

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

Page No. 2020 – 94

June 1, 2020

The City Council of the City of Gardner, Kansas met in regular session on June 1, 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 City Administrator James Pruetting; Business & Economic Development Director Larry Powell; Police Chief James Belcher; Utilities Director Gonzalo Garcia; City Engineer Tim McEldowney; Finance Director Matthew Wolff; Parks and Recreation Director Jason Bruce; City Attorney Ryan Denk; 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**

**PUBLIC HEARING**

- 1. Hold a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the sale of domestic table wine within 200 feet of a school, church or library during the weekly Farmers Markets events to be held on Thursdays, 4pm to 7pm, from June 4, 2020 to September 10, 2020**

Councilmember Gregorcyk made a motion to open a public hearing for the purpose of receiving public comments on the Waiver of the Distance Limitation to allow for the sale of domestic table wine within 200 feet of a school, church or library during the weekly Farmers Markets events to be held on Thursdays, 4pm to 7pm, from June 4, 2020 to September 10, 2020

Councilmember Melton Seconded.

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

No members of the public came forward.

Councilmember Gregorcyk made a motion to close the public hearing

Councilmember Melton Seconded.

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

**PUBLIC COMMENTS**

Dan Hecke, 613/619 S. Meadowbrook, stated he is building a duplex in town. In 2018, he built a duplex to the south of this one, 601/607 S. Meadowbrook. At the time, he was told there wasn't enough service behind where the drainage ditch is. He met with the electric department, and put two more boxes and stubbed out because they knew they would be building another duplex. They pulled their building permit this year. They hooked up the electrical, and it passed through inspectors. The electric department then said they couldn't go across the back yard, the existing they had already buried there. He shared a picture of the rear of the property. There is a transformer near the tree where they stubbed out two lines to connect this duplex. The inspectors passed it, but the electric department turned it down and couldn't hook it up. The electric department wants them to add 50 more feet, and that will cost the owner an extra \$500. If this is the only option, the owner shouldn't have to pay for it. They were told where to stub out for the other duplex over a year ago; the city knew where these buildings were going. Mr. Hecke doesn't see a reason it can't go in the back of the property. It would be a bigger concern on the front of the house with the sewers. Nothing will be built on the backside of the house. If something happens in the future, then it would be time to run the line the 50 feet. They already spent several hundred dollars and had

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

Page No. 2020 - 95  
June 1, 2020

the line in. Why didn't the city say anything a year and a half ago that the line couldn't go there? He said it's not right the city wants them to change when they were never told they couldn't go in back yard. If they stayed in easement, they wouldn't have met specs requiring two sweeps; they would have had three. They need power. They have been running sump pumps with an extension cord. They need service without having to ditch another 50 feet, costing the owner another \$500.

**CONSENT AGENDA**

- 1. Standing approval of the minutes as written for the regular meeting on May 18, 2020.**
- 2. Standing approval of City expenditures prepared May 15, 2020 in the amount of \$1,968,312.17; and May 22, 2020 in the amount of \$426,750.63.**
- 3 Consider authorizing the purchase of two (2) trucks from Landmark Dodge**

Councilmember Melton made a motion to approve Consent Agenda.

Councilmember Winters Seconded.

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

**PLANNING & ZONING CONSENT AGENDA**

**COMMITTEE RECOMMENDATIONS**

**NEW BUSINESS**

- 1. Consider a request for a Waiver of the Distance Limitation to allow for the sale of domestic table wine within 200 feet of a school, church or library during the weekly Farmers Markets events to be held on Thursdays, 4pm to 7pm, from June 4, 2020 to September 10, 2020**

City Clerk Sharon Rose said this is a housekeeping item related to the public hearing held earlier. If council approves, this would allow the sale of sealed bottles of wine at the farmers market beginning this Thursday.

Councilmember Gregorcyk clarified that they are only selling it, not consuming on premise. Mayor Shute confirmed. City Clerk Rose stated they will only sell sealed bottles.

Councilmember Gregorcyk made a motion to approve a Waiver of the Distance Limitation to allow for the sale of domestic table wine within 200 feet of a school, church or library during the weekly Farmers Markets events to be held on Thursdays, 4pm to 7pm, from June 4, 2020 to September 10, 2020

Councilmember Melton Seconded.

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

**COUNCIL UPDATES**

Chief Belcher responded to comments from the last meeting regarding VERP. They are coming up with alternatives, and they hope to have an update in the Friday Minute Memo.

Director Bruce said the registration deadline for youth sports is Friday. They are rolling out a new program next month. Staff have put a lot of measures in place to have these programs. Bruce thanked Public Works for their hard work to patch the parking lot at Celebration Park. They spent a lot of time and manpower, and it looks good.

Director Garcia provided an update on the Hillsdale plant expansion. He provided a brief history on the Hillsdale plant, and the timeline of the new expansion. He shared the original site plan and site plans for the previous expansion and the current expansion. Garcia shared a process flow diagram as water moves through the plant. Garcia then shared photos of the expansion construction to date. Shute asked about mitigation of construction

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

Page No. 2020 - 96

June 1, 2020

dust along Moonlight Road, have there been discussions with Miami County? Shute has had questions from homeowners. Director Garcia said the situation was resolved that day of the complaint. The contractor started irrigating the area for dust control. The resident sent an email thanking them for their quick action. Shute asked if there was a plant to continue. Garcia said Miami County has not done any dust control, and is their responsibility, but the contractor stepped in to alleviate this problem.

City Engineer McEldowney provided an update on Santa Fe project. The waterline work is almost complete. A lot of the box culverts are completed as well. The contractor will be paving in the areas where they've crossed the road in several places, and this will result in two additional days of road closure on West 175<sup>th</sup>. They will put out signs and messages. Councilmember Gregorcyk asked if there is a 'plan b' to supply a water source to businesses and residences along 175<sup>th</sup>. McEldowney said the closures have been short, and they typically don't supply. They work around businesses, a daycare for example, crews will work on the weekend. They try to give people advanced notice, but typically don't provide an alternate source. Councilmember Baldwin asked what the next step is on Santa Fe after the water line. McEldowney said they still have storm drainage to do along Santa Fe. The next phase will be taking Santa Fe to one lane and reconstructing the closed lane. They are adding a third lane. They have a plan to maintain one lane of traffic between Waverly and Poplar.

Mayor Shute asked City Clerk Rose about committees. Rose said there are no applications for the Public Works committee or the EDAC. Mayor Shute asked the council to recruit volunteers.

Director Powell responded to the public comment by providing history on easement and planning processes. The permit application comes in with plot plan, location of house in reference to the boundaries. The plot plan also shows how the easements are to be utilized with utilities. The city requires independent metering of water and electric for twin-homes. Each half has individual access of utilities at the closest point to the buildings to prevent access issues. This duplex application came in. There is a storm drain in the photo; there was no easy way to get electric line from the access point to the second house. The electric department extended utility pedestal to allow for extra hook ups for the second house. When the city issues a permit, they issue only based on where the building access is. The utility department lays out the points in between, and the contractor makes the connection from the city utility to the house. When the contractor installs, they lay out the conduit, and the utility department inspects and pulls the wire from the pedestal to the house. Building inspectors inspect from the meter can to the house. In this case, the line came through the middle of the back yard to the far side of the house. The city requires the meter be 10 feet from the rear of the house on the side of the house, not in the back. The owner of the property, who doesn't intend to sell, has his own utility line through the back yard. There's no existing easement required from the pedestal to the house. There is a pedestal, a hook up point, on that side of the house which is a much shorter route and what the city thought would be utilized. It's about 50 ft from the pedestal to the existing line, which could be hooked into. The cost to run a replacement line would be around \$500. When Mr. Hecke called and asked for variance, staff found two options. One is to do the short run up high or get an easement across the property. Both require action by the owner. Planning staff reached out to Utility Director Garcia and City Attorney Denk to review. Councilmember Melton asked why couldn't they just do an easement, nothing will be built there? Director Garcia said it's not best practice to run service line across backyard, due to additions of decks, patios, pools, playgrounds being built over the top. If those structures are above the service line, then they may be damaged or removed to repair the service line. Best practice is to run the service line to the side with easement. There can be exceptions, but the owner would have to release liability. City Attorney Denk has concerns that if they sold the duplex, and there's no easement, only a hold-harmless agreement, there is no record that it's there. The property being served by that line could say the city has no right to access that property. That indemnity agreement doesn't do anything down the road if the owner sells. Denk recommended an easement between the two properties. If they want to build over the top at a later date, they can do a hold-harmless agreement. Councilmember Melton suggested allowing a temporary easement, then add language in title work that, when this transfers ownership, it would require new owner to put new line in. It solves the problem right now, and moves it down the road when it's not an issue then. Mayor Shute clarified that in the sale agreement would vacate the easement. Melton said it would initiate a requirement to fix the line in the title work, and require the work be done before the property sells. Denk said that could be in the easement document when it's vacated. Melton said it will come up on the title that this work has to be done. Denk said there are options they

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

Page No. 2020 - 97

June 1, 2020

can work through with the owner. Councilmember Winters asked if the owner is requesting easement. Shute said it needs to be on record and has to have an easement. Councilmember Baldwin said the line affects both sides of the home, so they'll affect two people when it sells at different times. The first one pays and second one is free? Melton said the owner owns both sides currently. There is a chance when he sells one of them, he will have to pay, or have money coming in where the others will pay for it. Baldwin said it would disclose that it would cost them extra. Melton said they could do a temporary easement, and then when the property sells later, there is a clause that it would have to be fixed as a condition of the sale. Mr. Hecke thought the owner would be agreeable to that. Hecke asked if that might be an issue for lenders? Melton said no. Shute asked if there was consensus to work through that option. Consensus was achieved.

Director Powell said inspectors issued TCO for Price Chopper for June 3<sup>rd</sup>. Shute is looking forward to ribbon cutting and thanked the staff for their work on that.

Councilmember Melton asked if they could revisit the pool? City Administrator Pruetting said it's not just distancing, it was more a budget decision. Shute said if they opened it would be after July 1, and they couldn't recover half of the operating costs. Melton reminded everyone that there is a CPAC meeting on June 29 meeting at Justice Center.

Councilmember Baldwin asked if refunds have gone out for baseball. Director Bruce said staff have started the process with their software company, and this should happen very soon.

Councilmember Roberts for an update on 4<sup>th</sup> of July event. Director Bruce said staff are finishing details and will have an announcement later this week. Roberts noted after the budget discussion last meeting, she heard about a shake-up with staff in the Planning department and asked if they are cutting staff. City Administrator Pruetting said that was personnel issue, and not budget related.

Mayor Shute noted that everyone is dealing with current events. He asked City Administrator Pruetting to offer assurances regarding readiness, to give residents confidence. Pruetting said Johnson County started working on civil unrest plan several years ago. The city does not have individual necessary resources, but can draw from other agencies. Chief Belcher and Pruetting began discussions on how to become more self-reliant. Shute mentioned the city is in close coordination with Johnson County Sheriff Department. Residents can rest assured the city will be able to support and protect the citizens.

**EXECUTIVE SESSION**

**1. Consider entering 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 7:46 pm; returning to regular session at 7:56 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 7:46 p.m.; and returning to regular session at 7:56 p.m.

Councilmember Baldwin seconded.

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

Councilmember Baldwin made a motion to resume regular session at 7:56 p.m.;

Councilmember Gregorcyk seconded.

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

Councilmember Baldwin 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 7:56 p.m.; and returning to regular session at 8:11 p.m.

Councilmember Gregorcyk seconded.

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY**

**CITY OF GARDNER, KANSAS**

Page No. 2020 - 98

June 1, 2020

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

Councilmember Gregorcyk made a motion to resume regular session at 8:11 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 Melton and seconded by Councilmember Gregorcyk the meeting adjourned at 8:11p.m.

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City Clerk