

**MERRIAM CITY COUNCIL AGENDA
CITY HALL
9001 WEST 62ND STREET
AUGUST 14, 2017
7:00 P.M.**

<p>If you require any accommodation (i.e. qualified interpreter, large print, reader, hearing assistance) in order to attend this meeting, please notify the Administrative Office at 913-322-5500 no later than 24 hours prior to the beginning of the meeting.</p>

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. PUBLIC ITEMS

Members of the public are encouraged to use this time to make comments about matters that do not appear on the agenda. Comments about items on the regular agenda will be taken as each item is considered. ***Please note: individuals making Public Comments will be limited to 5 minutes.***

IV. CONSENT AGENDA

All items listed under the heading are considered to be routine by the City Council and may be enacted by one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case that item will be removed from the Consent Agenda and considered separately.

1. Consider approval of the minutes of the City Council meeting held July 24, 2017.
2. Consider approval of a bid award to Kansas Heavy Construction for Sidewalk Infill Project.
3. Consider approval of a bid award to Diversified Infrastructure Services, Inc. for Ground Penetrating Radar Services.

V. MAYOR'S REPORT

1. Public Art Initiative Update-Phil Lammers, Committee Chair.

PUBLIC HEARING- Public Hearing for the purpose of hearing and answering questions and/or objections from the public related to the 2018 Budget.

Members of the public are allowed to use this time to make comments about the proposed 2018 Budget. ***Individuals making public comments will be limited to 5 minutes.***

VI. COUNCIL ITEMS

1. Consider approval of a resolution to adopt the 2018 Budget.

A. Finance and Administration

1. Consider approval of an Ordinance adopting the 2017 Standard Traffic Ordinance (STO). (recommend waiving the first reading)
2. Consider approval of an Ordinance adopting the 2017 Uniform Public Offense Code (UPOC). (recommend waiving the first reading)
3. Consider approval of an ordinance amending Chapter 44 of the Merriam Code of Ordinances related to controlled substances. (recommend waiving the first reading)
4. Consider ratification of a budget adjustment between expenditure accounts for the Aquatic Center department (\$3,200) and use of contingency funds (\$5,200) for Irene B. French Community Center repairs.
5. Monthly Finance Report. (included in packet)

B. Community Development/Public Works/CIP

1. CIP Update.

VII. STAFF ITEMS

VIII. NEW BUSINESS

IX. EXECUTIVE SESSION

X. ADJOURNMENT

Respectfully submitted,

Juliana Pinnick

Juliana Pinnick
City Clerk

**MERRIAM CITY COUNCIL MINUTES
CITY HALL
9001 WEST 62ND STREET
July 24, 2017**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

Mayor Ken Sissom called the meeting to order at 7:00 pm.

II. ROLL CALL

Scott Diebold
Al Frisby
Chris Evans Hands
Nancy Hupp
Bryan Knaff
Cheryl Moore
Bob Pape
Robert Weems

Staff present: Chris Engel, City Administrator; Mike Daniels, Police Chief; Cindy Ehart, Finance Director; Anna Slocum, Parks and Recreation Director; Meredith Hauck, Assistant City Administrator; Bryan Dyer, Community Development Director; Kevin Bruemmer, Public Works Director; Nicole Proulx Aiken, City Attorney; and Juli Pinnick, City Clerk.

III. PUBLIC ITEMS

Members of the public are encouraged to use this time to make comments about matters that do not appear on the agenda. Comments about items on the regular agenda will be taken as each item is considered. ***Please note: individuals making Public Comments will be limited to 5 minutes.***

IV. CONSENT AGENDA

All items listed under the heading are considered to be routine by the City Council and may be enacted by one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case that item will be removed from the Consent Agenda and considered separately.

1. Consider approval of the minutes of the City Council meeting held July 10, 2017.

COUNCILMEMBER MOORE MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEM 1. COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

V. MAYOR'S REPORT**VI. PUBLIC HEARING - Public Hearing to consider the Amended Merriam Pointe TIF Redevelopment Project Plan.**

City Administrator Chris Engel commented that for about a year and a half staff has been working with an applicant to develop a parcel of land in Merriam Pointe. The parcel is fondly called the big ditch and is currently a drainage area with no value on the County tax rolls. A plan to develop this parcel and construct a car dealership on it has been submitted. There are many steps that need to take place tonight to bring this project to fruition. This is a TIF project, and is an example of how beneficial TIF projects can be. This project will take a piece of land that generates no tax revenue and has no value in its current condition and through private-public partnership will turn into something that will generate a significant amount of revenue on the tax rolls and for the city.

There will be a presentation from the applicant, Merriam Luxury Imports representative Sandy Watts. Ms. Watts represents Mr. Richard Webb, owner of Merriam Luxury Imports, Infinity car dealership, and the big ditch parcel. Per State Statute, the first formal approval for the TIF Project Plan is a finding by the Planning Commission that the Plan is consistent with the City's Comprehensive Plan. At their June 7, 2017 meeting the Planning Commission found the Plan to be consistent with the Comprehensive Plan.

On June 26, 2017, in accordance with state statute, the City Council passed a resolution setting July 24, 2017 at 7:00 p.m. as the Public Hearing on the Project Plan. A copy of the TIF Project Plan was delivered to the Johnson County Board of County Commissioners and the Shawnee Mission School District the following day. Also, per state statute, surrounding property owners were notified by certified mail and the resolution was published in the Legal Record on July 11, 2017 and July 18, 2017.

After presentations and the Public Hearing, a series of votes will occur; if any one of these items are not approved, the project will most likely not move forward.

Sandy Watts, Attorney, White Goss, representing the applicant Richard Webb addressed the council regarding the project. Ms. Watts commented that Mr. Webb is a principal in the Infinity dealership, located in Merriam, and also principal in Merriam Luxury Imports, which is the applicant and owner of the property. The subject property is located within an existing TIF District, that TIF District expires in July 2023. The designated developer under that TIF District is an entity called Merriam Investors LLC, which is owned by David Block and David Christie, well established real estate developers in the Kansas City and Midwest region. Both are present this evening. Merriam Investors took an assignment of developer rights of this TIF Project in 2011. Since that time, Merriam has seen the development of three successful car dealerships along the I-35 corridor. While Mr. Webb has yet to obtain

an end user for the development, he believes that one will be identified in the very near future.

The clustering of car dealerships is a very common and successful business model and Mr. Webb has had numerous conversations with car retailers and many have expressed a great deal of interest in the site. Any such end user that would be on the site would not be a dealership that is currently located in the City of Merriam.

The owner and developer have been working diligently with city staff and it is very evident that development of this site is not economically feasible without the requested TIF assistance. This fact is supported by the city's independent financial advisors and is based on the existence of numerous and expensive development challenges. Those challenges include Quail Creek that runs through the property. The creek will need to be enclosed and filled in to allow space to construct the improvements. The creek is a jurisdictional stream and is under the authority of the Army Corps of Engineers. The developer has come to an agreement with the Corps about the proposed handling of the stream.

The site is vastly uneven which will require significant fill of material to make the property ready for development. It is estimated that over 100,000 cubic yard of fill material will be needed. In addition to the fill material needed, the sanitary sewer system will need to be upgraded as the current system will be unable to support the weight of the fill material. Due to the property's proximity to the railroad, the site will require a substantial retaining wall on the back of the property. This is similar to the what occurred on the Lexus and Toyota properties. Without completion of those extraordinary site improvements, the project is not viable.

The current TIF plan expires in 2023; this request does not change that. The requested reimbursements will occur on a pay-as-you-go basis with the applicant having full responsibility for the cost of the improvements. The requested \$4 million in reimbursements would come from the TIF funds over the remaining TIF years. The remaining \$2 million would not be paid to the applicant until construction has been completed and the dealership has been open for one year. If the applicant fails to complete construction by July 2020 the agreement will terminate and the applicant will have no rights to the reimbursement. These terms are designed to provide assurances that the applicant will perform under the private-public partnership. Ms. Watts thanked City staff and all the consultants or their hard work over the past year and a half to bring this project to fruition.

Community Development Director Bryan Dyer reviewed the history of the project. Mr. Dyer displayed a photo of the Merriam Pointe Development and also the I-35 TIF District. Within the I-35 District there are several Project Plans.

In 2003, the City of Merriam adopted the Merriam Pointe Redevelopment Plan in accordance with Kansas Statutes Annotated (KSA) 12-1772. That plan outlined a number of items including disbursement of Tax Increment Financing (TIF) funds to the developer, Merriam Pointe LLC, for eligible expenses and the proposed land

uses. The Redevelopment Plan that was approved showed four retail buildings with approximately a total square footage of 350,000. The only development that occurred was the construction of the Shawnee Mission Hyundai dealership that was completed in 2007.

In 2010, Merriam Pointe LLC declared bankruptcy and the following year Merriam Investors LLC became the property owner and developer of Merriam Pointe and set to recasting the development. The recasting involved seeking approval of two additional automobile dealerships (Toyota and Lexus) that were built in the north portion of the development. As part of the approval of those dealerships, the Merriam Pointe Redevelopment Project Plan was amended to permit the additional two automobile dealerships.

Following the approval of the Toyota and Lexus dealerships, Merriam Pointe sought approval for the development of a third dealership, KC Infiniti. The Merriam Pointe Redevelopment Project Plan was amended and the Infiniti dealership was constructed. Merriam Investors and Richard Webb (General Manager of KC Infiniti) are now requesting TIF funds to develop the large drainage area that is south of the Infiniti dealership. In order for the development to occur a number of items must be approved, including the preliminary development plan and change of use that is on this agenda.

The first item to be approved is the amended Merriam Pointe Redevelopment Project Plan. The Redevelopment Project Plan is part of the TIF approval process. The Project Plan is a requirement of the TIF process. The Project Plan provides information about the proposed development, including detailed description of the buildings and facilities proposed to be constructed.

On June 7, 2017, the Planning Commission found that the amended Merriam Pointe Redevelopment Project Plan is consistent with the City's Comprehensive Plan. Then on June 26, 2017, the City Council passed a resolution setting July 24, 2017 as the date for the public hearing to on the amended Merriam Pointe Redevelopment Project Plan.

Mayor Ken Sissom opened the Public Hearing at 7:25 pm. There were no public comments. Mayor Sissom closed the Public Hearing at 7:27 pm.

VII. PLANNING COMMISSION

1. Consider approval of an ordinance adopting the amended Merriam Pointe TIF Redevelopment Project Plan. (recommend waiving the first reading).

COUNCILMEMBER PAPE MOVED THAT THE GOVERNING BODY WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE ADOPTING THE AMENDED MERRIAM POINTE TIF REDEVELOPMENT PROJECT PLAN.

COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

COUNCILMEMBER HUPP MOVED THAT THE GOVERNING BODY APPROVE AN ORDINANCE ADOPTING THE AMENDED MERRIAM POINTE TIF REDEVELOPMENT PROJECT PLAN. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

2. Consider approval of the Second Amended and Restated Redevelopment Agreement for the Merriam Pointe Redevelopment Project with Merriam Investors LLC and Merriam Luxury Imports LLC.

City Administrator Chris Engel reviewed the terms of the Redevelopment agreement which includes:

The completed project will be an automobile dealership for the sale of new automobiles by a flagship brand that is not currently sold in the City.

Project Plan Term is not being extended and will terminate on July 28, 2023.

The City will receive an annual Administrative Fee of \$15,000 over the life of the agreement to cover the costs related to the administration of the project.

The total amount of public funds available for the Tract B Project is capped at \$6,000,000. This Maximum Reimbursement Amount will include a blended amount of two available revenue sources - Up to \$4 million will be available from Incremental Real Property Taxes and \$2 million from unallocated fund balance within the I-35 District Tax Increment Financing Project Fund.

The \$2 million will be paid as follows: \$1 million once the dealership becomes operational; \$1 million after the dealership has been in operation for one year.

Lead Developer cannot assign rights, duties and obligations to the Co-Developer until the project is sufficiently Pad Ready to the degree that vertical construction could begin.

Developer must post a Performance Bond equal to 125% of the cost of the Drainage Improvements to ensure their completion.

The Maximum Reimbursable Amount will be reduced to \$0.00 (zero) if (a) the new dealership is not operational by July 24, 2020, (b) the Developers fail to address any violation of applicable local, state, or Federal law within 90 days, or (c) the new dealership becomes operational and then closes for more than three months withstanding conditions outside the Developers control, i.e. natural disasters, fires, performance failures by subcontractors, etc.

Mr. Engel reviewed the aspects of the Fiscal Analysis that is required by State Statute.

Fiscal Study

K.S.A. 12-1770 et seq., as amended, requires that before a redevelopment project is undertaken a feasibility study should be performed to demonstrate a redevelopment project's benefits and tax increment revenue are expected to exceed the redevelopment's eligible project costs. The fiscal study was completed by the city's financial advisor, Columbia Capital, and they determined that projected and existing tax increment revenues plus Developer contributions are sufficient to pay the redevelopment's project costs.

Columbia Capital also reviewed the Developer's cost and revenue assumptions for reasonableness, as well as performing their own analysis using more conservative assumptions. Based upon conservative assumptions, their projections indicate revenue streams to support \$5,697,661 which leaves a gap of \$302,339 to get to the Maximum Reimbursable Amount of \$6,000,000. The Developer will be required to provide that additional contribution if there is a shortage.

The fiscal study also shows projected revenue increases to the city, county, and state to begin during the duration of the agreement. The project is estimated to generate an average of \$58.8 million in gross sales each year over the first ten years of operations. Sales tax revenue generated by the city sales tax rate of 1.25% is projected at an average of \$380,000 per year over the first ten years of operation. Sales tax revenue will also be collected by Johnson County and the State of Kansas at rates of 1.475% and 6.5%, respectively. In addition, the Developer projects 54 new full-time employees and one part-time employee once fully operational.

Mr. Engel further explained the "but-for" principle that are to be considered in a TIF application.

All TIF applications shall be considered in light of the "but-for" principle, i.e., the project would not be economically feasible but for the availability of TIF. The Governing Body does not encourage the subsidy of private business with public funds unless some measurable public good results, as determined by the City, and the public subsidization can reasonably be expected to make a significant difference in achieving one or more objectives of the City.

This project meets the "but-for" principle due to the following factors:

- The fiscal study includes a “but-for” analysis and it concludes that without subsidy the development likely falls below the current rate of return expected within the marketplace.
- Meets the City Council Goal of “Economic Development – Promote and stimulate quality development to enhance the City’s economic base.” It specifically achieves the economic development objectives of (1) Promote existing developments, and (2) Work with local business owners and business associations.

COUNCILMEMBER MOORE MOVED THAT THE COUNCIL APPROVE A SECOND AMENDED AND RESTATED MERRIAM POINTE REDEVELOPMENT AGREEMENT AND AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT SUBJECT TO THE GOVERNING BODY’S APPROVAL OF A CHANGE IN USE AND PRELIMINARY DEVELOPMENT PLAN FOR MERRIAM LUXURY IMPORTS LLC. COUNCILMEMBER WEEMS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

3. Consider approval of a Change in Use and Preliminary Development Plan, including Detention Waiver, for Merriam Pointe-Merriam Luxury Imports, located at 7000 W. Frontage Road (Z-8-04/PD7-0717).

Community Development Director Bryan Dyer provided the background for this item.

Richard Webb, General Manager of KC Infiniti is requesting approval of a preliminary development plan, change in use, and final plat to combine Merriam Pointe Final Plat Tract B and the unplatted parcels to the east into a single lot and to construct an automobile dealership on the new Lot 1. Purchase of the unplatted parcels, previously owned by the City of Merriam, occurred in March, 2017.

The proposed preliminary development plan includes a 44,998-square foot building and outdoor parking similar to the Hyundai and Infiniti facilities previously approved by the Planning Commission and the Governing Body. The preliminary development plan shows an extensive amount of drainage improvements that will be needed to develop the property. Prior to development of the proposed automobile dealership, the applicant will need to submit a final development plan to the Planning Commission for their review and action. The applicant has not identified an end user for the project and will be requesting a final development plan approval at a future date once plans are finalized.

The preliminary development plan proposes to enclose Quail Creek, which traverses the subject property from east to west, and fill the channel. Once that

has been accomplished the owner intends to construct an automobile dealership.

The applicant has indicated that they desire to proceed with the enclosing and filling of the drainage way following the approval of this preliminary development plan and before the submittal of the final development plan. Considering the unique timing of this project caused by drainage way and in order to market the property, staff is comfortable with the applicant's proposed timeline.

Merriam Luxury Imports have requested the Governing Body to grant the proposed development a waiver from the city's stormwater detention requirements. The City Engineer has reviewed the request and finds that it does not meet Merriam Code form requirements for granting the waiver. The City Engineer does believe that the request could be considered for a waiver if it is presented in a manner that corresponds with Merriam Code requirements. A recommend condition of approval is that the applicant make their waiver request in conformance with Merriam Code. If the waiver is granted, prior to the issuance of a permit to construct any above ground impervious surfaces the developer must make a payment-in-lieu-of-detention per City Council Policy No. 128. Stormwater detention waivers were granted for the Toyota, Lexus, and Infiniti developments.

Mr. Dyer displayed the Preliminary development plan depicting the stormwater plan which includes enclosing the channel and daylighting the water at the back of the property with energy dissipaters at the end of the outlet box which will slow the water down as it carries under the train tracks.

Prior to its installation, the city will review detailed construction and grading plans for the enclosing of the creek to ensure that the plans meet city standards. Once the plans meet city standards, the city will issue a drainage permit authorizing the construction of the storm drainage system. Additionally, prior to the issuance of the permit, the applicant will need to provide the city with verification that the US Corp of Engineers (404 permit), BNSF, and the property owner to the south have approved the plans. The applicant will also need to provide verification that BNSF and the property owner to the south have provided approval for right of entry and grading on their respective properties.

Automobile sales and services use was not included in the PUD-G rezoning action on the subject property. To include automobile sales and services to allow for an automobile dealership, the Planning Commission must consider and the Governing Body approve a change of use to include that use in this planned unit district. The process to consider a change in use is the same one used for rezoning requests.

The Planning Commission held a public hearing on July 5, 2017. There were no comments from the public. At that meeting, the Planning Commission, based on information supplied by the applicant, the criteria outlined in the Merriam Code and Kansas law as outlined in the Planning Commission Staff Report, and testimony presented at the Public Hearing, unanimously recommended approval, with conditions, of the proposed preliminary development plan and change in use. The associated conditions were included on the City Council Action Form.

COUNCILMEMBER MOORE MOVED THAT THE GOVERNING BODY CONCUR WITH THE PLANNING COMMISSION'S RECOMMENDATION AND APPROVE, WITH CONDITIONS, THE CHANGE IN USE TO ADD AUTOMOBILE SALES AND SERVICE TO THE ALLOWABLE USES IN THE PUD-G DISTRICT AND THE ASSOCIATED PRELIMINARY DEVELOPMENT PLAN (Z-8-04/PD7-0717), INCLUDING THE DETENTION WAIVER, FOR MERRIAM POINTE-MERRIAM LUXURY IMPORTS AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

4. Consider approval of the final plat for Merriam Pointe 5th Plat -Merriam Luxury Imports LLC located at 7000 W. Frontage Rd. (PA17-000001).

Community Development Director Bryan Dyer provided the background for this item.

The plat dedicates two, 10-foot utility easements along the front and rear of the subject property, and a seven and half (7.5) foot utility easement on the south portion of the property. The plat also dedicates a 40-foot drainage easement through the property. The drainage easement is over the proposed location of the reinforced concrete box structure that will convey Quail Creek through the site. An additional 15-foot drainage easement is indicated on the plat to convey stormwater from an existing 15-foot pipe to the north into the proposed reinforced concrete box. The plat shows a number of existing sanitary sewer easements and dedicates a new 15-foot utility easement on the north side of the 50-foot drainage easement. An access easement to gain entry into the outflow of the reinforced concrete box has been dedicated on the plat in the southwest corner of the property. In addition, there is a sidewalk and 10 ft. utility along W. Frontage Rd.

COUNCILMEMBER HANDS MOVED THAT THE GOVERNING BODY ACCEPT, WITH CONDITIONS, THE DEDICATION OF EASEMENTS SHOWN ON THE MERRIAM POINTE 5TH PLAT (PA17-000001). COUNCILMEMBER FRISBY SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

5. Consider approval of a Change in Use and Preliminary Development Plan for the construction of an automobile dealership (Audi) located at 6601 E. Frontage Road in a PUD-G, Planned Unit Development-General (PUD17-000001).

Community Development Director Bryan Dyer provided the background for this item.

The applicant, Gravity Company representing the Kuni/Holman Automotive Group, is proposing the redevelopment of an existing antiqued office building and an aging hotel into an automobile dealership, Audi Shawnee Mission, and a parking lot for World's Gym. Shawnee Mission Audi is an existing dealership with a temporary facility located south of Merriam at Switzer Road and Lenexa Drive along the I-35 corridor. Upon completion of this new dealership, Audi Shawnee Mission will close its temporary facility and move its operation to Merriam.

Mr. Dyer displayed a photo depicting the site plan for Shawnee Mission Audi and the building location on the site. He also displayed the easements and the re-platting of how the two properties will come together to create the Audi site and dedicated parking for world's gym.

The northern portion of the subject property is unplatted and was developed in 1961 as a Western Hills motel, which subsequently became a Best Western Motel. Over the past several decades the building has been utilized for small offices and business uses. In 1995, the property was rezoned to Planned Unit Development – General (PUD-G) District. The rezoning included in a development plan that was for the office building and Gold's, now World's Gym. The rezoning and development plan was for the approval to construct a parking lot between the two buildings.

The southern portion of the subject property is platted and developed with a Quality Inn hotel. In 1988, the property was rezoned PUD-G District and the development plan approved for a Fairfield Inn. The hotel was subsequently developed and over time become the Quality Inn.

The applicant is requesting approval of a preliminary development plan, change in use, and final plat to develop the subject properties into an Audi automobile dealership. The preliminary development plan proposal is only for the southern portion of the office building property.

A final plat for the office building property is on this Council agenda. It should be noted that the applicant will be required to replat the automobile dealership properties to create one lot. The proposed automobile dealership development

includes a 25,778-square foot building and outdoor parking similar to the previously approved automobile dealerships along the I-35 corridor that corresponds to this development plan.

The applicant is requesting that the Planning Commission and City Council grant the Community Development Director the ability to approve the final development plan. With that request, the applicant has incorporated those items normally reviewed as a part of the final development plan into this application.

Automobile sales and service use was not included in the PUD-G rezoning actions on the subject properties. To include automobile sales and services to allow for an automobile dealership, the Planning Commission must consider and Governing Body approve a change of use to include that use in this planned unit district. The process to consider a change in use is the same one used for rezoning requests.

Mr. Dyer displayed a site plan depicting the new building location on the site as well as dedicated parking for use by World's Gym. The applicant has agreed to allow for a private easement on the site for emergency access. At the Planning Commission, the access easement was listed as a public access easement, the applicant and staff agrees that this easement should be a privately dedicated easement due to the fact that if the Worlds Gym site was to ever to be redeveloped, a public easement would have to allow access through the middle of the Audi site.

The Planning Commission held a public hearing on July 5, 2017. There were no comments from the public. At that meeting, the Planning Commission, based on information supplied by the applicant, the criteria outlined in the Merriam Code and Kansas law as outlined in the Planning Commission Staff Report, and testimony presented at the Public Hearing, unanimously recommended approval, with conditions, of the proposed preliminary development plan and change in use.

Mr. Dyer asked that the council modify the motion regarding condition #7 to remove the word "public" related to the access easement.

COUNCILMEMBER MOORE MOVED THAT THE GOVERNING BODY CONCUR WITH THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE, WITH CONDITIONS, THE CHANGE IN USE TO ADD AUTOMOBILE SALES AND SERVICE USE TO THE ALLOWABLE USES IN THE PUD-G DISTRICT AND THE ASSOCIATED PRELIMINARY DEVELOPMENT PLAN (PUD17-000001), FOR CONSTRUCTION OF AN AUTOMOBILE DEALERSHIP LOCATED AT 6601 E. FRONTAGE ROAD, STRIKING THE WORD "PUBLIC" FROM CONDITION #7 AND AUTHORIZE

THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

6. Consider accepting the dedication of easements shown on the Merriam Audi 1st Plat located at 6505 E. Frontage Road (PA17-000002).

Community Development Director Bryan Dyer displayed the plat depicting the easements including the private access easement.

Councilmember Moore asked the timeline for construction of the Audi dealership.

Michael Graves, Gravity Company, construction company for the development responded that they will move forward with construction documents after planning approvals tonight. They don't anticipate any issues with moving forward other than maybe Johnson County Wastewater. Tenants in the office building have been given notice to vacate. March 2018 is an opening date that Holman/Kuni Automotive Group has given to Garvity Company, Mr. Graves noted that they have been known to get extensions on projects with the auto group. However, it would be their desire to meet that opening date deadline.

COUNCILMEMBER HANDS MOVED THAT THE GOVERNING BODY ACCEPT THE DEDICATION OF EASEMENTS SHOW ON THE MERRIAM AUDI 1ST PLAT. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

VI. COUNCIL ITEMS

A. Finance and Administration

B. Community Development/Public Works/CIP

1. Community Development Update.

Community Development Director Bryan Dyer provided the following Community Development Updates:

Aristocrat Motors received approval for their final development plan for a new Porsche facility.

Shawnee Mission Medical Center has submitted plans for a new Family Center which will be located where the Infant Development

Center is currently. The Infant Development Center will be torn down and the new Family Center will be constructed.

Freddy's Steak burgers has requested their application be continued as they are looking at a different site in Merriam along Shawnee Mission Parkway.

The Shawnee Mission School District Maintenance Facility on Carter is trying to obtain a permit with Johnson County Wastewater but are continuing to move forward on their project.

VII. STAFF ITEMS

City Administrator Chris Engel provided the following staff items:

The Wayside Horns railroad crossing at 67th is almost ready to start implementing the quieter horn system and the relay cabinet at Johnson Dr. is being retrofitted for installation by late August.

There will be a Public Art Committee update at the next meeting. The footings for the art project at the Marketplace have been poured and staff is greatly anticipating the installation of the art.

The limb pickup will begin tomorrow and continue through the week. It is unclear how long it will take to get all the limbs picked up as the storm caused a lot a tree damage.

VIII. NEW BUSINESS

X. EXECUTIVE SESSION

XI. ADJOURNMENT

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL,
COUNCILMEMBER HANDS MOVED TO ADJOURN AT 8:38 PM.
COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS
UNANIMOUSLY APPROVED.**

Respectfully submitted,

Juliana Pinnick

Juliana Pinnick
City Clerk

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider approval of the bid from Kansas Heavy Construction for the 2017 Sidewalk In-Fill Program.

Department: Public Works/CIP

Background/Description of Item:

On August 2, 2017, staff opened five (5) bids for the 2017 Sidewalk In-Fill Project in the Milburn West Subdivision, Antioch Rd. – East Frontage Rd. from 69th Street to 70th Terrace. The scope of this project is to construct approximately 6,500 linear feet of sidewalk in areas that either have no sidewalk or have partial sidewalks that need to be connected. Bids as read were as follows:

Kansas Heavy Construction	\$424,059.00
Phoenix Concrete	\$508,669.40
Freeman Concrete Const.	\$523,769.90
Metro Asphalt, Inc.	\$590,023.55
Amino Brothers Co., Inc.	\$642,837.60
Engineer's Estimate	\$428,451.00

All bids have been checked for accuracy with Kansas Heavy Construction being the low bidder. The Engineer recommends that the Contract be awarded to Kansas Heavy Construction.

Funding Source: General CIP (Project GM 1704). There is \$500,000 budgeted for construction in the 2017 CIP.

Funding Source Reviewed by: Cindy Ehart-Finance Director

Recommendation: Staff recommends the Council award the 2017 Sidewalk In-Fill Project contract to Kansas Heavy Construction in the amount of \$424,059.00.

Prepared by: Carl Sanders, Project Coordinator
Reviewed by: Kevin Bruemmer, Public Works Director

Date: August 7, 2017

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider approval of the Request for Proposal (RFP)/Bid from Diversified Infrastructure Services, Inc. for Ground Penetrating Radar(GPR) Street Evaluation.

Department: Public Works/CIP

Background/Description of Item:

On August 1, 2017, staff opened six (6) RFP's for the Ground Penetrating Radar Street Evaluation. As part of a comprehensive pavement maintenance program, existing conditions of streets need to be assessed. While surface defects are apparent, what lies beneath is often unknown. All streets not improved in the last five years were included in the list of streets in the RFP. GPR is a method by which the depth of the existing pavement structure can be measured. Based upon the results, the appropriate method of improvement can be established, (i.e.) mill/overlay or full depth reconstruction.

RFPs as read were as follows:

Diversified Infrastructure Services, Inc.	\$36,546.02
Resource International, Inc.	\$36,710.00
Penetradar	\$45,357.00
Engineering & Research Int'l, Inc.	\$49,621.00
Terracon	\$72,280.00
Geotechnology, Inc.	\$115,200.00

Staff has contacted Diversified Infrastructure references and they are favorable.

Funding Source: Special Street/Stormwater Sales Tax (Project GM 1708). There is \$90,000 budgeted in the 2017 CIP.

Funding Source Reviewed by: Cindy Ehart-Finance Director

Recommendation: Staff recommends the Council award the Ground Penetrating Radar Street Evaluation contract to Diversified Infrastructure Services, Inc. in the amount of \$36,546.02.

Prepared by: Carl Sanders, Project Coordinator
Reviewed by: Kevin Bruemmer, Public Works Director

Date: August 8, 2017

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider approval of a resolution to adopt the 2018 Budget.

Department: Finance

Background/Description of Item:

The attached resolution adopts Merriam’s 2018 Budget. The budget requests an estimated mill levy rate of 27.673 and authorizes Citywide operating expenditures of \$26,680,125. Property values as of June 1, 2017 were used to calculate the levy shown below. The tax levy increase does not require an election according to Kansas “tax lid” statutes.

	Real Property Taxes Levied for 2018 vs. 2017			
	<u>2018</u>	<u>2017</u>	<u>\$ Increase</u>	<u>% increase</u>
General and Bond Fund uses	4,184,550	4,030,900	153,650	3.8%
Potential loss from appeals	49,820	69,190	(19,370)	-
Committed to TIF districts	1,037,120	1,076,193	(39,073)	-3.6%
Total Levy	\$ 5,271,490	\$ 5,176,283	\$ 95,207	1.8%

Approval of the budget also approves the 2018 - 2022 Capital Improvement Program, 2018 Compensation Plan (salary ranges), and 2018 Authorized Positions (staffing levels). The complete budget draft is posted under the “Work Session” packet link.

City Attorney has reviewed this resolution.

Attachment: 2018 Budget Summary

Related Ordinance or Statutes: K.S.A. 79-2925c, 79-2934

Recommendation: Staff recommends approval of the resolution to adopt the 2018 Budget.

Prepared by: Cindy Ehart, Finance Director

Date: August 10, 2017

CITY OF MERRIAM, KANSAS

BUDGET SUMMARY

2018

2018 Budget Highlights Citywide

\$10,999,623
CAPITAL EXPENDITURES

\$15,680,502
NON-CAPITAL EXPENDITURES

\$24,248,230
OPERATING REVENUES



CITY MILL
27.673



CITYWIDE REVENUE SOURCES

SALES/USE TAX

OTHER SOURCES

52%

17%

31%

PROPERTY TAX



CITY EMPLOYEES
111



LARGEST SINGLE REVENUE SOURCE

1% CITY SALES TAX

\$8,024,429



POPULATION
11,245

Issued July 2017



2018 BUDGET OVERVIEW

ALL FUNDS COMBINED

BEGINNING FUND BALANCE \$29,602,571

REVENUES

Sales Taxes	12,630,067
Property Taxes	4,184,550
Other Taxes	1,727,320
Franchise Fees	1,453,286
Licenses/Permits/Fees	693,902
Fines	925,000
Intergovernmental	658,018
Interest Income	111,000
TIF District Revenue	1,700,000
Miscellaneous	165,087

TOTAL REVENUES 24,248,230

TRANSFERS IN 5,399,378

TOTAL RESOURCES \$59,250,179

EXPENDITURES

Personal Services	\$8,773,453
Contractual Services	5,024,214
Commodities	779,330
Capital Outlay	806,500
Capital Improvements	10,193,123
Debt Service	916,650
Health & Welfare	186,855

TOTAL EXPENDITURES 26,680,125

TRANSFERS OUT 5,399,378

RESERVES (Ending Fund Balance) 27,170,676

TOTAL APPROPRIATIONS \$59,250,179

Property Tax

Property taxes collected in Merriam are distributed among six entities:

State of Kansas
 Johnson County
 Johnson County Community College
 Shawnee Mission School District
 Merriam Drainage Board
 City of Merriam

MERRIAM'S SHARE OF TOTAL PROPERTY TAX



23% City of Merriam

77% Schools, County, Other

CITY PROPERTY TAX CALCULATION EXAMPLE

MARKET VALUE OF HOME

\$150,000

CITY MILL RATE

27.673

Assessed Valuation: \$17,250

To determine assessed valuation, multiply market value by 11.5%

$$150,000 \times 11.5\% = \$17,250$$

Annual Tax Liability for City Services: \$477.36

To calculate the annual tax bill, multiply the assessed valuation by the mill rate and divide the result by 1,000.

$$\$17,250 \times 27.673 = \$477,359$$

$$\$477,359 / 1,000 = \$477.36$$

Monthly Expenses For City Services: \$39.78

To determine the monthly tax expenses for City services, divide the tax liability by 12.

$$\$477.36 / 12 = \$39.78$$

2018 Capital Improvement Plan

All proposed public improvements through 2018

\$9.9
million



HIGHLIGHTS

- » Recreational Facility Improvements
- » Citywide Sidewalk Infill
- » Johnson Drive Reconstruction

2018 General Fund Revenues*

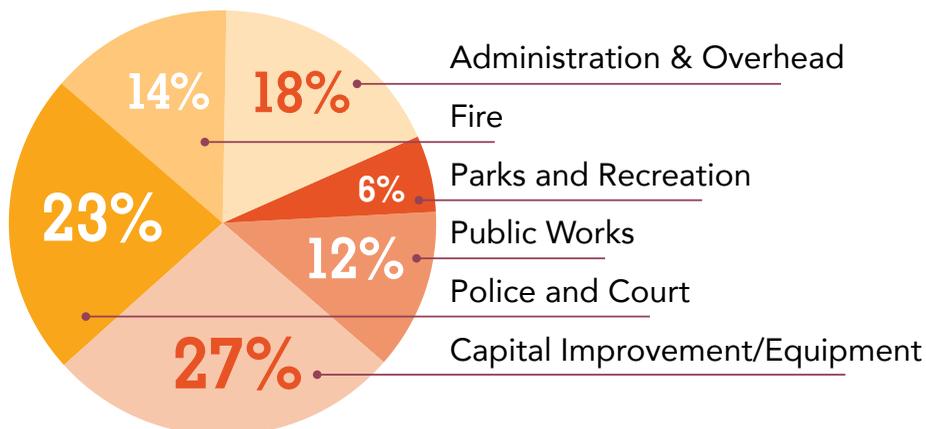
Charges, Licenses, and Fees

City & County Sales Taxes



**in millions*

2018 General Fund Expenditures



Governing Body



KEN SISSOM
MAYOR
913-523-5357



SCOTT DIEBOLD
WARD 1
913-293-8457



AL FRISBY
WARD 2
913-206-5354



CHRIS HANDS
WARD 3
913-384-5340



CHERYL MOORE
WARD 4
913-677-3277



ROBERT WEEMS
WARD 1
913-209-4105



BRIAN KNAFF
WARD 2
913-362-9496



NANCY HUPP
WARD 3
913-831-4471



BOB PAPE
WARD 4
913-384-0746

Staff Leadership

Chris Engel, CITY ADMINISTRATOR
Meredith Hauck, ASSISTANT CITY ADMINISTRATOR
Mike Daniels, POLICE CHIEF
Kevin Bruemmer, PUBLIC WORKS
Juliana Pinnick, CITY CLERK

Cynthia Ehart, FINANCE, CITY TREASURER
Bryan Dyer, COMMUNITY DEVELOPMENT
Anna Slocum, PARKS & RECREATION
Nicole Proulx Aiken, CITY ATTORNEY



Presented by the City of Merriam Finance Department

9001 W. 62ND ST., MERRIAM, KS 66202 // 913-322-5500 // merriam.org

RESOLUTION NO. _____

A RESOLUTION ADOPTING THE 2018 BUDGET OF THE CITY OF MERRIAM, KANSAS.

WHEREAS, following proper notice as prescribed by law, the Governing Body of the City of Merriam, Kansas held a public hearing for the purpose of answering questions, hearing objections and receiving feedback regarding the City's proposed 2018 budget; and

WHEREAS, said public hearing was properly held before the Governing Body on August 14, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MERRIAM, KANSAS THAT:

SECTION 1. Adoption of Budget. The City of Merriam hereby adopts its budget for the year 2018. Copies of said budget shall be open for inspection in the office of the City Clerk during business hours. Upon filing of the budget with the County Clerk of Johnson County, Kansas, said budget shall constitute an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose, pursuant to K.S.A. 79-2934.

SECTION 2. Take Effect. This Resolution shall take effect and be in full force and effect after adoption of such by the Governing Body.

ADOPTED BY THE Governing Body this _____ day of _____, 2017.

Ken Sissom, Mayor

(SEAL)

ATTEST:

Juliana Pinnick, City Clerk

AGENDA ITEM INFORMATION FORM

Agenda Item: Adoption of the 2017 Standard Traffic Ordinance for Kansas Cities

Department: POLICE

Background/Description of Item:

Each year the Kansas League of Municipalities publishes an updated version of the Standard Traffic Ordinance (STO) for Kansas Cities. This year the 2017 edition of this publication is available and should be “incorporated by reference”. Passing and publishing this ordinance will bring our traffic ordinance into compliance with any changes made by the latest Kansas Legislative session. This Standard Traffic Ordinance (STO) will also repeal the previous seat belt ordinance Section 68-48 that was passed in June.

There were two changes to the 2017 STO, one dealing with bicycle lighting and the other the fine amount for a seat belt violation, that will replace the emergency ordinance that was passed in June.

The changes in the Standard Traffic Ordinance are included in the attached memo.

Related Ordinance or Statutes: 2017 STO # 1769

Recommendation:

Staff has fully inspected the new ordinance. It is our recommendation that the City Council vote to adopt the incorporating ordinance that specifically relates to the 2017 edition of the Standard Traffic Ordinance for Kansas Cities. These laws went into effect as of July 1, 2017, so staff recommends that the first reading be waived.

Funding Source: N/A



CHIEF OF POLICE

Merriam Police Department
9010 W 62 St., Merriam, KS 66202-2815

TO: Chris Engel
FROM: Police Chief Michael Daniels
CC: City Attorney Nicole Aiken, City Prosecutor Beth Boldt
DATE: August 8, 2017
RE: Changes to 2017 Standard Traffic Ordinance

The following is a list of amendments and deletions made to the 2017 version of the Standard Traffic Ordinances published by the Kansas League of Municipalities.

There were just two amendments to state traffic statutes in 2017.

Specifics listed below:

Section 133 – Lamps and Other Equipment on Bicycles

- Changed: night time to “between sunset and sunrise” and added that “the operator of such bicycle shall be wearing a device that emits a red or amber light that shall be visible from a distance of 500 feet to the rear”

Section 182.1 – Seat Belts

- Changed: fine is now \$30

ORDINANCE NO.1769

AN ORDINANCE AMENDING CHAPTER 68, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING STANDARD TRAFFIC REGULATIONS; AMENDING SECTION 68-19 BY INCORPORATING BY REFERENCE THE “2017 STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES,” 45th EDITION WITH AMENDMENTS THERETO; REPEALING THE SECTION HEREBY AMENDED; AND REPEALING SECTION 68-48.1 CONCERNING SEAT BELTS.

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

Section 1. Section 68-19 of the Code of Ordinances of the City of Merriam, Kansas is amended to read as follows:

Sec. 68-19. Incorporating the standard traffic ordinance.

(a) There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Merriam, Kansas, that certain standard traffic ordinance known as the “2017 Standard Traffic Ordinance for Kansas Cities,” 45th edition, (“STO”) prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed by this Ordinance or by Chapter 68 of the Code of Ordinances of the City of Merriam, Kansas.

(b) At least one copy of the STO shall be marked or stamped “Official Copy as Incorporated by Ordinance No.1769” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of the incorporating ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

Section 2. Section 68-19 of the Code of Ordinances of the City of Merriam, Kansas, as such section existed before the above amendment, is hereby repealed.

Section 3. Section 68-48.1 of the Code of Ordinances of the City of Merriam, Kansas is hereby repealed.

Section 4. Existing Sections. Those sections of Chapter 68, Article II of the Code of Ordinances of the City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

Section 5. Severability. If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

Section 6. Savings Clause. Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, nor the repeal of Ordinance No. 1754, shall in any manner affect the prosecution for violation of this Ordinance or a violation of

Ordinance 1754, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either Ordinance, nor be construed as affecting any of the provisions of these Ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any Ordinance, and all rights and obligations thereunder shall continue in full force and effect.

Section 7. Penalties for violation of this Ordinance or the Standard Traffic Ordinance incorporated herein shall be as set forth in Section 68-21 of the Code of Ordinances of the City of Merriam, Kansas.

Section 8. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication in the official City newspaper, all as provided by law.

PASSED by the Governing Body this _____ day of _____, 2017.

APPROVED AND SIGNED by the Mayor this _____ day of _____, 2017.

Ken Sissom, Mayor

ATTEST:

Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

Nicole Proulx Aiken, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Adoption of the 2017 Uniform Public Offense Code for Kansas Cities

Department: POLICE

Background/Description of Item:

Each year the Kansas League of Municipalities publishes an updated version of the Uniform Public Offense Code for Kansas Cities (UPOC). This year the 2017 edition of this publication is available and should be “incorporated by reference”. Passing and publishing an ordinance will bring our city codes into compliance with any changes made by the latest Kansas Legislative session.

This year there were several substantial changes in the 2017 UPOC.

- Domestic Battery was amended to better explain who is in a domestic relationship
- Unlawful use of a Communication Facility was added
- Drawing a weapon was deleted
- Illegal Operation of an Amusement Ride was added

More detailed information provided in attached memo.

Related Ordinance or Statutes: 2017 UPOC # 1770

Recommendation:

Staff has fully inspected the new ordinance. It is our recommendation that the City Council vote to adopt the incorporating ordinance that specifically relates to the 2017 edition of the Uniform Public Offense Code for Kansas Cities. These laws went into effect as of July 1, 2017, so staff recommends that the first reading be waived.

Funding Source: N/A

Prepared by: Chief Michael Daniels

Date:08/10/17



CHIEF OF POLICE

Merriam Police Department

9010 W 62 St., Merriam, KS 66202-2815

TO: Chris Engel
FROM: Police Chief Michael Daniels
CC: City Attorney Nicole Aiken, City Prosecutor Beth Boldt
DATE: August 8, 2017
RE: Changes to 2017 Uniform Public Offense Code

The following is a list providing the changes made to the 2017 version of the Uniform Public Offense Code published by the Kansas League of Municipalities.

Section 1.1 – Definitions

- **Added: Animal Shelter.**

Section 3.1.1 – Domestic Battery

- Added: “to a person with whom the offender is involved or has been involved in a dating relationship” to further explain a domestic relationship

Section 3.8.1 – Violation of a Protective Order

- Added: “sexual assault” as a reason someone can get a protective order

Section 4.5 – Buying Sexual Relations

- Added: “One-half of each” fine collected pursuant to this subsection shall be remitted to the human trafficking victim assistance fund “and the remainder shall be remitted as otherwise provided by the law.” Changes from “all fines” going to victim assistance to half

Section 4.5.1 – Unlawful use of a Communication Facility (New section)

- Added: (a) It shall be unlawful for any person to knowingly or intentionally use any communication facility in committing, causing, or facilitating the commission of any misdemeanor under Section 4.5, or in any attempt to commit, any conspiracy to commit, or any criminal solicitation of any misdemeanor under Section 4.5.
(b) Violation of this section is a class A violation.
(c) As used in this section, communication facility means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers and all other means of communication.
(d) It shall be an affirmative defense to any prosecution under this section that the defendant committed the violation of this section because such defendant was subject to human trafficking or aggravated human trafficking, as defined by K.S.A. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 21-6422, and amendments thereto. (House Substitute for SB 40, new section 1, 2017)
Each separate use of a communication facility may be charged as a separate offense under this section.

Section 10.2 – Drawing a Weapon Upon Another (Deleted)

Section 10.27 – Illegal Operation of an Amusement Ride (New section)

- On and after January 1, 2018 it shall be unlawful for an owner or operator of an amusement ride, as defined in K.S.A. 44-1601 and amendments thereto, to knowingly operate, or cause to be operated, any amusement ride without a valid permit issued by the State of Kansas. Violation of this section is a Class B violation. (K.S.A. Supp. 44-1610)

Section 11.11 – Cruelty to Animals

- Added: “an animal shelter” as the place that an animal will be placed once a conviction is established, there is no option to return the animal to the owner

ORDINANCE NO. 1770

AN ORDINANCE AMENDING SECTIONS 44-1 AND 44-2 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS REGULATING PUBLIC OFFENSES; INCORPORATING BY REFERENCE THE “2017 UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES,” 33rd EDITION, WITH AMENDMENTS THERETO; AMENDING SECTION 10.13 THEREOF; AND REPEALING THOSE SECTIONS HEREBY AMENDED.

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

SECTION 1. Section 44-1 of the Merriam Code of Ordinances is hereby amended to read as follows:

“Sec. 44-1. Incorporating Uniform Public Offense Code. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Merriam, Kansas, that certain code known as the “2017 Uniform Public Offense Code,” 33rd edition, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such sections as are hereafter modified by this Ordinance or by Chapter 44 of the Code of Ordinances of the City of Merriam, Kansas. At least one copy of said Uniform Public Offense Code shall be marked or stamped “Official Copy as Incorporated by Ordinance No. 1770” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this Ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.”

SECTION 2. Section 44-2 of the Merriam Code of Ordinances is hereby amended to read as follows:

“Sec. 44-2. Amendment. Section 10.13 of the Uniform Public Offense Code adopted and incorporated by section 44-1 is amended to read as follows:

10.13 BARBED WIRE. It shall be unlawful for any person to construct, set up or maintain any barbed wire or barbed wire fence or enclosure within the city unless such construction, setting up or maintenance is in compliance with the Zoning Regulations of the city.”

SECTION 3. Repeal. Sections 44-1 and 44-2 of the Code of Ordinances of the City of Merriam, Kansas, as such sections existed prior to the above amendments, are hereby repealed.

SECTION 4. Existing Sections. Those sections of Chapter 44 of the Code of Ordinances of the City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

SECTION 5. Severability. If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 6. Savings Clause. Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, nor the repeal of Ordinance No. 1755, shall in any manner affect the prosecution for violation of this Ordinance or a violation of Ordinance No. 1755, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either ordinance, nor be construed as affecting any of the provisions of these ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder shall continue in full force and effect.

SECTION 7. Effective Date. This ordinance shall be in full force and effect from and after its passage, approval and publication in the official City newspaper, all as provided by law.

PASSED by the Governing Body this _____ day of _____, 2017.

APPROVED AND SIGNED by the Mayor this _____ day of _____, 2017.

Ken Sissom, Mayor

ATTEST:

Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

Nicole Proulx Aiken, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Updated Controlled Substance Ordinance

Department: POLICE

Background/Description of Item:

The Kansas Legislature has amended the various laws dealing with controlled substances over the years. We have made various changes to our ordinances that bring the City of Merriam in line with state law. The changes are not major and do not affect the way our officers enforce ordinances for drug related crimes.

Changes:

- We matched the definitions in our ordinance to Kansas law.
- We reduced our penalties for both the possession of marijuana and its paraphernalia to match Kansas law.
- We removed the section on forfeiture of drug paraphernalia and simulated controlled substances, we follow state law on all forfeitures so an ordinance is not needed.

Recommendation: Council waive the customary first reading and approve the updated controlled substance ordinance

Funding Source: N/A

Prepared by: Chief Michael Daniels

Date: August 9, 2017

AN ORDINANCE AMENDING CHAPTER 44, ARTICLE VI OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING CONTROLLED SUBSTANCES; AMENDING SECTIONS 44-241, 44-242, 44-243, AND 44-244; ADDING SECTIONS 44-242.1, 44-242.2, 44-242.3, 44-242.4, 44-242.5, AND 44-242.6; REPEALING SECTION 44-245; AND REPEALING THE SECTIONS HEREBY AMENDED.

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

SECTION 1: Section 44-241 of the Code of Ordinances of the City of Merriam, Kansas is amended to read as follows:

Sec. 44-241. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Controlled substance means any drug, substance or immediate precursor included in any of the schedules designated in the Uniform Controlled Substance Act, Chapter 65, Article 41 of the Kansas Statutes Annotated (65-4101 et seq.).

Controlled substance analog means a substance that is intended for human consumption, and at least one of the following:

- (1) The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;
- (2) The substance has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or
- (3) With respect to a particular individual, such individual represents or intends the substance to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

Controlled substance analog does not include:

- (1) A controlled substance;
- (2) A substance for which there is an approved new drug application; or
- (3) A substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. § 355, to the extent conduct with respect to the substance is permitted by the exemption.

Cultivate means the planting or promotion of growth of plants which contain or can produce controlled substances.

Distribute means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. *Distribute* includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. *Distribute* does not

include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

Drug means:

- (1) Substances recognized as drugs in the official United States pharmacopeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;
- (2) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;
- (3) Substances, other than food, intended to affect the structure or any function of the body of man or animals; and
- (4) Substances intended for use as a component of any article specified in subsections (1), (2) or (3) of this definition. It does not include devices or their components, parts or accessories.

Drug paraphernalia

(1) The term *drug paraphernalia* means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or Chapter 21, Article 57 of the Kansas Statutes Annotated (21-5701 et seq.), as from time to time amended. *Drug paraphernalia* shall include, but is not limited to:

(a) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used or intended for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(g) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(j) Containers and other objects used or intended for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(1) Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
2. Water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;
3. Carburetion pipes, glass or other heat resistant tubes or any other device used, intended to be used or designed to be used to cause vaporization of a controlled substance for inhalation;
4. Smoking and carburetion masks;
5. Roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
6. Miniature cocaine spoons and cocaine vials;
7. Chamber smoking pipes;
8. Carburetor smoking pipes;
9. Electric smoking pipes;
10. Air-driven smoking pipes;
11. Chillums;
12. Bong;
13. Ice pipes or chillers;
14. Any smoking pipe manufactured to disguise its intended purpose;
15. Wired cigarette papers; or
16. Cocaine freebase kits.

The term *drug paraphernalia* shall not include any products, chemicals or materials described in K.S.A. 2016 Supp. 21-5709(a), and amendments thereto.

- (2) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:
- a. Statements by an owner or person in control of the object concerning its use;
 - b. Prior convictions, if any, of an owner or person in control of the object, under any city, state or federal law relating to any controlled substance;
 - c. The proximity of the object, in time and space, to a direct violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto;
 - d. The proximity of the object to controlled substances;
 - e. The existence of any residue of controlled substances on the object;
 - f. Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of Chapter 44, Article VI

of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto. The innocence of an owner or person in control of the object as to a direct violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto, shall not prevent a finding that the object is intended for use as drug paraphernalia;

- g. Oral or written instructions provided with the object concerning its use;
- h. Descriptive materials accompanying the object which explain or depict its use;
- i. National and local advertising concerning the object's use;
- j. The manner in which the object is displayed for sale;
- k. Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products;
- l. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- m. The existence and scope of legitimate uses for the object in the community;
- n. Expert testimony concerning the object's use;
- o. Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia; or
- p. Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

Manufacture means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. *Manufacture* does not include:

- (1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance;
 - (a) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
 - (b) By a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.
- (2) The addition of diluents or adulterants, included, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which are intended for use in cutting a controlled substance.

Marijuana means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. *Marijuana* does not include:

- (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination; or
- (2) Any substance listed in schedules II through V of the uniform controlled substances act.

Person means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

Possession means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

Simulated controlled substance means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

SECTION 2: Section 44-242 of the Code of Ordinances of the City of Merriam, Kansas is amended to read as follows:

Sec. 44-242. – Unlawful distribution of controlled substances.

- (a) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.
- (b) A violation of subsection (a) is a Class A violation.
- (c) In any prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses the following quantities of controlled substances or analogs thereof:
 - (1) 100 dosage units or more containing a controlled substance; or
 - (2) 100 grams or more of any other controlled substance.
- (d) It shall not be a defense to charges arising under this section that the defendant:
 - (1) Was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog;
 - (2) Did not know the quantity of the controlled substance or controlled substance analog; or
 - (3) Did not know the specific controlled substance or controlled substance analog contained in the material that was distributed or possessed with the intent to distribute.
- (e) As used in this section:
 - (1) *Material* means the total amount of any substance, including a compound or a mixture, which contains any quantity of a controlled substance or a controlled substance analog.
 - (2) *Dosage unit* means a controlled substance or controlled substance analog distributed or possessed with the intent to distribute as a discrete unit, including but not limited to, one pill, one capsule or one microdot, and not distributed by weight.
 - a. For steroids, or controlled substances in liquid solution legally manufactured for prescription use, or an analog thereof, *dosage unit* means the smallest medically approved dosage unit, as determined by the label, materials provided by the manufacturer, a prescribing authority, licensed health care professional or other qualified health authority.

b. For illegally manufactured controlled substances in liquid solution, or controlled substances in liquid products not intended for ingestion by human beings, or an analog thereof, *dosage unit* means 10 milligrams, including the liquid carrier medium.

SECTION 3: Section 44-242.1 is added to the Code of Ordinances of the City of Merriam, Kansas and reads as follows:

Sec. 44-242.1. – Unlawful possession of controlled substances.

- (a) It shall be unlawful for any person to possess any of the following controlled substances or controlled substances analog thereof:
- (1) Any depressant designated in K.S.A. 65-4105(e), K.S.A. 65-4107(e), K.S.A. 65-4109(b) or (c) or K.S.A. 65-4111(b), and amendments thereto;
 - (2) Any stimulant designated in K.S.A. 65-4105(f), K.S.A. 65-4107(d)(2), (d)(4), (d)(5), or (f)(2) or K.S.A. 65-4109(e), and amendments thereto;
 - (3) Any hallucinogenic drug designated in K.S.A. 65-4105(d), K.S.A. 65-4107(g) or K.S.A. 65-4109(g), and amendments thereto;
 - (4) Any substance designated in K.S.A. 65-4105(g) and K.S.A. 65-4111(c), (d), (e), (f) or (g), and amendments thereto;
 - (5) Any anabolic steroids as defined in K.S.A. 65-4109(f), and amendments thereto;
 - (6) Any substance designated in K.S.A. 65-4113, and amendments thereto; or
 - (7) Any substance designated in K.S.A. 65-4105(h), and amendments thereto.
- (b) Except as provided in subsection (c), violation of subsection (a) is a Class A violation.
- (c) If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, violation of subsection (a) is a:
- (1) Class B violation, except as provided in (c)(2);
 - (2) Class A violation if that person has a prior conviction under such subsection; under K.S.A. 2016 Supp. 21-5706, and amendments thereto; under K.S.A. 65-4162, prior to its repeal; under a substantially similar offense from another jurisdiction; or under any city ordinance or county resolution for a substantially similar offense.
- (d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.

SECTION 4: Section 44-242.2 is added to the Code of Ordinances of the City of Merriam, Kansas and reads as follows:

Sec. 44-242.2. – Unlawfully obtaining a prescription-only drug.

- (a) Unlawfully obtaining a prescription-only drug is:
- (1) Making, altering or signing of a prescription order by a person other than a practitioner or a mid-level practitioner;
 - (2) Distribution of a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;

- (3) Possession of a prescription order with intent to distribute it and knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;
 - (4) Possession of a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner or a mid-level practitioner; or
 - (5) Providing false information, with the intent to deceive, to a practitioner or mid-level practitioner for the purpose of obtaining a prescription-only drug.
- (b) A violation of subsection (a) is a Class A violation.
 - (c) As used in this section:
 - (1) *Pharmacist, practitioner, mid-level practitioner, and prescription-only drug* shall have the meanings ascribed thereto by K.S.A. 65-1626, and amendments thereto.
 - (2) *Prescription order* means an order transmitted in writing, orally, telephonically or by other means of communication for a prescription-only drug to be filled by a pharmacist. *Prescription order* does not mean a drug dispensed pursuant to such an order.
 - (d) The provisions of this section shall not be applicable to prosecutions involving prescription-only drugs which could be brought under Section 44-242 or Section 44-242.1 of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5705 or 21-5706, and amendments thereto.

SECTION 5: Section 44-242.3 is added to the Code of Ordinances of the City of Merriam, Kansas and reads as follows:

Sec. 44-242.3. – Unlawful possession of certain drug precursors and drug paraphernalia.

- (a) It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to:
 - (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; or
 - (2) Store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.
- (b) It shall be unlawful for any person to purchase, receive or otherwise acquire at retail any compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than nine grams of pseudoephedrine base or ephedrine base within any 30-day period.
- (c) A violation of subsection (a) or (b) is a Class A violation.

SECTION 6: Section 44-242.4 is added to the Code of Ordinances of the City of Merriam, Kansas and reads as follows:

Sec. 44-242.4. – Unlawful distribution of drug paraphernalia.

- (a) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (a) of Section 44-242.1 of the Code of Ordinances of the City of Merriam, Kansas, or in violation of subsection (b) of K.S.A. 2016 Supp. 21-5706, and amendments thereto.
- (b) A violation of subsection (a) is a Class A violation.

SECTION 7: Section 44-242.5 is added to the Code of Ordinances of the City of Merriam, Kansas and reads as follows:

Sec. 44-242.5. – Unlawful possession of a simulated controlled substance.

- (a) It shall be unlawful for any person to use or possess with intent to use any simulated controlled substance.
- (b) A violation of this subsection (a) is a Class A violation.

SECTION 8: Section 44-242.6 is added to the Code of Ordinances of the City of Merriam, Kansas and reads as follows:

Sec. 44-242.6. – Unlawful representation that noncontrolled substance is controlled substance.

- (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any substance which is not a controlled substance:
 - (1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or
 - (2) Under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.
- (b) Violation of subsection (a) is a Class A violation.
- (c) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:
 - (1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;
 - (2) The distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or
 - (3) The physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.
- (d) A person who commits a violation of subsection (a) may also be prosecuted for, convicted of and punished for theft.

SECTION 9: Section 44-243 of the Code of Ordinances of the City of Merriam, Kansas is amended to read as follows:

Sec. 44-243. – Exemptions. The prohibitions of this article shall apply unless the conduct prohibited is authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

SECTION 10: Section 44-244 of the Code of Ordinances of the City of Merriam, Kansas is amended to read as follows:

Sec. 44-244. – Penalties defined. Class A violation and Class B violation, as used in this article, are defined by the “Uniform Public Offense Code for Kansas Cities,” as incorporated by reference in section 44-1.

SECTION 11: Section 44-245 of the Code of Ordinances of the City of Merriam, Kansas is hereby repealed.

SECTION 12: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance and the Governing Body hereby declares that it would have passed the remaining portions of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 13: Repeal. Sections 44-241, 44-242, 44-243, and 44-244 of the Code of Ordinances of the City of Merriam, Kansas as they existed before the above amendments are hereby repealed.

SECTOIN 14: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the official city newspaper, all as provided by law.

PASSED BY THE City Council the _____ day of _____, 2017.

APPROVED BY THE Mayor the _____ day of _____, 2017.

Ken Sissom, Mayor

ATTEST:

Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

Nicole Proulx Aiken, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider ratification of a budget adjustment between expenditure accounts for the Aquatic Center department and use of contingency funds for Irene B. French Community Center repairs.

Department: Parks and Recreation

Background/Description of Item:

Aquatic Center:

Council Policy No. 102 requires City Council ratification of budget adjustments between line items within departments when they occur between broad expenditure categories (i.e. between “personal services” “contractual services”, “commodities” or “fixed assets”). The attached Aquatic Center budget adjustment proposes the use of available funds from the Seasonal Salaries account to fund \$3,350 in Chemicals. The shortage is due to the public health incident that occurred in June when the entire Aquatic Center had to be closed to hyper-chlorinate the water per CDC protocols. Approximately 600,000 gallons had to be treated since all water runs through the same filtration system and chemical controller. The amount of chemicals used for this one incident equals the amount required to operate the pool for half the season. In a modern system, each body of water would have its own filtration system and chemical controller allowing only requiring the affected body of water to be closed instead of the entire facility.

The overall Aquatic Center department budget is expected to finish the year approximately \$50,000 under budget.

Community Center:

In May, staff discovered a bad 3-way valve controlling the air handler in an office occupied by the Police Department. The repair involved replacing the valve but due to the condition of the piping a large section of pipe had to be replaced as it was leaking glycol. The glycol runs throughout the HVAC system to help regulate the water that is used to heat and cool the building. To make the repair, glycol had to be drained from the system and then refilled. The invoice for labor and supplies needed to refill the glycol alone totaled \$5,191. Unfortunately, due to other numerous repairs required in 2017 (actuators, stack repairs, pipe replacement, pumps and sump pumps) the Building/Grounds budget was expended by the beginning of June. There are no other funds available to complete a budget adjustment to cover the repair. Per the Finance Director, this repair as well as any other large facility repairs exceeding budget and requiring immediate attention will need to be paid through contingency funds.

Finance Director has reviewed and City Administrator approved the proposed budget adjustments.

Related Ordinance or Statutes: Council Policy No. 102.

Recommendation: Staff recommends City Council ratification of the budget adjustment of \$3,350 from Aquatic Center Seasonal Salaries to Chemical line items and the use of contingency funds for large facility repair related to the operation of the Irene B. French Community Center.



**CITY OF MERRIAM
INTEROFFICE MEMORANDUM**

TO: MAYOR AND THE CITY COUNCIL
FROM: KEVIN BRUEMMER, PUBLIC WORKS DIRECTOR
SUBJECT: AUGUST CIP UPDATE
DATE: AUGUST 14, 2017

Highlights:

- **SMP Bridge over BNSF Railroad** – SMP is open to unrestricted traffic, with a few items of work still needing to be completed. These items of work include traffic signal loops at I-35 southbound ramps, placement of mulch in medians.
- **Residential Streets Group V** – Construction on 51st Street has been suspended until this fall for the placement of sod. Construction on Merriam Ln./62nd St./61st St. began on July 11th. The existing road has been removed, new storm drains, AB-3 (road) base, curb/gutters and asphalt base have been placed.
- **Owen Heights (CMP Repair)** – Anticipated start date of October 16, 2017.
- **Sidewalk In-Fill** – Staff opened five bids on August 8, 2017. Kansas Heavy Construction (KHC) was the apparent low bidder. GBA Engineers reviewed all bids for accuracy, and has recommend KHC the construction contract.
- **Antioch Rd. 47th St to 54th Ter** – Contractor has placed the Epoxy Polymer Overlay on the BNSF bridge, and has started curb/gutter removals. This project is being administered by Overland Park.
- **54th Ter & Switzer Rd Drainage Improvements** – Staff had a Public Meeting on July 9, 2017. Easements have been sent to residents affected by these improvements. Staff has reviewed final plans and provide comment to design engineer BHC Rhodes. Current schedule is to advertise in September and begin construction in October.
- **Johnson Drive Rehabilitation (Kessler to West City Limits)** – Affinis Corp., Project Design Engineers, has had a testing firm onsite doing some pavement cores for pavement evaluation.

Capital Improvement Active Project List

Last Updated 8/9/2017

PROJECT NAME	FUNDING SOURCES	* BUDGETED CONSTRUCTION COST	* ACTUAL CONSTRUCTION COST	STATUS	DESIGN CONSULTANT	PUBLIC MEETING #1	PUBLIC MEETING #2	PUBLIC MEETING #3	ENGINEER'S ESTIMATE	BID OPENING	AWARD AT COUNCIL	CONTRACTOR	CONTRACT AMOUNT	NOTICE TO PROCEED	PROJECTED SUBSTANT COMPLETION DATE
2017															
Residential Group V: 51st St., Merriam Lane	Special sales tax-Street/stormwater	\$2,326,500		Design	Affinis	6/29/16	9/27/16	12/14/16	\$1,518,784.00	3/6/17	3/13/17	V.F. Anderson	\$1,184,231.28	4/11/17	
Corrugated Metal Pipe Replacement 47th/Eby/Antioch	General CIP	\$1,100,000		Design	BHC-Rhodes	4/18/17			\$915,480.00	6/28/17	7/10/17	Kansas Heavy Construction	\$728,229.60		
SMP Bridge over BNSF Rail Road & Mill/Overlay West	Special sales tax-Street/stormwater	\$2,843,599		Design	GBA					10/19/16	11/14/16	Comanche Construction, Inc.	\$2,425,574.90		
Sidewalk Infill	General CIP	\$1,815,000		Design	GBA	6/14/17				8/2/17	8/14/17	Kansas Heavy Construction	\$424,059.00		
Police Department Facility Improvements	General CIP	\$2,400,000		Design/Construction	Hoefler Wysocki							Nabholz Construction			
West 54th Ter. & Switzer Rd. Drainage Improvements	General CIP	\$300,000		Design	BHC Rhodes										
2018															
Johson Drive Rehabilitation Kessler to West City Limits	CARS/General CIP/Highway	\$946,226		Design	Affinis										

CITY OF MERRIAM PARK AND RECREATION
ADVISORY BOARD MEETING MINUTES
Tuesday, July 25th, 2017
6:00PM

Roll Call

The July meeting of the Merriam Parks & Recreation Advisory Board was called to order at 6:00 pm, by Kathy Stull in the absence of Tom Heffron and Thelma Fowler. Board members in attendance included: Suzanne Downey, LaVera Howard, Billy Crook, and Grant Getzlow. Thelma Fowler, arrived late. Katie Leary and Tom Heffron were excused. Staff members in attendance included: Anna Slocum, Director; Dave Smothers, Assistant Director; Sara Thompson, Recreation Supervisor; and Ingrid Berg, Assistant Program Coordinator.

Public Comments

Public in attendance: Lance and Annie Ogborn regarding "Jeny's Tournament" a 3 vs 3 soccer fundraiser. The request was made for Parks and Recreation to waive the fees associated with Waterfall Park. The fundraiser is to benefit Jeny's children education fund. Jeny passed away after a brief but courageous fight of an aggressive cancer.

Approval of Meeting Minutes

Suzanne Downey made a motion to accept the June meeting minutes and Billy Crook seconded the motion; motion was approved unanimously.

Staff Reports

Director's Report

Seasonal Facilities Report

Included in your packet is the Seasonal Facilities Report. This report is provided to City Council and is included for informational sharing purposes. The Farmers' Market report will be covered later, but there are a few items in the Aquatic Center report to highlight. There were three days of recorded rain and one day that temperature impacted attendance. Also, one day the facility was closed due to a public health risk. Staff has received all invoices associated with the public health incident. This one incident cost the city an additional \$3,200 in chemicals alone. This does not include staff time needed to complete the protocol or the loss of revenue. Had the system been up to code with each body of water on its own filtration system, only the pool affected would have had to be closed. This additional expense has liquidated the chemical budget for the season and staff will have to ask City Council for a budget ratification to transfer money from other areas of the budget to cover the expense. Season visits through June were lower than 2016 but temperature averages were also lower. Pass sales are comparable to 2016 through June.

Car Show Update

Car Show is quickly approaching. The July meeting will focus on finalizing the marketing pieces to be sent to printer to meet deadlines. Sponsorship of this event has reached a record amount with \$6,100 and three in kind sponsors! Marketing of the event has started to roll out through various websites. Staff will begin the biggest campaign in the next month.

Kansas Amusement Ride Law

There has been a lot of activity and controversy over Senate Bill 70 – the Kansas Amusement Ride Law. The intent of the law was for it not to go into effect until January 2018 but an oversight in some of the language, KDOL had to start enforcing the law July 1st. This law classifies all aquatic slides and moving features as "rides". Any slide 15' or taller is

now required to be registered, permitted and inspected annually. Staff were aware of the new law but were working toward the 2018 date. Instead, the last week in June was notified of the July 1 date. With only days to work through the permitting process, the City Attorney reviewed the language and staff felt that the language of the law was unclear with the statement “water should propel a rider through the ride”. Staff felt that the slides work on gravity and the water was for reduction of friction. With that argument, the slides remained opened while staff worked to comply with the law in the event this argument was overruled. During this process, several steps had to be completed, one of which required an update of the Manufacturers Slide rules. At that time, it was discovered that the height of the slides was to be 48” and not 42”. In order to be compliant with the manufacturers recommendation and to complete the permitting process, all slide heights had to be adjusted. The inspector was from Kennah, Texas and it was a joint effort of the six NEJOCO cities to bring him to the area. There were three issues identified on the inspection. Two are clerical and require documentation of processes that are currently completed and one deals with the rusting structure of the base to be addressed in the off-season. The paperwork required for permitting was submitted on Tuesday, July 18 and an email with permitting documentation was received on Friday, July 21. Unfortunately, this law is broader than just water slides. The department was also impacted with inflatables. Preschool Park inflatables can no longer be used. Staff is working with the third-party vendors utilized for various outdoor events to ensure they are following the necessary protocol required by KDOL. Until they have secured the proper permits, can meet the necessary insurance requirements of \$1 mil/ occurrence and \$2 mil aggregate with the City listed as an additional insured and can establish a daily inspection process these additional activities have been sidelined for future events.

Election Season-Advocate vs. Educate

As a reminder – information that the City distributes is designed to be of educational in nature. There are rack cards, the Highlights that is due to hit mailboxes in the next week has expanded information than the rack card. In the upcoming weeks, you will see various videos that have been produced.

Assistant Director’s Report

Updates

Farmers’ Market Update

The Farmers’ market is exactly halfway through the 2017 season. Detailed monthly report pertaining to attendance is included in the packet. There have been new vendors on Wednesday every week.

Quail Creek Playground

Originally the demolition of the Quail Creek playground was to begin this past Monday, July 24th, but was postponed so Public Works can focus on cleaning up from the storm on Saturday. Therefore, demolition has been rescheduled for the first or second week of August with completion hopefully by the first or second week of September.

Upcoming Events

Art Gallery

The opening night reception for “Agglomeration: People, Places and Things” featuring works by Ted Denton and Eric Tiffany is scheduled for Thursday, August 3rd from 7:00-8:30 pm.

Recreation Supervisor's Report

Updates

Thank Goodness It's Food Truck Friday

There were three trucks (Marigold's, Fresh and Tasty Catering and Coffee Cake KC) and about 124 attendees for this event, not as much variety or attendance as staff would have liked. It's hard to determine whether people may be out of town on the front end or back end of the 4th of July holiday.

Upcoming Events

Party in YOUR Park-Campbell Park

This event is scheduled for Friday, August 18th from 6:00-8:00 pm at Campbell Park (9674 W. 61st St). There will be walking tacos, watermelon, lemonade & water as well as yard games and live entertainment by Valentine and the Ones (variety). It was suggested that staff look into renting misting fans for the July event.

Pool Party Palooza

This is a season pass holder exclusive event scheduled for Friday, July 28th from 7:30-9:00 pm at the MAC (6040 Slater). The theme this year is "Surf's Up". Staff will be serving Sun Chips and an ocean creature themed snack mix as well as blue Koolaid to drink. Live entertainment by MDM (Caribbean).

National Night Out

MPRD staff are partnering with the MPD for this event scheduled for Tuesday, August 1st from 6:30-8:30 pm at Vavra Park (6040 Slater). This is an annual community building event to promote police and community relationships. The officers will be serving hamburgers, hot dogs, chips and ice cream. MPRD will be providing yard games and a water balloon toss.

Cruise Night

This event is scheduled for Saturday, August 12th from 6:30-8:30 pm at Merriam Marketplace (5740 Merriam Dr). There will be door prizes, Fresh and Tasty Catering will be there and live entertainment by Julie Major Trio.

New Business

No new business, but members gave Public Works kudos for the prompt pick up of tree limbs and debris from Saturday's storm.

Other Business

The footings have been poured for "Planting the Seed" the new sculpture at the Marketplace. Installment is still about 3 weeks out, but staff are hoping to have it in before the Car Show.

Adjournment

LaVera Howard moved to adjourn the meeting at 7:05 pm and Suzann Downey seconded; motion was approved unanimously.

CITY COUNCIL SUGGESTED MOTIONS FOR YOUR CONSIDERATION

CONSENT AGENDA

1. Move that the council approve Consent Agenda items 1-3.

MAYOR'S REPORT

1. No motion.

COUNCIL ITEMS

1. Move that the council approve a resolution adopting the 2018 Budget.

FINANCE AND ADMINISTRATION

1. Move that the Governing Body waive the customary first reading of an ordinance adopting the 2017 Standard Traffic Ordinance (STO).
 - 1a. Move that the council approve an ordinance adopting the 2017 Standard Traffic Ordinance (STO).
 2. Move that the Governing Body waive the customary first reading of an ordinance adopting the 2017 Uniform Public Offense Code (UPOC).
 - 2a. Move that the council approve an ordinance adopting the 2017 Uniform Public Offense Code (UPOC).
 3. Move that the Governing Body waive the customary first reading of an ordinance amending Chapter 44 of the Merriam Code of Ordinances related to controlled substances.
 - 3a. Move that the council approve an ordinance amending Chapter 44 of the Merriam Code of Ordinances related to controlled substances.
 4. Move that the council ratify the budget adjustment of \$3,350 from Aquatic Center Seasonal Salaries to Chemical line items and the use of contingency funds for large facility repair related to the operation of the Irene B. French Community Center.
5. No motion.

COMMUNITY DEVELOPMENT/PUBLIC WORKS

1. No motion.

STAFF ITEMS

EXECUTIVE SESSION