” as they are now specific to the Utility Advisory Commission within the context of this Ordinance. (Multiple subsections)
- Clarification has been added to sections of text as necessary. (Multiple subsections)
- The explanation of the application process has been simplified for the purpose of brevity and to reflect the commonality of the usage of electronic applications rather than paper applications. (Proposed subsection 2(g)(ii))
  - Please note paper applications are still available and accepted, as stated in the amended ordinance as proposed.
- The requirement to publish notification in the official City newspaper for two weeks has been removed. The notification requirement is now the publication of notification on the City’s official website and social media sites. (Proposed subsection 2(g)(iii))
  - Please note this is for the purpose of allowing the City to act more quickly when a vacancy occurs. Having to publish notification in the paper limits the process start date to one day per week. The delay of notification may be longer than a week depending when a vacancy occurs, due to submission deadlines for the paper.
- Clarification that interviews may take place via phone conference has been added. (Proposed subsection 2(g)(v))
A stipulation has been added stating “Should the number of qualified applicants for a position be less than or equal to the number of positions available, the interview team may make a unanimous decision to nominate the applicant or applicants without an interview.” *(Proposed subsection 2(g)(v))*
  - Please note this is not a KOMA violation as the interview team is less than a quorum of the Governing Body.

- Agenda placement for the consideration of nominees for appointment has been moved to the Consent Agenda. *(Proposed subsection 2(g)(vii))*

- The requirement for including the nominee’s application has been removed as applications contain personal information, much of which had to be redacted prior to inclusion in the packet and is not subject to KORA

**Attachments:**

- Ordinance 2608
- Ordinance 2474 (Utility Advisory Commission creation ordinance)
- GBROP Section 2(H)

**Suggested Motion:**

Adopt Ordinance 2608, an ordinance amending ordinance 2474 of the City of Gardner, Kansas
ORDINANCE NO. 2608

AN ORDINANCE AMENDING ORDINANCE NO. 2474 OF THE CITY OF GARDNER, KANSAS,

WHEREAS, the Governing Body of the City has determined that it is necessary to amend Ordinance No. 2474 to change the Electric Utility Advisory Board to a Utility Advisory Commission which will oversee all of the City’s utilities;

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

SECTION ONE. Section 2 of Ordinance 2474 is hereby repealed and replaced by the following:

Section 2. Organization of the Commission

(a) Number of Commission Members. The Commission shall consist of five members, hereafter referred to as Members.

(b) Appointment and tenure. The Members shall be nominated by the Mayor and confirmed by the City Council. Members shall be appointed to serve four year terms. Members appointed prior to the effective date of this ordinance shall serve the remainder of their four year term. In the event of vacancies, the appointments shall be for the unexpired terms.

(c) Vacancies. A vacancy on the commission shall be effective on the date stated in the individuals’ written notice of resignation filed with the Mayor or the date they become ineligible to serve in such position, whichever comes first. No vacancy on the commission shall impair the right of the remaining members to exercise all powers of the body.

(d) Interview Team. The Mayor and two Councilmembers selected by the Mayor (the Interview Team) are charged with the responsibility of recommending individuals, by unanimous consent, to serve on the Utility Advisory Commission, subject to the approval by majority vote of the Council.

(e) Time for filling vacancies. In the event of a vacancy on the commission, the Interview Team shall submit to the City Council a recommendation to fill the vacancy within sixty (60) days from the date the office became vacant. In addition to the sixty (60) days, for good cause and upon a majority vote of the Council members present and voting, the Interview Team may extend for up to an additional thirty (30) days, the time stated to make the recommendation to fill a vacancy. Good cause shall be determined by the City Council and include but not be limited to such events as a death in office, illness, insufficient or inadequate candidates, legal holidays, or the timing of the next regular Council meeting at which a nominee would be considered for appointment.

(f) Qualifications. All Members must be qualified electors and residents of the City. All Members must be customers of a City utility. No voting Member may hold any City office or be an employee of the City government or conduct any business with the City’s utilities. However, membership in professional organizations affiliated with the
conduct of utility operations or participation in or employment at quasi-governmental agencies such as Kansas Municipal Utilities or Kansas Municipal Energy Agency shall not prohibit an individual from serving on the Commission. An individual is only eligible for appointment to and may serve as a member of only one board or commission at any given time.

(g) Appointment Process

I. Basis for consideration. Consideration for appointment shall be based upon a completed Public Service Application, meeting basic qualifications, and interview results.

II. Public service applications. Public Service Applications are available on the City’s website and may be submitted electronically through the website or may be printed and returned to City Hall in person or via the United States Post Office. Paper applications will be available at City hall via the City Clerk’s office. All Public Service Applications are to be kept on file in the City Clerk’s office for a period of one calendar year from the date of receipt.

III. Notification of Openings. The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on all boards and commissions. Openings will be advertised for two weeks via the City’s website (www.gardnerkansas.gov), and other official City social media outlets.

IV. Application Review. Following the two week notification period, the City Clerk shall provide to the Governing Body the applications on file for the specified opening. The Council will then be given one week to advise the City Clerk only of any personally known potential issues with any of the candidates or to offer a personal recommendation for a candidate or candidates from the pool of applicants. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

V. Candidate Interviews. An additional two weeks will be set aside for the conducting of candidate interviews by the Interview Team. A Board/Commission representative and the City Administrator (or the City Administrator’s designee) may participate in the interviews at the request of the Interview Team. Should the number of qualified applicants for a position be less than or equal to the number of positions available, the interview team may make a unanimous decision to nominate the applicant or applicants without an interview.

VI. Candidate Nomination. The Interview Team will have one week after the conclusion of candidate interviews to unanimously choose a nominee which they will bring forward to the City Council for consideration.

VII. Appointment as part of the City Council meeting agenda. The City Council will consider the appointment as part of the consent agenda at their first regular meeting after the Interview Team has selected a nominee.
(h) **Compensation.** Members serve on a volunteer basis and shall not be compensated for their services. Members may be reimbursed for expenses incurred in carrying out their duties.

(i) **Officers.** The Commission by majority vote shall elect from among its Members a Chairperson who shall preside over the meetings of the Commission, and a Vice-Chairperson who shall act for the Chairperson during absences. Election of officers shall be held annually at the first regular meeting of the calendar year. No Member shall serve for more than two consecutive terms as an officer.

(j) **Meetings.** The Commission shall hold meetings regularly at least once per month. Special meetings can be held as required following appropriate notice. Such meetings shall not conflict with the scheduled meeting dates and times of the City Council or the Planning Commission. Such meetings shall be held in the City Council chambers. All meetings of the Commission shall be subject to and be in conformity with the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. Additionally, all meetings shall be conducted in such a manner as to enable the City to record such meetings and to post such recordings on the City website which shall include seating of the members at the dais and requiring anyone addressing the Commission to do so from the podium. The Commission shall adopt by-laws which shall govern, among other matters, rules for the conduct of its meetings including: posting and publication of agenda and matters to be considered on the agenda; establishment of rules of parliamentary procedure; order of business; staff reports; Commission action; record of proceedings; motion; and, abstentions. No action shall be taken by the Commission except by affirmative vote of at least three Members, who shall constitute a quorum.

(k) **Removal.** A majority of the Governing Body may remove any appointed board or commission member at any time for good and sufficient cause. Cause shall include but not be limited to, any violation of any applicable law, regulation or policy; neglect of duty; and failure to comply with the appointive body attendance policy. If such removal occurs, the vacancy shall be filled by Mayoral appointment, subject to the approval of the Council.

(l) **Attendance.** Attendance shall be recorded by the Department Director or a staff member designated by the Department Director of the Commission and member attendance tracked by the same. Appointees violate the attendance policy if they receive notice of meetings and without excuse miss three (3) consecutive meetings or attend fewer than two-thirds (2/3) of the regular or special meetings of the board or commission on which they serve within the twelve (12) month period following the member’s appointment, or an anniversary date thereof. “Excuse” shall mean more than inconvenience and includes illness or family emergency. Business commitments shall not be a good excuse. Violation of the attendance policy will be reported to the City Clerk and the Mayor.

(m) **Reappointment.** Commission members wishing to be considered for reappointment after their term has expired shall follow the process as outlined above. When a member of the commission has served for a period of eight consecutive years, that member generally will not be eligible for reappointment until the member has vacated
the position for one full term. Commission members may be reappointed beyond the eight-year limit under exceptional circumstances.

SECTION TWO. Effective Date of Ordinance. This Ordinance shall be in full force and effect after its passage by the Governing Body of the City and publication one time in the official City newspaper.

PASSED BY THE CITY COUNCIL OF THE CITY OF GARDNER, KANSAS AND SIGNED BY THE MAYOR ON this 18th day of March, 2018.

CITY OF GARDNER, KANSAS
(SEAL)

__________________________
Steve Shute, Mayor

Attest:

__________________________
Amy Nasta, City Clerk

Approved as to form:

__________________________
Ryan B. Denk, City Attorney
ORDINANCE NO. 2474

AN ORDINANCE AMENDING ORDINANCE NO. 2438 OF THE CITY OF GARDNER, KANSAS, PROVIDING FOR A UTILITY ADVISORY COMMISSION FOR THE PURPOSE OF PROVIDING ADVICE AND GUIDANCE TO THE CITY COUNCIL OF THE CITY RELATING TO THE CITY’S OPERATION, MANAGEMENT AND CONTROL OF SAID UTILITIES AND FURTHER PRESCRIBING SUCH ADVISORY COMMISSION’S POWERS AND DUTIES.

WHEREAS, the Governing Body of the City has determined it to be in the best interest of the City to align the City’s utilities under the same department; and

WHEREAS, the Governing Body of the City has determined that it is necessary to amend Ordinance No. 2438 to change the Electric Utility Advisory Board to a Utility Advisory Commission which will oversee all of the City’s utilities;

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

SECTION ONE. Section 1 of Ordinance 2438 is hereby repealed and replaced by the following:

Section 1. Utility Advisory Commission and Commission Members

There is hereby created a Utility Advisory Commission for the City of Gardner, Kansas, which shall be responsible for providing advice and guidance to the City relating to the planning, development, production, purchase, transmission, and distribution of all utilities, by the City. Hereafter, the Utility Advisory Commission will be referred to as the Commission.

The Commission shall act in an advisory capacity only and shall have no actual or apparent authority or powers to take any legal action or create any binding legal obligations on behalf of the City. The actual and apparent authority and responsibility of the City relating to the jurisdiction, control, and policy making responsibility of the utilities of the City and all its operations and facilities are hereby expressly reserved exclusively to the City Council of the City except as may subsequent to the enactment of this ordinance be expressly delegated by the City Council. The Commission shall act in an advisory capacity only and shall have no power or authority to construct, acquire, expand and operate the utilities, or to do any acts or things that are necessary, convenient, or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economic and business-like administration of the utilities which powers are hereby expressly reserved by the City Council of the City except as may subsequent to the enactment of this ordinance be delegated by the City Council.

SECTION TWO. Section 2 of Ordinance 2438 is hereby repealed and replaced by the following:

Section 2. Organization of the Commission

(a) Number of Commission Members. The Commission shall consist of five members, hereafter referred to as Members.

(b) Appointment and tenure. The Members shall be nominated by the Mayor and confirmed by the City Council. Members shall be appointed to serve four year terms.
Members appointed prior to the effective date of this ordinance shall serve the remainder of their four year term.

(c) Vacancies. Vacancies shall be filled by the Mayor, with the approval of the Council, for the unexpired term. No vacancy on the Commission shall impair the right of the remaining Members to exercise all the powers of the Commission.

(d) Qualifications. All Members must be qualified electors and residents of the City. All Members must be customers of a City utility. No voting Member may hold any City office or be an employee of the City government or conduct any business with the City’s utilities. However, membership in professional organizations affiliated with the conduct of utility operations or participation in or employment at quasi-governmental agencies such as Kansas Municipal Utilities or Kansas Municipal Energy Agency shall not prohibit an individual from serving on the Commission.

Should it appear that there is good cause for the removal of any Member because of negligent or willful failure to carry out the duties of office, or because of misprision of office, the City Council shall remove such Member by majority vote, and the Mayor shall appoint a successor, to be confirmed by the City Council.

(e) Compensation. Members serve on a volunteer basis and shall not be compensated for their services. Members may be reimbursed for expenses incurred in carrying out their duties.

(f) Officers. The Commission by majority vote shall elect from among its Members a Chairperson who shall preside over the meetings of the Commission, and a Vice-Chairperson who shall act for the Chairperson during absences. Election of officers shall be held annually at the first regular meeting of the calendar year. No Member shall serve for more than two consecutive terms as an officer.

(g) Meetings. The Commission shall hold meetings regularly at least once per month. Special meetings can be held as required following appropriate notice. Such meetings shall not conflict with the scheduled meeting dates and times of the City Council or the Planning Commission. Such meetings shall be held in the City Council chambers. All meetings of the Commission shall be subject to and be in conformity with the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. Additionally all meetings shall be conducted in such a manner as to enable the City to record such meetings and to post such recordings on the City website which shall include seating of the members at the dais and requiring anyone addressing the Commission to do so from the podium. The Commission shall adopt by-laws which shall govern, among other matters, rules for the conduct of its meetings including: posting and publication of agenda and matters to be considered on the agenda; establishment of rules of parliamentary procedure; order of business; staff reports; Commission action; record of proceedings; motion; and, abstentions. No action shall be taken by the Commission except by affirmative vote of at least three Members, who shall constitute a quorum.

SECTION THREE. Section 3 of Ordinance 2438 is hereby repealed and replaced by the following:

Section 3. Powers and Duties of the Commission
(a) **Real estate and supply contracts.** The Commission, in the efficient and economical operation of the utilities, both inside and outside City limits as state law permits, may recommend that the City Council: (1) sell the utility's products and services to the public and private corporations and to other consumers; (2) construct and operate plants and operate distribution and collection systems, transmission lines, pipe or conduit and other facilities; (3) purchase real estate or otherwise acquire real estate through the exercise of eminent domain; (4) purchase franchises; and (5) enter into all contracts, leases, and agreements in furtherance thereof. The authority to enter into such transactions shall be vested exclusively in the City Council except as may subsequent to the enactment of this ordinance be expressly delegated by the City Council.

(b) **Extensions of services.** All extensions of service or expansions of the service area of the utilities must be approved by the City Council. The Commission shall be responsible for making recommendations to the City Council relating to the adoption of regulations governing extensions of utility service both inside and outside City limits. Such recommended regulations shall include the conditions under which the extensions shall be made to render them compensatory and shall provide that each extension project shall, when completed, become the property of the City whether on public or private property. The Commission may recommend to the City Council that refunds be provided where advances by the person benefited are necessary to make extensions compensatory. As the City annexes new areas into the City Limits, the Commission may recommend to the City Council that a cost-benefit feasibility analysis be conducted. Such cost-benefit and feasibility analysis shall then be submitted to the City Council for consideration. For specific economic development purposes, the City Council may restrict areas to be served by a third-party provider other than the City's utilities. To assist the City Council in rendering its determination, the Commission may recommend to the City Council a cost-benefit analysis of service to the area be conducted.

(c) **Rates.** The City Council shall establish rates to be charged for utility services rendered to a utility's customers. The Commission shall recommend to the City Council rates to be charged for utility services rendered to a utility's customers. Rates shall be competitive, fair, reasonable, compensatory, and with no undue preference or discrimination. Rates shall also be sufficient for the operations of and the debt service and reserve for the utilities.

(d) **Economic Development Incentives.** The City Council may also develop and implement economic development incentives. The Commission may recommend to the City Council economic development incentives.

(e) **Authorization for expenditures.** No money shall be drawn from the funds of the utilities nor shall any obligations for the expenditure of money be incurred except in conformity with the established purchasing policy of the City, as may be amended.

(f) **Bond issues and other indebtedness.** The City Council may issue bonds for the construction, extension or improvement of the utilities when it deems that such issuance is necessary and expedient for the operation of the utilities subject to all applicable laws for the issuance of such bonds. The Commission may make
recommendations that the City Council issue bonds for the construction, extension or improvement of the utilities.

(g) Planning reports. The Commission shall submit to the City Council recommendations concerning existing or proposed long-range power or water supply arrangements, capital improvement projects, and other programs that may have an impact on the utilities.

SECTION FOUR. Section 4 (a) of Ordinance 2438 is hereby repealed and replaced by the following:

Section 4. General Provisions.

(a) Disposition of Utilities. The City Council shall have the authority to cease to operate, or to sell, lease, abandon, or in any other way dispose of the Advisory Commission and/or the utilities.

SECTION FIVE. Effective Date of Ordinance. This Ordinance shall be in full force and effect after its passage by the Governing Body of the City and publication one time in the official City newspaper.

PASSED BY THE CITY COUNCIL OF THE CITY OF GARDNER, KANSAS AND SIGNED BY THE MAYOR ON this 15th day of December, 2014.

CITY OF GARDNER, KANSAS

(SEAL)

/s/ Chris Morrow

Chris Morrow, Mayor

Attest:

/s/ Jeanne Koontz

Jeanne Koontz, City Clerk

Approved as to form:

/s/ Ryan B. Denk

Ryan B. Denk, City Attorney
accessed directly through the City’s website, completed, and returned to the City Clerk’s Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City’s website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the City Council opening has been advertised for two weeks, the City Clerk shall provide to the Governing Body a list of the applicants who are qualified pursuant to the laws of the State of Kansas. The Council will then be given one week to advise the City Clerk of any potential issues with any of the candidates.

The applicants will then be invited to the next regularly scheduled City Council Meeting for interview with the Governing Body. The Governing Body will interview the applicants at the City Council Meeting and vote to appoint one of the applicants to fill the vacant City Council position until the next election. The Governing Body may conduct second interviews or start the appointment process over if they believe none of the applicants are qualified. A copy of the nominee’s Public Service Application will be included in the Council packet for the meeting at which the interviews will be conducted.

H. APPOINTMENTS TO BOARDS AND COMMISSIONS

The City of Gardner utilizes direct citizen input through the voluntary appointment of individuals to various boards and commissions (i.e. Planning Commission, Board of Zoning Appeals, Utility Advisory Commission, and the Airport Board).

The Mayor and two Councilmembers are charged with the responsibility of recommending individuals, by unanimous consent, to serve on City boards and commissions, subject to the approval of the Council. The Mayor and two Councilmembers shall serve as the Interview Team for applicant interviews.

Vacancies

A vacancy on a board or commission shall be effective on the date stated in the individuals’ written notice of resignation filed with the Mayor or the date they become ineligible to serve in such position, whichever comes first. All vacancies shall be filled by the Interview Team, subject to the approval of the Council. No vacancy on a board or commission shall impair the right of the remaining members to exercise all powers of the body.

In the event of a vacancy on a board or commission, the Interview Team shall submit to the City Council a recommendation to fill the vacancy within sixty (60) days from the date the office became vacant. In addition to the sixty (60) days, for good cause and upon a majority vote of the Council members present and voting, the Interview Team may extend for up to an additional thirty (30) days, the time stated to make the recommendation to fill a vacancy. Good cause shall be determined by the City Council and include but not be limited to such events as a death in office, illness, insufficient or inadequate candidates, legal holidays, or the timing of the next regular Council meeting at which a nominee would be considered for appointment.
Candidate Qualifications

Preferred candidates for appointment shall be at least 18 years of age or older, a registered voter, and a resident of the City of Gardner or be otherwise connected to the community in terms of property ownership, business affairs, or by offering a unique and necessary expertise.

Candidates interested in serving on the Utility Advisory Commission must be a resident of the City and a customer of one of the City’s utilities.

Candidates interested in serving on the Airport Board have no residency requirement; however, they must have a vested interest and working knowledge of the Gardner Airport.

Prior to submitting an application, interested individuals are encouraged to attend at least one meeting of the board or commission for which they are applying so as to understand the mission of the body and the time commitment involved.

An individual is only eligible for appointment to and may serve as a member of only one board or commission at any given time.

Appointment Process

The City Clerk will coordinate the appointment process beginning with the notification to the general public of openings on all boards and commissions. Openings will be advertised for two weeks via the City’s official newspaper, the City’s website (www.gardnerkansas.gov), and other social media outlets.

Appointments to boards and commissions are based upon recommendation by the Interview Team followed by a majority vote by the Council. Consideration for appointment shall be based upon a completed Public Service Application, meeting basic qualifications, and interview results. Members of the public are encouraged to visit the City’s website where they can choose one of two options to apply for an appointed position on a board or commission. The first option offers a printable Public Service Application which can be accessed directly through the City’s website, completed, and returned to the City Clerk’s Office via the United States Post Office or by facsimile transmission. The second option allows the submittal of the Public Service Application electronically via an online application process which can be accessed through the City’s website. Paper applications will be available at City Hall via the City Clerk’s Office. Public Service Applications are always welcomed by the City Clerk and shall be kept for a period of one calendar year. The City Clerk will call upon the City Council to submit the names of potential candidates should there be no applications for appointment on file.

After the board and/or commission opening(s) have been advertised for two weeks, the City Clerk shall provide to the Governing Body the applications on file for the specified opening. The Council will then be given one week to advise the City Clerk of any personally known potential issues with any of the candidates or to offer a personal recommendation for a candidate or candidates.

An additional two weeks will be set aside for the conducting of candidate interviews by the Interview Team. A Board/Commission representative and the City Administrator (or
the City Administrator’s designee) can participate in the interviews as their schedules allow.

The Interview Team will have one week after the conclusion of candidate interviews to choose a nominee which they will bring forward to the City Council for consideration.

The City Council will consider the appointment at their first regular meeting after the Interview Team has selected a nominee. A copy of the nominee’s Public Service Application will be included in the Council packet for the meeting at which the recommendation will be presented for consideration.

**Appointment Records**

The City Clerk shall keep the official records pertaining to the appointment process, which include: Public Service Applications on all appointees, excerpts from Council meetings at which the appointments were approved, official oaths, membership rosters for all boards and commissions, attendance records, and other records that may be required.

**Compensation**

Appointees serve on a volunteer basis and shall not be compensated for their services but may be reimbursed for expenses in carrying out their duties.

**Removal**

A majority of the Governing Body may remove any appointed board or commission member at any time for good and sufficient cause. Cause shall include but not be limited to, any violation of any applicable law, regulation or policy; neglect of duty; and failure to comply with the appointive body attendance policy. If such removal occurs, the vacancy shall be filled by Mayoral appointment, subject to the approval of the Council.

**Attendance**

Attendance shall be recorded by the Department Director or a staff member designated by the Department Director of the Board or Commission and member attendance tracked by the same. Appointees violate the City’s boards and commissions attendance policy if they receive notice of meetings and without excuse miss three (3) consecutive meetings or attend fewer than two-thirds (2/3) of the regular or special meetings of the board or commission on which they serve within the twelve (12) month period following the member’s appointment, or an anniversary date thereof. “Excuse” shall mean more than inconvenience and includes illness or family emergency. Business commitments shall not be a good excuse. Violation of the attendance policy will be reported to the City Clerk and the Mayor.

**Terms**

Terms of office for boards and commissions shall be as stated in the Gardner Municipal Code pertaining to the specific body.

**Reappointment**

Board or commission members wishing to be considered for reappointment after their term has expired shall follow the process as outlined above.
When a member of a board or commission has served for a period of eight consecutive years on one particular body, that member generally will not be eligible for reappointment until the member has vacated the position for one full term. Board or commission members may be reappointed beyond the eight-year limit under exceptional circumstances.