

**MERRIAM CITY COUNCIL
CITY HALL
9000 W. 62ND TERRACE
June 23, 2008
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

Mayor Carl Wilkes called the meeting to order at 7:00 p.m.

II. ROLL CALL

Mayor Carl Wilkes

Pam Bertoncin
Bryan Burks
John Crabtree
Chris Evans Hands
Nancy Hupp
Dan Leap
Chad Rowe
Gayle Stephens

Staff Present

Phil Lammers, City Administrator; Michelle Daise, City Attorney; Bill Lietzke, Police Chief; Bryan Dyer, Community Development Director; Cindy Ehart, Finance Director; Doug Crockett, Interim Fire Chief; Susan Hayden, Parks and Recreation Director; Randy Carroll, Public Works Director; Beth Linn, Neighborhood Services Manager, and Juli Pinnick, Interim City Clerk.

III. 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.

A. Council items:

1. Approval of the minutes of the Public Hearing held May 19, 2008.
2. Approval of the minutes of the regular City Council meeting held May 19, 2008.
3. Approval of the Special Meeting held June 9, 2008.

4. Consider approval of an ordinance relating to due date and penalty for late payment of occupational licenses (second reading).
5. Consider approval of Change Order #2 for Merriam Village for Parking Lot Improvements at the Police Station (\$11,931.30).
6. Consider approval of a contract with J. M. Fahey Construction Company for construction of the 2008 Overlay Program in the amount of \$812,725.30 and authorize the Mayor to execute the contract.

COUNCILMEMBER LEAP REQUESTED CONSENT AGENDA ITEMS 3 AND 5 BE CONSIDERED SEPARATELY.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEMS, 1, 2, 4, 6. THE MOTION WAS UNANIMOUSLY APPROVED.

There was one correction to item 3.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEM 3. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP ABSTAINED AS HE NOT IN ATTENDANCE OF THAT MEETING.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEM 5. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP VOTED NAY.

IV. 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.

Terry Markus, 5100 England addressed the council regarding a privacy fence he wants to install in his yard. Mr. Markus has a corner lot and to place the fence within the setbacks in accordance with the city code takes up much of the yard he is trying to fence in. Mr. Markus inquired if there was a way he would be allowed to place his fence where he desires.

Community Development Director, Bryan Dyer explained that the application for the fence has been reviewed and the desired location of Mr. Markus' fence does not conform to the city codes.

Lee Daugherty, 9605 W. 59th Ter., addressed concerns regarding the street project occurring on his street. Mr. Daugherty has concerns about stormwater issues with his property and believes the current project will make those issues worse. Mr. Daugherty has not signed his easement with the City to allow the contractor on his property to do work related to the project, however when he arrived home today the contractor was on his property doing work.

Neighborhood Services Manager, Beth Linn responded that there was some miscommunication with the contractor regarding Mr. Daugherty's property as he has not signed his easement. The contractor, Miles Excavating has had some staffing changes with their project manager. It is the intention of staff to meet with Mr. Daugherty to explore options to address Mr. Daugherty's concerns.

V. MAYOR'S REPORT

1. Consider the appointment of LaVera Howard (W3) to the Parks and Recreation Advisory Board for the term expiring December 31, 2008.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL AFFIRM THE APPOINTMENT OF LAVERA HOWARD (WARD 3) TO THE PARKS AND RECREATION ADVISORY BOARD FOR THE TERM EXPIRING DECEMBER 31, 2008. THE MOTION WAS UNANIMOUSLY APPROVED.

2. Hearing regarding suspension and/or revocation of Cereal Malt Beverage License for premises located at 5800 Antioch Road.

City Attorney Michelle Daise commented that there are representatives from Hen House present and they are not intending to contest the suspension.

Mike Beal, Chief Financial Officer, Balls Food Stores, addressed the council and explained the training program used for the cashiers at all 29 stores operating in the Kansas City area. All cashiers must go through and pass the training before they are allowed to work a cash register. Mr. Beal notified the council that the employee that violated the law and company policy has been terminated. Mr. Beal provided the council a copy of the training program.

Mark Fiedler, Store Director, addressed the council regarding the training program for cashiers and positive incentive program that Hen House has for the cashiers when they follow the company policies regarding alcohol and tobacco sales. The current violation involved a cashier who was unable to ring up the alcohol because she was under the age of 18, so she asked another cashier who was of legal age to ring up alcohol to conduct the sale. The second cashier apparently knew the underage buyer and knew he was under 21 years old and sold the alcohol to him anyway. The cashier has been terminated as she blatantly violated the law and company policy. Mr. Fiedler also explained the newest policy that has been immediately implemented since this violation. The new policy requires any cashier that is under 18 and unable to ring up alcohol must have a supervisor or team lead

to ring up the alcohol. The previous policy allowed another cashier of proper age to ring up the alcohol. Mr. Fiedler has contacted the Merriam Police Department and has scheduled a visit with an officer to review the company's current policy and discuss any further suggestion the officer may have to ensure no further violations.

COUNCILMEMBER CRABTREE MOVED THAT THE GOVERNING BODY SUSPEND THE CMB LICENSE FOR THE PROPERTY LOCATED AT 5800 ANTIOCH FOR A PERIOD OF ONE WEEK BEGINNING JUNE 27, 2008. THE MOTION WAS APPROVED. COUNCILMEMBERS LEAP AND ROWE VOTED NAY.

3. Hearing regarding suspension and/or revocation of Cereal Malt Beverage License for premises located at 5903 Merriam Drive.

There were no representatives from this licensed premise present.

After some discussion from the council regarding concern over this being the second violation within a one-year period.

Police Chief Bill Lietzke explained the circumstances of this violation and commented that of the four sting operations conducted by the Police Department this location has had two violations. So 50% of the time during the controlled buys they acted in compliance with the City Code.

Chief Lietzke further commented that there was another business that has had two violations within the one year. However, that business holds a Drinking Establishment license which is regulated by the State Alcoholic Beverage Control Division (ABC) so there are no sanctions the city can impose. Each violation is always reported to ABC.

After some discussion there was a consensus among the council to require the license holder to appear before the council to address their concerns and at that time the council would determine whether further suspension is needed.

COUNCILMEMBER CRABTREE MOVED THAT THE GOVERNING BODY SUSPEND THE CMB LICENSE FOR THE PROPERTY LOCATED AT 5903 MERRIAM DRIVE FOR A PERIOD OF APPROXIMATELY SIX WEEKS BEGINNING ON JUNE 27, 2008 THROUGH AUGUST 18, 2008 AT WHICH TIME THE GOVERNING BODY WILL CONSIDER FURTHER SUSPENSION. THE MOTION WAS UNANIMOUSLY APPROVED.

4. Recognition of graduates from Citizen's Police Academy.

Police Chief Bill Lietzke and Lt. Mike Daniels presented an overview of the first Citizen's Police Academy which included informational and training sessions designed to show citizens what is involved with the daily duties of

police officers. The academy consisted of nine weeks which included use of force, firearms, detective work, field sobriety testing, SWAT demonstration, and defensive tactics.

5. Recognition of Eagle Scout candidate Jake Messner for completion of his bench project at Waterfall Park.

Susan Hayden, Parks and Recreation Director presented Jake Messner with a Certificate of Appreciation.

6. Recognition of Eagle Scout candidate Chris Visker for completion of his sign painting project at Streamway Trail.

Susan Hayden, Parks and Recreation Director presented Chris Visker with a Certificate of Appreciation.

VI. PLANNING COMMISSION

VII. COUNCIL ITEMS

Work Session

1. Consider approval of the restructuring of the Community Development Department to include the position of an Assistant Community Development Director/ City Engineer and a full-time CIP Construction Inspector to the classification/compensation plan.

Bryan Dyer, Community Development Director presented the background for this item. In spring of 2008 council approved a reorganization of the Community Development and CIP departments due to recent staff departures and expected future needs. This reorganization included the creation of the Assistant Community Development Director with a salary range of \$46,509-\$68,764 and contracting for engineering services. This reorganization anticipated significant savings in the current and future years due to the new structure. After monitoring several months of actual costs for contract engineering services, savings and benefits of this arrangement are now in doubt.

After evaluating the existing costs of a contract engineer and the need for a high level of customer service for future CIP projects including the 47th St. reconstruction and the Shawnee Mission Parkway bridge, it has become apparent that there is a need for a staff City Engineer. Combining the Assistant Community Development Director with the City Engineer position full fills both needs. The Assistant CD Director/City Engineer's responsibilities will be primarily implementation of the CIP program.

Also in the spring of 2008, the council approved the reclassification of CIP Inspector from a full-time to a seasonal position. Recruitment of a qualified candidate has been difficult and staff is now contracting these services through an engineering firm. The anticipated savings regarding this restructure is also in doubt. Reclassifying the CIP Inspector back to full-time will permit hiring a full-time inspector. The Inspector duties will include the inspection of infrastructure improvements and working with residents, utility relocations and obtaining easements.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE RECLASSIFYING THE ASSISTANT COMMUNITY DEVELOPMENT DIRECTOR/CITY ENGINEER POSITION AND ASSOCIATED SALARY RANGE AND RETURN THE CAPITAL IMPROVEMENTS INSPECTOR TO A FULL-TIME POSITION. THE MOTION WAS UNANIMOUSLY APPROVED.

Finance and Administration Committee

Community Development/Public Works Committee

1. Consider approval of an ordinance revising Chapter 18 of the Code of Ordinances for the City of Merriam, Kansas relating to Nuisances (second reading).

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE AN ORDINANCE REVISING CHAPTER 18 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS RELATING TO NUISANCES. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP VOTED NAY.

2. Discussion regarding Merriam Aquatic Center Buffer Feature – Phase III and consider approval of the bid from City of Merriam Public Works Department in the amount of \$150,880.78 for construction of the tennis courts as part of the Vavra Park Enhancement Project.

This item was discussed at CD/ Public Works Committee and was forwarded without recommendation as the committee wanted the entire council to discuss this item.

Beth Linn, Neighborhood Services Manager presented the background for this item. The buffer feature is part of the Vavra Park Enhancement Project designed to soften the seventeen foot high retaining wall on Eby Street adjacent to Vavra Park and the Aquatic Center. The buffer feature includes a water feature with pools and a fountain and extensive landscaping between Eby Street and the Aquatic Center. The project has been completed in phases with the concrete vault for the fountain and pools

constructed and integrated into the retaining wall along Eby Street. Initial construction estimates for the entire buffer feature were \$470,000. Due to the extensive length of time between initial project development and final design, the anticipated cost of construction has risen significantly. Previous construction estimates for the entire project were \$470,000. Current construction estimates for Phase III is \$473,000, with total project cost of \$699,490.

The rehabilitation of the Vavra Park tennis courts were also a part of Vavra Park Enhancement Project. On June 11, 2009 the city held a public bid opening for the rehabilitation of the tennis courts. Five companies submitted bids for the project. City of Merriam Public Works is the recommended best bid at \$150,880.78. The engineers' estimate for the tennis court project was \$298,793.20. Bids for construction of the tennis courts are valid for 30 days due to the rising costs of materials. There are not adequate funds remaining in the Vavra Park Project to construct Phase III of the buffer feature and rehab the tennis courts. If the rehab of the tennis courts is advanced, the scope of the buffer feature will need to be revisited.

There was much discussion regarding options for the project. The Phase III of the buffer feature could be set for bid with a possible alternate for the third pool to see what the actual cost would be. The bid would not have to be accepted if the bids were too high.

Kathy Rowe, 4749 Knox, addressed the council regarding the tennis courts portion of the project. As a member of the Parks and Recreation Advisory Board, she is very familiar with this project. After researching the number of tennis courts available in the area by Vavra Park and not seeing those courts being used Mrs. Rowe feels that the Buffer Feature should be the priority of the enhancement project. The Buffer Feature will provide a beautiful enhancement to the Aquatic Center and the park as a whole. The tennis courts could be revisited at a later time.

There was some discussion of the CIP budget and possible reallocation of funds within the Municipal Complex Enhancements project; specifically the Fire Department apron replacement which has been scheduled for replacement. Public Works Director Randy Carroll commented that that apron is in very poor condition. The budgeted amount for replacement of the apron is \$200,000 and is the only project scheduled for Municipal Complex Enhancements in 2009.

Beth Linn also commented that there is currently \$90,000 of unprogramed funds for Municipal Complex Enhancements for 2008 which could be reallocated to Vavra Park Enhancements.

The consensus of the council was to solicit bids for the buffer feature with an alternate for the third pool to find out an actual cost of the project.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL DIRECT STAFF TO WORK WITH THE CONSULTANT TO PROCEED WITH THE FINAL DESIGN AND BIDDING OF PHASE III OF THE AQUATIC CENTER BUFFER FEATURE INCLUDING AN ALTERNATE BID FOR ONE LESS POOL WITHIN THE FEATURE. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP VOTED NAY.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE A BID FROM THE CITY OF MERRIAM PUBLIC WORKS DEPARTMENT IN THE AMOUNT OF \$150,880.78 FOR CONSTRUCTION OF THE TENNIS COURTS AS PART OF THE VAVRA PARK ENHANCEMENT PROJECT. THE MOTION FAILED.

VIII. STAFF ITEMS

1. Update on Fire Department Breathing Air Compressor purchase.

Doug Crockett, Interim Fire Chief commented that the Fire Department has moved ahead and purchased the air compressor. The expenditure was approved a few months back but was put on hold to see what was going to happen with the proposed consolidation. As nothing has progressed with the consolidation, the department has purchased the compressor.

City Administrator Phil Lammers notified the council that there are Temporary Notes for the Merriam Point project coming due. Staff will be working with a consultant from Piper Jaffray to work through the process of converting those notes into longer term GO Bonds.

Councilmember Rowe notified the council that the Downtown Merriam Partnership has committed \$10,000 to the Merriam Arts Association for a feasibility study of an arts incubator at the South Park School location. They are also working with a developer who will be researching the development of the arts incubator.

IX. OLD BUSINESS

X. NEW BUSINESS


XI. EXECUTIVE SESSION

XII. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER CRABTREE MOVED TO ADJOURN AT 9:40 PM.

**COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS
UNANIMOUSLY APPROVED.**

Respectfully submitted,

A handwritten signature in cursive script that reads "Juliana Pinnick".

Juliana Pinnick
Interim City Clerk