

RECORD OF PROCEEDINGS
**OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2020 – 21

February 17, 2020

The City Council of the City of Gardner, Kansas met in regular session on February 17, 2020, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with the Mayor Steve Shute presiding. Present were Councilmembers Todd Winters, Rich Melton, Mark Baldwin, Randy Gregorcyk and Tory Roberts. City staff present were Business & Economic Development Director Larry Powell; Public Works Director Michael Kramer; Parks and Recreation Director Jason Bruce; Police Chief James Belcher; Finance Director Matthew Wolff; Attorney F. Charles Dunlay; and City Clerk Sharon Rose. 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 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Shute led those present in the Pledge of Allegiance.

PRESENTATIONS

1. AAA Community Traffic Safety Award Presentation

Retired Master Deputy Bob Hamilton presented the AAA Community Traffic Safety Award. Mr. Hamilton is a law enforcement liaison in NE Kansas. He worked in traffic safety 28 years and understands how important traffic safety is. They work with AAA to find law enforcement agencies across the state that are qualified for award. Gardner Police Department is one of 38 departments receiving this award. They are being recognized for having a community-based traffic safety committee, called Operation Impact, where officers from both sides of the state line meet monthly to discuss traffic situations across the metro. There are points for having a departmental policy on seatbelt use. There is a seatbelt law in Kansas, but there are still agencies that are not wearing seatbelts. Gardner scored on their application for their special traffic enforcement programs like Click It or Ticket, You Drink You Drive You Lose, 420, seatbelt use and the enforced electronic communication restrictions for drivers. GPD is receiving their 4th consecutive award, and it's a silver award. As proof of the work that the Gardner PD has done, they've made 205 alcohol arrests, wrote over 108 seatbelt violations. The seatbelt use in teens and child passengers rates is excellent, having gone from 96 to 98 percent. The number of vehicle crashes fell while statewide the number went up. There were no fatality crashes. Hamilton thanked the mayor and council for their support of Chief Belcher and the Police Department.

PUBLIC HEARING

PUBLIC COMMENTS

CONSENT AGENDA

- 1. Standing approval of the minutes as written for the regular meeting on February 3, 2020**
- 2. Standing approval of City expenditures prepared January 27, 2020 in the amount of \$1,663.09; and January 31, 2020 in the amount of \$441,980.76; and February 7, 2020 in the amount of \$146,912.81**
- 3. Consider authorizing the execution of a Change Order with Amino Brothers to construct the Santa Fe Improvements project**
- 4. Consider authorizing the execution of an agreement with Kansas Department of Transportation (KDOT) for construction improvements for the Center Street Sidewalk project**
- 5. Consider the authorizing the purchase of a tractor for the Parks & Recreation Department**
- 6. Consider authorizing the execution of an agreement with Schlagel & Associates for the design of the**

**RECORD OF PROCEEDINGS
OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2020 - 22
February 17, 2020

East Sewer Main Interceptor at Prairie Trace

7. Consider authorizing the execution of a contract with William Morris Endeavor Entertainment for headlining entertainment during the 2020 Independence Day event

Councilmember Melton made a motion to approve the Consent Agenda.

Councilmember Baldwin Seconded.

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

PLANNING & ZONING CONSENT AGENDA

COMMITTEE RECOMMENDATIONS

1. Consider adopting an ordinance rezoning 71.4 acres located just west of the Kill Creek Road and W 167th Street from County RUR (Rural, Agriculture) District to City R-1 (Single-Family Residential) District

Business & Economic Development Director Larry Powell said this is a new subdivision property coming into the city, directly south of Symphony Farms, covering the ground between 167th and St. John's Trace and is approximately 71 acres. Planning Commission has approved preliminary plat, and it will be brought forward in 45 phases with 150 lots in three tracts. It will be called Hilltop Ridge. It's a single-family residential housing subdivision and was annexed into the city in December 2019. This is a rezoning designation from RUR to R-1 for single-family use.

Councilmember Melton asked if the roads will be connected right away or phased in? Director Powell said it would be phased in. The construction is planned to start at the north end at 167th Street and work south. They have a limitation to the number of housing units they can have on a road with one entrance, so when they start the 2nd phase, they are going up to 40. Thirty is the normal limit. Forty units have been preapproved by the fire department for this phase. After that, it will go up and reconnect at Osage Street. There are two routes the developer can take, and it's unclear which he will take at this time as it's still in engineering.

Mayor Shute asked why the R-1 and not RP-1? Director Powell said the R-1 district fit what the developer needed.

Councilmember Melton made a motion to adopt 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

Councilmember Gregorcyk seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2649.

Roberts:	Yes
Winters:	Yes
Baldwin	Yes
Gregorcyk:	Yes
Melton:	Yes

2. Consider adopting an ordinance approving amendment TA-20-01 to GMC Title 17 Land Development Code of the Gardner Municipal Code

**RECORD OF PROCEEDINGS
OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2020 - 23
February 17, 2020

Business & Economic Development Director Larry Powell said this is a continuation of a discussion that took place in January 2020. The governing body initiated this potential text amendment to the Gardner Land Development Code directing the Planning Commission to consider revising the use provisions for Communications and Utilities to permit Public Utility Facility – Major as a Conditional Use subject to additional standards in additional zoning districts (including the agriculture district). As the community grows, there is a need to provide public utility services to outlying areas. Based on a comparison of the adopted utility plans and future land-use maps, it may be advisable that some major public utility facilities be developed on sites planned for agriculture or residential zoning. The city's sanitary sewer plant is zoned agricultural. This would set up the criteria to set up within a specified zoning with conditions. The city's sanitary sewer plant is zoned agricultural within the city limits and it's on a conditional use, but it was built under a previous code. Since they adopted the new LDC in August 2016, if they were to build on it, they would have to re-approve it. This is the process to start that reapproval for that particular existing facility, plus if they create a new utility project, this will set up criteria for them to be able to be located within a specified zoning area with conditions.

Mayor Shute said it's nice being proactive, fixing something before it becomes a problem.

Councilmember Melton made a motion to adopt an ordinance amending the Land Development Code of the City of Gardner, Kansas by amending the sections of Title 17 of the Gardner Municipal Code

Councilmember Winters seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2650.

Winters:	Yes
Baldwin	Yes
Gregorcyk:	Yes
Melton:	Yes
Roberts:	Yes

OLD BUSINESS

NEW BUSINESS

1. Consider adopting a resolution authorizing the City of Gardner to execute a Special Warranty Deed, a Release of Real Estate, and other release documents and to take certain other action to effect the option to purchase the project pursuant to the lease agreement in connection with the City's not to exceed \$52,000,000 Industrial Revenue Bonds (taxable under federal law), Series 2009 (US Industrial REIT II)

Finance Director Matt Wolff said in November 2009, the city passed an ordinance authorizing the issuance of industrial revenue bonds to finance acquisition construction and improvement of a commercial facility known as Coleman. As part of the project, the city approved a 50% property tax abatement for 10 years. That abatement has ended on December 31, 2019. During the abatement period, the city took ownership of the property and leased it back to the original property owner. Now that the abatement has ended, the city needs to convey the property back to the entity that's been assigned the interest in the lease. Now that the abatement is over, when taxes are levied again in November 2020, the property tax will be taxed at the full amount and will lead to an increase of approximately \$108,000 in property taxes for the city.

Councilmember Melton called upon Attorney Dunlay. There's a criminal investigation at the DA's office related to Councilmember Gregorcyk's March 6, 2018 vote on Excelligence. Should he recuse himself on this vote because this is a similar thing, so as not to cause an extra conflict with the current investigation. Attorney Dunlay

**RECORD OF PROCEEDINGS
OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2020 - 24
February 17, 2020

responded with regard to a potential investigation, or whether or not the existence of an investigation is in place by the DA's office from which they have no knowledge as the DA office is separate from this body, he recommends leaving that the decision of the councilmember to make that determination himself. It's not appropriate for the governing body to dictate the recusal on the vote. That is a matter of determination for the attorney's office going forward. Dunlay has no reason provide this body with advice on this item. Councilmember Baldwin clarified it doesn't matter the status of the investigation. Dunlay said the status of the investigation is beyond the answer of this body and beyond his knowledge and it's inappropriate for him to comment as to that matter. There is no reason under law that the member must recuse himself. Councilmember Melton asked what if he's directly employed by that? Councilmember Baldwin said if the investigation comes out negatively, are they putting themselves in liability? Attorney Dunlay doesn't believe there would be any liability, as a single councilmember possesses no individual authority with regard to the ability to influence or take action. A councilmember may only take action as a member of the body.

Mayor Shute said it is good news that this was a successful IRB.

Councilmember Gregorcyk said he will recuse during voting, and doesn't understand political grandstand on Melton's behalf. It will be seen when the outcome, if there is an outcome, he is not employed by Excelligence or by Coleman. He's not on their payroll. It was a misnomer that was politically motivated and emotional, but he will abstain from this vote.

Councilmember Gregorcyk made a motion to adopt the resolution. Attorney Dunlay said if Gregorcyk is going to abstain from voting, he should not move the motion forward. Dunlay said he may do so, but suggests that he doesn't. Gregorcyk withdrew his motion.

Councilmember Melton made a motion to adopt a resolution authorizing the City of Gardner to execute a Special Warranty Deed, a Release of Real Estate, and other release documents and to take certain other action to effect the option to purchase the project pursuant to the lease agreement in connection with the City's not to exceed \$52,000,000 Industrial Revenue Bonds (taxable under federal law), Series 2009 (US Industrial REIT II)

Councilmember Baldwin Seconded.

With a majority of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2048.

Baldwin	Yes
Melton:	Yes
Roberts:	Yes
Winters:	Yes
Gregorcyk:	Abstain

2. Consider accepting a voluntary annexation with landowner consent

Business and Economic Development Director Larry Powell stated this is a voluntary land annexation. A few years ago, they entered into an MOU with Kansas Logistics Business Corporation for a proposed project that unfortunately did not continue at that time. The company has continued to market the facility and is moving forward. The next step they need to take is to have this property annexed into the city to prepare the property. This is a voluntary request for annexation of approximately 122 acres located west of city limits and at the south end of the city's airport. It's between 183rd St, 56 Hwy, and Four Corners Rd.

Mayor Shute said there may be questions about the nature of this annexation as this is being annexed pursuant to a piece of land that's already in the city of Gardner but is not directly connected to the city. Director Powell said the voluntary annexation statute was amended in the recent past to allow for any property that touches a portion of the city to be annexed voluntarily. It used to exclude island annexation properties, but no longer does so. The

**RECORD OF PROCEEDINGS
OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2020 - 25
February 17, 2020

park property the city has had in the city limits as an island annexation for several years acts as a piece of the city and this property directly abuts. After review by the city attorney, this is an acceptable method to annex the property.

Attorney Dunlay said this voluntary annexation is consistent with recent amended legislation over the last several years. This is the sort of annexation for which the law anticipates and expects.

Mayor Shute appreciates the work put into this.

Councilmember Melton made a motion to accept the Voluntary Consent Annexation request of Heartland Family Farms LLC, and adopt an ordinance annexing land to the City of Gardner, Kansas

Councilmember Gregorcyk Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2651.

Gregorcyk:	Yes
Melton:	Yes
Roberts:	Yes
Winters:	Yes
Baldwin	Yes

COUNCIL UPDATES

Director Powell said it's been busy. Several new projects have come in which will move into the upcoming Planning Commission meeting. Olathe Medical Center open house is coming in March. It's an opportunity for the public to review the new medical facility and learn about its future growth patterns and how the south end of the city will be improved and affected, and they can see the future use for the existing doctor office. Price Chopper is moving along quickly. The building is winterized and sealed up, and work is taking place inside. Weather has impacted work on the parking lot. It is on schedule to be completed in June. Looking forward to road projects coming soon. Public is already aware of some on the west end. Be aware of orange barrel season.

Director Kramer said the sanitary sewer project to serve the airport passed all testing requirements. Last Friday they were able to connect the bathroom at the old flight school building and a new bathroom at VAA building. One of the best things is that KDOT provided a lot of money for this project.

Director Bruce thanked council for the support for the Independence Day event. They hope to make an announcement early April. It's a big act currently on the radio. Staff is diligently hiring seasonals, and they had over 540 applications. Staff is conducting interviews. Director Bruce and Jen Jordan, grants writer, are heading to Wichita for a presentation with the Kansas Dept. of Wildlife, Parks and Tourism to seek grant funding for Quail Meadows trail, which would be a connector to the Kill Creek trail just completed. It's in partnership with the county. He met with Great Life about a grand reopening at the golf course including disc golf. They are looking at early June. Disc golf is almost completed and they have some donated signage. Mayor Shute said folks reached out to him and he guided them to Director Bruce regarding sponsorships of events and signage. This is a platform for Director Bruce, what is the process of they wanted to participate or contribute? Director Bruce said they just rolled out the 2020 sponsorship program. Contact anyone in the Parks Department for more information. There are all kinds of sponsorships, from signage to league sponsors, event sponsors, a lot of opportunity for marketing. Councilmember Winters asked what's the plan for St. Johns Park? There are a lot of homes, new subdivision coming in. Director Bruce believes there is land purchase and park in CIP. Director Wolff said land purchase and park development in CIP. Parks is currently going through their CIP for the next 5 years. Councilmember Winters. Asked if that's the next one on the list following Quail Meadows? Director Bruce said yes, but these new areas of development coming in, they are meeting with developers and being included in meetings. They are looking at

**RECORD OF PROCEEDINGS
OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2020 - 26
February 17, 2020

ways to get connectivity throughout the new neighborhoods with trails. Director Powell said the complexity of putting together a public parks trail way system as they build a community; things come in bits and pieces. Something comes in on one end of town, and then something else on the other end of town. The planning department works with the other departments on connectivity so that when it's time to be built, the access and easement are in place to do so. They've worked hard with parks department on recent subdivisions on the west end of town because they have fallen in line to build the areas in question. There will be long-term community improvements as they build the system. Departments work together to ensure they all get what they need.

Mayor Shute asked City Clerk Rose about committees. Rose said she needs more applications for the PW and Accessibility Advisory Committee. Shute said there are a lot of questions about ADA and sidewalk access. He hopes those folks put their name in.

Chief Belcher received a communication from Kansas Law Enforcement Training Center that they love having training at the Justice Center. They will schedule more trainings, which is good for staff because the city gets free spots in the training classes for hosting. There is a CPAC meeting Monday, February 24th at 7pm at the Justice Center.

Attorney Dunlay said they have been paying attention to Senate Bill 380 offered by the KCTA with regard to cable and telecommunication ROW access fees, and elimination or reduction of related charges consistent with those provided to franchise rules related to similar reductions for wireless services in the last legislative session and the likelihood of combining those. Mayor Shute asked if he can provide fiscal repercussions if this passes? Would there be a hard cap on franchise fees? Dunlay said the concern is whether there will be a significant reduction or elimination of franchise fees for municipal services. Last year, because of the desire for increased opportunities for rural and exurban communities to obtain 5G communications, the legislature substantially limited the ability of municipalities to exercise their rights within the ROW. Now cable companies are pursuing the same access. Councilmember Gregorcyk attended the committee last week. Overland Park already has an opinion. Cox Communication said they've already paid for the ROW, so they don't need to pay again. Someone against the bill compared it to buying a movie ticket for 7pm, and when the movie is over, they go down the hall and watch another movie at 10pm with the same ticket. That's what these companies are wanting to do. There are also safety concerns and control concerns. Attorney Dunlay said Cox and Spectrum have championed cable strand wireless communication. The same ROW provisions that cities have previously entered into agreements with providers for, they want to provide on their existing aerial telecom devices without being charged for those. There is additional concerns that with the combination of the two acts plus FCC regulations will the city ultimately lose control of the ROW. Mayor Shute said according to the opinions he's seen from League of Kansas Municipalities, that's what they feel is going to happen. Dunlay said the League is very concerned and they are following up. Mayor Shute said it's a very big concern amongst communities in Johnson County. In rural areas they only have one or two providers, but in Johnson County, there are multiple providers competing for the same ROW. Dunlay said there is a consortium that he's a part of and they have been addressing the concerns of their communities as related to prospective changes. It's a dynamic issue, because the opportunity to bring 5G to the community is great, but if that opportunity comes with putting a pole every 35 feet in the ROW without costs or assessment fees to inspect those, then the city becomes responsible for determining whether those facilities are safe. Shute said it pushes liability from the telecom provides back on to the city. Dunlay said yes, but also the city has paid for the ROW previously, so it's a balancing act. Dunlay said expect to see changes to planning and zoning regulations and ROW ordinances.

Gregorcyk has had community members that live on the north and south side of 183rd/Cherokee St. west of Gardner Rd that have expressed safety concerns of children crossing the road, and heavy-haul trucks that are using that road as a northern entrance to LPKC. They have a designated intersection off I-35 they could use. He doesn't know if they need to do a traffic study. He suggests a barrier that would limit or stop heavy haul traffic going westbound into LPKC. Maybe like a height clearance. Director Kramer said they can look at pedestrian safety in that area, but Johnson County uses that as a route for emergency vehicles, so anything that would stop a truck could hamper emergency vehicles. The intersection is signed as "no truck traffic". Mayor Shute said they

**RECORD OF PROCEEDINGS
OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2020 - 27
February 17, 2020

have local trucks that use that, as there are businesses directly west of Center St. There are through trucks coming from that point west, and there's an island there to deter trucks from using the area by narrowing the pavement area, but the island is covered in black marks, trucks continue to go through because it's shorter to go that way. There is a residential neighborhood, and there are heavy haul trucks coming down that road. They are wrecking the road and creating a significant safety hazard. It's considered an arterial road for the Fire District. Councilmember Gregorcyk doesn't want to impede local businesses. It's not the local trucks that are the concern, it's the corrugated metal containers on chassis. If staff can provide options, they can get information to citizens. Attorney Dunlay said they can coordinate with the Police Department with regard to "no through traffic", but then it's a matter of enforcement. Councilmember Baldwin asked about removable metal pylons. They can be automatic and placed at the border of the two cities, and the mechanism that lowers them can be triggered by an emergency vehicle. Councilmember Melton said weather will play a part with the mechanics, getting the street plowed and other maintenance will be an issue. The trucks will still turn down there, and now they are down the street with no way to turn around. Baldwin said they can patrol that with trucks turning and it says no trucks. They'll figure out after they get a ticket a few times. Melton said they can do that now. Mayor Shute said the concern is the damage that will take place if they try to back out with no place to go. Melton asked if they can put a flashing "local trucks only" on the traffic signal, so when they see the turn arrow to go left, they see the sign? Chief Belcher said Director Kramer had it right, they can work together to figure out some options and what is the best way to move forward with enforcement and the crosswalk is a big concern. Mayor Shute said the trucks disregard those "no trucks" signs and go down residential streets. Chief Belcher pointed out that Ofc. Adams is one of the city's commercial vehicle inspectors and he's worked that road before. They can work with Public Works to figure out options. Councilmember Gregorcyk appreciates everyone's input, and he can tell the residents they are looking into it.

Councilmember Gregorcyk asked what is status on Grata project? They got it annexed, and a lot of work was done, but where are they? Mayor Shute said they are working through the site plan with the developer. Director Powell said there is a public hearing scheduled for the February Planning Commission meeting, which is the next step for rezoning. As one of the three zones they plan to use, an RP-3 zone requires a planned site plan. Staff has been in review of that, and has issue with the way they want to use some of the different types of land development code aspects. The city's code is set up as if it's this kind of house then it's this kind of street. The developer wants to mix and match. They don't always work well together. Deviations are being asked for by developer. Staff has a meeting with City Administrator Pruetting tomorrow and will be in touch with Grata regarding the next steps.

Councilmember Melton spoke with Grata developer today and he requested deviations. If they allow deviations, they should be codified into code. Melton is looking for consensus to see if they want to amend the code. He suggests getting having a work session to see if they want to amend the code. Mayor Shute said they would be looking at more text amendments, and they need to have staff involved. A work session is great, but he doesn't know if those changes being requested warrant a text amendment. Councilmember Baldwin said it would be best to have Planning Commission and staff have the work session. Melton said that's why he brought it up, to move it along. The developer is worried it would take 6 months. Councilmember Winters recommends that this go to Planning Commission and staff first. Councilmember Gregorcyk agrees with Melton because the Planning Commission has to work within finite guidelines. He recommends a work session with staff and then push it to the Planning Commission. They can table it because it's on an agenda item for PC, and then bring it back which would be a 30-day window versus months. Melton said they couldn't table it because they are on a time constraint for Grata. Director Powell said there are four timelines being convoluted. There is a timeline that Grata is working under to get the project underway. The city has a separate timeline to provide negotiated utilities underway. Land Development Code changes typically take 90 days, so this would be a 90-day delay not 30 days. Powell said the Planning Commission needs to have the opportunity to work through the deviations with the applicant and present them to council and council will have an opportunity to tweak. Mayor Shute said any changes would take a super majority. Powell said the council would make their decision as a group and vote what is best for the community. If

**RECORD OF PROCEEDINGS
OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2020 - 28
February 17, 2020

that's to change something in the code, the proper time to consider it would be when it's a recommendation to you from the Planning Commission and council can address the recommendations.

Councilmember Gregorcyk if a work session on a Monday before Planning Commission is a benefit? Councilmember Baldwin doesn't believe they should meet before Planning Commission because of appearances. The developer comes with his wants, council puts them on paper, Planning Commission approves it, and then council approves it. It sets a bad precedent. It should start at Planning Commission and let it come up, because that process needs to be proper. Mayor Shute said it needs to be proper, but also consistent and replicatable in the future for the next developer with a big project and their own requests. Gregorcyk agrees and will let it move through the Planning Commission

Councilmember Melton recommends residents attend the Citizens Police Advisory Committee meeting next Monday night.

EXECUTIVE SESSION

1. Consider recessing into executive session to discuss matters of attorney-client privilege

Recess into executive session pursuant to K.S.A. 75-4319 (b) (2), to discuss matters of attorney-client privilege beginning at 8:00 pm; returning to regular session at 8:20 pm.

Councilmember Melton made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b) (2), to discuss matters of attorney-client privilege beginning at 8:00 p.m.; and returning to regular session at 8:20 p.m.

Councilmember Baldwin seconded.

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

Councilmember Melton made a motion to resume regular session at 8:20 p.m.;

Councilmember Baldwin 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 8:21 p.m.

City Clerk