

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

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August 3, 2020

The City Council of the City of Gardner, Kansas met in regular session on August 3, 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; Police Captain Lee Krout; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Finance Director Matthew Wolff; Parks and Recreation Director Jason Bruce; Attorney F. Charles Dunlay; Business Services Manager Amy Foster; 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, Mayor Shute called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Shute led those present in the Pledge of Allegiance.

PRESENTATIONS

PUBLIC HEARING

1. Consider holding a public hearing to receive public input regarding the amendment of the FY 2020 budget

Councilmember Melton made a motion to open a public hearing to receive public input regarding the amendment of the FY 2020 Budget.

Councilmember Baldwin 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.

2. Consider holding a public hearing to receive public input regarding the proposed FY 2021-2022 Budget

Councilmember Melton made a motion to open a public hearing to receive public input regarding the proposed FY 2021-2022 Budget.

Councilmember Winters Seconded.

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

No members of the public came forward.

Councilmember Baldwin 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

No members of the public came forward.

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CONSENT AGENDA

1. **Standing approval of the minutes as written for the regular meeting on July 20, 2020.**
2. **Standing approval of City expenditures prepared July 16, 2020 in the amount of \$542,952.01; and July 24, 2020 in the amount of \$614,120.07.**
3. **Consider authorizing the execution of an agreement amendment with BHC Rhodes, Inc. to design the US-56, Moonlight Road to Old-56 improvements**
4. **Consider authorizing the execution of an engineering services contract with George Butler and Associates (GBA) for the preliminary planning and design of a wastewater system east and south of I-35 and a new South Wastewater Treatment Plant**
5. **Consider a recommendation to settle eminent domain with Pinnacle Construction**
6. **Consider the appointment of Jacob Wells to the Utility Advisory Commission**

Councilmember Melton made a motion to approve the 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

OLD BUSINESS

1. **Consider adopting an ordinance amending provisions of Chapter 13.35 of the Gardner Municipal Codes relating to Inflow & Infiltration and Fats, Oils and Grease Discharge (FOG) programs**

Utilities Director Gonz Garcia stated two weeks ago, staff presented an ordinance to implement I&I and FOG programs. During the presentation, the fees were discussed at length. The ordinance was modified, and Garcia summarized the changes. The wording was changed to say the fees shall initially be set by the governing body by resolution and shall be applied for each plan required to be reviewed. The operating fee, in similar wording, states permit fees shall initially be set by the governing body by resolution, and same with the other two fees. Staff will implement the program, and based on what they learn, will propose a recommended fee for the four fees that were originally suggested.

Councilmember Winters asked for clarification. Does this solve the problem regarding new businesses being checked yearly while existing business were grandfathered in and not checked? Garcia said with the implementation of the FOG program, every food service facility will be inspected to ensure their existing system meets criteria. No business is grandfathered in. If they are found to be contributing to FOG, they will need to upgrade their system. Winters asked if new businesses will have to pay a new fee each year for it to be inspected. Garcia said that will be decided next year if there will be an applicable fee to do the inspection. Mayor Shute said there was a question as to whether or not they were treating new businesses differently than existing, but that's not going to be the case

Councilmember Gregorcyk made a motion to a adopt an ordinance amending provisions of Chapter 13.35 of the Gardner Municipal Code and adding additional provisions to this shame Chapter relating to Infiltration and Inflow Prevention and a program providing for the control of Fat, Oil and Grease Discharges to the Gardner Municipal Code

Councilmember Melton Seconded.

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With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2668.

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

NEW BUSINESS

1. Consider authorizing the execution of an amendment to the existing contract with Central Square, Inc.

Business Services Manager Amy Foster requested authorization to execute an agreement with Central Square to include transaction processing for credit cards. Currently, the city is partnered with Automated Merchants, which was a third party vendor that contracted with Central Square. That partnership will no longer exist as of December 31, 2020. Staff researched options, but they would lose the integrity of being able to automatically put that into the core billing software. By going with what Central Square is offering, the only cost is new credit card swipes, totaling \$2,184. There's also no cost to recreate a website, no customer interference with the way cards are processed. They have done \$7.6 Million in credit card transactions so far this year. This is a housekeeping item. City Attorney Denk has reviewed the contract and has negotiated some changes, and gave his final approval.

Councilmember Melton made a motion to authorize the City Administrator to execute an amendment to the existing contract with Central Square, Inc. to include Central Square Payments provided by PAYA, Inc.

Councilmember Baldwin Seconded.

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

2. Consider adopting a resolution authoring the execution of a Cooperation Agreement for the Kansas Housing Assistance Program

City Clerk Sharon Rose stated since the mid-1990s, Sedgwick County and Shawnee County, acting jointly, have sponsored, and made available to all cities and counties in Kansas, a statewide program allowing low and moderate income home buyers the ability to purchase homes with either reduced interest rates, down payment assistance, or both. For a home purchase to be eligible, the city or county where the home is located must pass a resolution authorizing a cooperation agreement with Sedgwick and Shawnee counties to make the program available to homebuyers in that city. The City of Gardner passed Resolution No. 1315 on April 17, 1995 authorizing its participation in the program. The firm previously responsible for maintaining records for the program has closed its doors and some of those records cannot be located. While the original resolution was located, the signed cooperation agreement was not located. The best way to ensure the program is completely documented is to request jurisdictions with missing documents to reaffirm participation with new documentation. There are no costs, administrative duties or obligations for participating cities. Entering into a cooperation agreement merely allows homebuyers in that city or county access to the program. Staff recommends adopting a resolution authorizing the execution of a Cooperation Agreement for the Kansas Housing Assistance Program.

Councilmember Melton made a motion to adopt a resolution of the Governing Body of the City of Gardner, Kansas (the "Cooperating Jurisdiction") authorizing the execution of a cooperation agreement pursuant to the Kansas Local Residential Housing Finance Law, K.S.A. 12-5219 Et Seq., as amended, between the Cooperating Jurisdiction and Sedgwick County, Kansas and Shawnee County, Kansas (jointly, the "Issuers"), authorizing the Issuers to exercise, on behalf of the Cooperating Jurisdiction, the authority and powers conferred by the Kansas Local Residential Housing Law.

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Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2056.

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

3. Consider adopting a resolution approving the 2021-2025 County Assistance Road System Program for road improvements within the City of Gardner, Kansas

Public Works Director Michael Kramer said this a housekeeping item as well. It's a 5-year CARS program. The county asks for a resolution to be passed annually. All of the projects are budgeted except for the 2024 project in the 5-year CIP. Staff is still looking for additional funding for that 2024 project. As they get in those out-years, they may move things around. Primarily this is to be eligible for the 2021 project, additional funding for US 56. The resolution is written to match what was the original CARS application, or the existing project from Sycamore to Moonlight, and not the funding recently received. They plan to recommend additional funding to the county.

Councilmember Baldwin asked if they are looking to bump the \$734,000 up to \$850,000 since the scope of the project has grown. Kramer said no; these applications were already done and into the county previously. With the limited funding the county has, this is a large ask.

Councilmember Gregorcyk made a motion to adopt a resolution approving a five-year program for road improvements for 2021-2025 within the City of Gardner, Kansas.

Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2057.

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

COUNCIL UPDATES

City Clerk Rose said they have received six (6) applications for the Planning Commission opening, and she has forwarded them to the interview committee. They hope to begin scheduling interviews next week.

Public Works Director Kramer noted that the rain last week slowed projects, but they hope to catch up now.

Utilities Director Garcia noted that with the rain and mild temperatures, they have fallen below the water watch. If the trend continues, he recommends ending the water watch at the next meeting. Mayor Shute said they can rescind the resolution at the next meeting. Councilmember Winters asked if they can rescind the water watch now. Attorney Dunlay said if it requires a resolution or ordinance, it needs to be on the agenda. Shute asked if they can lift the water watch through rescinding the resolution. Dunlay said rescinding the resolution requires a resolution. Garcia continued with an issue regarding smart meter opt-outs. They have received 7 medical opt-out requests. A customer provided a medical certificate that was signed by a chiropractor. According to the city's

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policy, it must be a medical physician. The customer said the chiropractor is also a medical doctor. Attorney Dunlay asked about the certificate. Garcia explained this is for someone to request a medical opt-out from smart meters, and the city will use a digital meter instead of a smart meter. Dunlay said under certain aspects of federal law, a chiropractor may serve as a certified health care provider if the condition for which the individual is claiming the need for accommodation is one that a chiropractor treats. If the individual suffers from a musculoskeletal issue, a chiropractor may issue a certification of healthcare. If the individual is claiming to suffer from cancer, a chiropractor may not issue that certification.

Parks Director Bruce is waiting on information from the state on guidelines to return to play. Mayor Shute asked if they are aligning with KSHSAA. He's heard concerns that they may cancel fall sports. Bruce said they are aligning with KRPA with return to play, similar to what they did when baseball and softball started.

Councilmember Baldwin asked Director Garcia about smart meters. Are there plans to address move-ins or move-outs? Or are they only addressing one time at installation? Garcia said new residents must set up an account, and at that point, they can address if the resident wants to opt-out or keep a smart meter.

Councilmember Roberts asked if there are there updates on the Super 8. Is the state still using it? Do they know how many people are there? City Administrator Pruetting said he doesn't have any new information. Roberts asked if he could follow up, an update would be good. Mayor Shute said when he spoke with the county last wee, there were two rooms occupied. As a non-congregant site, each person has their own room. He doesn't know what the mix is with exposures versus infected, and that's not in their purview as a community. Roberts noted an ongoing update may be nice, as she's had people ask.

Councilmember Gregorcyk said in light of the two resignations and Mr. Powell's retirement, have they gotten in front of the planning commission to give them a point of contact? City Administrator Pruetting said no, Bob Case has taken over as the Chief Planner and handled the last meeting. They hired a planner who started last week. With regards to a director, Pruetting said they should have resolution by the end of the month, will bring that before the governing body.

Councilmember Melton stated he met with Rhonda Humble at the Gardner News regarding the paper of record. He told her if she can meet the 5 percent local option, the city would do business with her. Melton asked Finance Director Wolff share pricing structures and what that would like as compared to what the city is paying currently. She responded that she can't reduce her prices, but can work with the city on advertising. Melton said if the city can do some advertising, they should look into it. City Administrator Pruetting said the city still advertises with the Gardner News. Melton said Ms. Humble was willing to work out a kind of package deal. If everyone is in agreement, staff can look into it. Councilmember Baldwin asked what would be changing if the city is already advertising. Melton said she would work out a sort of package deal, may have a better deal if there's more advertising. He wanted to inform the body that he had been facilitating, but right now, she cannot match the 5% over what the city is paying the Legal Record. Mayor Shute asked that the email be shared with the governing body, as not everyone got a copy.

Councilmember Melton said he's been asked about UTVs on the street. People are asking if they have lights and such, can they get a permit to drive around. Melton is indifferent, but doesn't want them on 56 Highway. Pruetting said this came up when he was police chief. In 2nd and 3rd class cities, UTVs are allowed on the roadway. Shute noted Gardner is on the cusp of becoming a city of the 1st class. Pruetting said Capt. Krout can look into the state statute, whether they require permitting. Melton said Spring Hill and Paola had permits. People are willing to pay for permits, so he wanted to bring it up. Councilmember Gregorcyk clarified they have headlights and turn signals. Melton confirmed. Dunlay said it does vary, whether they can drive on state highways, even within the city. On city streets, for a brief period of time, the city has the ability to regulate that, until the city becomes a city of the 1st class. Many of the main thoroughfares that are state roads, they are not permissible. Gregorcyk would like more information.

Councilmember Melton also brought forward the roundabout discussion for which he wasn't able to be present. How many roundabouts are there by high schools and grade schools, and how many independently. It's a big difference in what Gardner has there versus what was presented. That kind of combination that could cause

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issue. Young drivers and kids crossing the streets, will they need more crossing guards? There has been one youth killed on that road, and he doesn't want to see that happen again. He would like staff to present council with where those locations are with grade schools. Gregorcyk said there is a roundabout on Grand. Melton noted it's not the same, there are no children crossing the roundabout. They can go down the street and cross where there's not a roundabout. Roberts noted that there are no student drivers at the Grand Star or Trail Ridge, while there are new drivers at the high school. Pruetting said they discussed crossing guards. There's potential to have the need for a second. They referenced Blue Valley, but finding other jurisdictions with high school and elementary school right next to each other is difficult. The engineering firm relied on traffic counts and times of day. Pruetting noted that the fire chief and school superintendent are both against a roundabout. It's worth discussing whether they move forward with the design when people are against it and there are other things to improve traffic flow, like turning right only out of Madison during the peak hours. Queuing into Madison Elementary is the issue. It's a matter of what the governing body wants to support, something that others are against. Shute said it comes down to life, health, and safety, and what is best for Gardner. What works in Blue Valley may not work here. Kramer noted they looked at several schools, there's a roundabout very near a grade school in Lawrence. Since that meeting, they discussed with fire marshal to get their truck turning movements to model their radiuses going around the roundabout. Kramer said a car entering the roundabout can see across and see other legs. Pedestrians are further down the leg and not crossing at the roundabout. Consultant is moving forward with that concept and design. If they want to revisit, they need to have that discussion. Keeping traffic flowing, since a signal is not warranted, it appears to be the best option. Gregorcyk agreed with Melton. Can they get a survey of parents, community? Do they support it? Pruetting said they need a traffic study. Shute said the work they did was good work, but need to give people the information and see where they are.

Councilmember Melton continued stating there is an issue with a Planning Commission member trying to put the city in legal matters regarding staff. It continues to be brought up and it's out of their wheelhouse. There was also an instance at a PC meeting where a developer was on a Zoom meeting. The developer raised his hand to comment before the presentation was over, and no one saw it, and everyone voted on the issue. One PC member noted that the developer had a comment, but this PC member in question voted against allowing the developer to speak. Everyone else agreed that the developer did raise their hand and should have been heard. Melton also raised concerns with comments this PC member made on facebook. He acknowledged that he is also outspoken on facebook, but this is below standard. He supplied the rest of the body with printouts of some screenshots he captured, removing the name of the PC member to protect their identity. Melton believes this person should be removed from the Planning Commission. The City Administrator had to reach out to this person and tell them their comments are not true. Melton received calls based on the comments that were made on facebook that were erroneous. Why do they want someone like that representing the city? As the governing body, they should not stand for this. Free speech comes with responsibilities. Councilmember Gregorcyk requested time to process this information. He agrees that rights come with responsibilities, but this is new information to him and he needs to understand the situation. Councilmember Baldwin said facebook comments notwithstanding, the first part is troubling: meddling in personnel affairs and shutting down a developer in a meeting. Those aren't appropriate for someone in that position. That's not representing how they want as a city to be represented to the development community. Gregorcyk said he was unaware of the developer issue until tonight. Councilmember Roberts noted that she went back and watched the recording of that PC meeting. Melton said it was the first zoom meeting in April, and the Chair had computer issues. Roberts said the developer did raise his hand, and Commissioner McNair mentioned it after the fact. Regarding the facebook comments, Roberts would need to revisit the rules of conduct and see what the criteria is and how this conflicts. Melton said the facebook comments set him off. Involvement in personnel issues could have opened them up for litigation, they caught it, but didn't say something then. He was going to let the facebook comments go, but it's continuing to be a problem. Roberts asked if there was precedence for removal? Baldwin said they just voted on it recently, and he was searching for the new ordinance. Roberts doesn't recall it saying specifically, and she would need to review it. Mayor Shute said there were inconsistencies within the ordinances; the master ordinance that created the citizen advisory committees had been modified. Roberts said it was more to have the Board of Zoning Appeals added on that last time. She thought there would be more to it, but doesn't remember reading it that way. Roberts doesn't recall it

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outlining behavior. Baldwin said there isn't anything for any appointed personnel that has a code of conduct like the city council, but there are details about expectations. Shute said members of any board or commission serve at the pleasure of the city council. Attorney Dunlay said whether it's a statutory reference or a specific ordinance, he could provide a report concerning that. Baldwin found the ordinance and there is a section on removal. He read section 2, subsection K of Ordinance 2667: "A majority of the Governing Body may remove any appointed Planning 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." Baldwin noted it's vague. Dunlay said 'for cause' has a specific legal meaning, so it is not necessarily vague. If there is significant misconduct, unrelated to something posted on a personal website unless that was obscene or sufficiently contrary to continued service, that's something they want to look at. Conduct in a meeting or conduct toward employees placing the city in potential liability, those are separate and are places to assess 'cause'. That's a discussion best had separately with council. Shute asked if a member of the city council was texted a rumor about removal of an employee, and that council member asks about it in a meeting, is that considered 'cause'? Dunlay can't answer without have specifics. Gregorcyk said the points were made, but there needs to be due diligence before they continue. Roberts noted she was the one who was texted and brought up the employee issue, but asked about it as a budget concern, and the City Administrator stated it wasn't a budget issue, but a personnel issue, and it was resolved. She said this needs more investigation and more details. Baldwin asked the attorney what they need to discuss, because he doesn't know what else they need to talk about. Melton doesn't need to present any more, because they already know these are the issues. If the ordinance states they can remove someone with the votes, they need to vote. Dunlay said if the appointment and provision of authority to the Planning Commission, consistent with the laws of the statute, with the laws of the state, under the authorities you give them, it's not 'serves at the pleasure of', rather it's 'may be removed for cause'. There would need to be a reason to remove the individual that is 'for cause'. Melton said the personnel issue is the 'cause'. Baldwin said it would be more 'cause' to not allow the developer to speak in a meeting. Dunlay said they may be sufficient for cause. The misconduct in terms of the commissioner's behavior toward staff of potential liability toward the city is a bigger issue. It could be cause, but he would like to sort out that information rather than say it in a public meeting. He needs the specifics of what occurred to give a considered opinion. Melton asked if they need executive session. Dunlay said in an executive session, they can get a legal opinion with regard to what the law states, not what they can do or a policy decision they are going to make or action they may take. A commissioner doesn't fall under the "non-elected personnel", as they are appointed and are not employees. The attorneys can provide a legal opinion as to legal standards for consideration, answer questions regarding that legal standard, and address concerns related to those, then council can address the matter in open session. Shute asked if they need to recess into executive session to get the legal opinion. Dunlay recommends letting the attorneys gather the information and prepare something to give during the executive session. Shute asked for consensus to do that, and consensus was received.

Shute was asked by Steve Hale to make a statement about the census. The Complete Count Committee for Johnson County has asked that everyone get their information entered so they can have a complete and accurate count. Census takers will be going door to door soon, but the more that residents can self-report the better for everyone during the pandemic.

Councilmember Gregorcyk reminds everyone to vote tomorrow; polls are open 7am-7pm. He encourages everyone to do their due diligence and vote. Shute agreed, adding that it's everyone's duty in a democratic society to exercise their right as citizens and vote.

EXECUTIVE SESSION

ADJOURNMENT

There being no further business to come before the Council, on a motion duly made by Councilmember Melton and seconded by Councilmember Baldwin the meeting adjourned at 8:02 p.m.

City Clerk