

**MERRIAM CITY COUNCIL
MINUTES
CITY HALL
9000 W. 62ND TERRACE
MARCH 23, 2009
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Mayor Carl Wilkes

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

Staff Present

Michelle Daise, City Attorney; Phil Lammers, City Administrator; Bill Lietzke, Police Chief; Bryan Dyer, Community Development Director; Cindy Ehart, Finance Director; Doug Crockett, Interim Fire Chief; Randy Carroll, Public Works Director; and Juli Pinnick, 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 regular City Council meeting held February 23, 2009.
2. Approval of the minutes of the Special Meeting held February 26, 2009.

3. Consider Approval of purchase of one (1) 2009 Ford Crown Victoria Police Interceptor vehicle for patrol purposes and two (2) Toyota Corolla's for use by the detective unit in the amount of \$56,492.
4. Authorize staff to execute terms as recommended by the CD/ Public Works Committee related to 9504 W. 56th St.
5. Consider approval of up to \$12,000 in additional engineering related to Residential Street Groups II project.

Councilmember Rowe requested some discussion for item 3.

Councilmember Rowe asked to discuss the policy regarding vehicle replacement schedules.

Public Works Director Randy Carroll replied that the policy was implemented about twenty years ago and vehicles were replaced every two years. When a vehicle gets 90,000 miles on it some performance issues can occur. The current policy allows for replacement of emergency vehicles at the 90,000 mile mark.

Police Chief Bill Lietzke further commented that two of the replacement vehicles are detective cars. Detective cars do not undergo the same stress as a patrol car does. The two detective cars being replaced actually have over 110,000 miles on them and were kept in service a year longer than the replacement schedule.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEMS 1-5. THE MOTION WAS UNANIMOUSLY APPROVED.

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.

Tom Busch, attorney with Holman, Hansen & Colville addressed the council regarding his client Kim Lawson. Ms. Lawson is the owner of Allure Sense Datum Massage located at 75th & Switzer in Merriam. Mr. Busch asked the council to make a consideration related to Ordinance No. 1611 which regulates the massage therapy business. As the ordinance is written, Ms. Lawson does not qualify to operate a massage business or work as a massage therapist. There are two factors that disqualify Ms. Lawson. One is the ordinance requiring 500 hours of education related to massage, and the other is that anyone with a felony conviction is not allowed to operate a massage therapy business. Ms. Lawson purchased the

business approximately 15 months ago from the previous owner, signed a three-year lease and has invested approximately \$100,000 into the business.

Mr. Busch indicated that in looking at other cities' ordinances in the area Merriam's is very similar to those other cities' ordinances. However, Prairie Village and Roeland Park have a five year look-back period for felony convictions and only require 70 hours of massage therapy education. Ms. Lawson has been a practicing therapist for over 6 years. Mr. Busch asked the council to give some consideration for a look back period of five years for felony convictions and to consider grandfathering or giving credit to existing businesses and therapists operating within the city. Mr. Busch further commented that some felonies can be expunged, however in Ms. Lawson's case, it was a federal felony conviction which can only be expunged through a presidential pardon.

Ms. Lawson participated in a public meeting with the police department, city staff and massage therapists when the new regulations were being considered. It was unclear after that meeting if existing therapists and businesses would be grandfathered. There was language related to felony convictions in the original draft ordinance but again, unclear if a felony conviction would eliminate an existing business once the ordinance was passed.

Mr. Busch added Ms. Lawson has been a good corporate citizen for the past 15 months. Her business has been located in Merriam and has not received any complaints. She runs a quality business in a professional manner.

Kim Lawson addressed the council stating that she provided a letter that went out in the agenda packet, and she hoped the council had an opportunity to read it. Regarding the educational requirements, as a practicing therapist Ms. Lawson has performed hundreds of hours of massage and has worked closely with a chiropractor for the past several years. He has been a mentor to her throughout her career. He provided a letter of recommendation for the council regarding Ms. Lawson's skill as a massage therapist. Ms. Lawson commented that her felony conviction was a result of being young and trusting of someone who used her and her credit card to commit a crime. Ms. Lawson distributed photos of her business and a letter of recommendation from the chiropractor and asked that the council give some consideration to her request.

Councilmember Leap commented that he voted against the massage therapy ordinance, and Ms. Lawson is the third massage therapist who has come before the council since the ordinance was considered. Councilmember Leap further commented that he would be willing to send it back through committee.

Councilmembers Bertoncin, Crabtree and Stephens also supported sending it back through committee.

Councilmember Burks asked for clear direction on which issues the council wants the committee to address.

Phil Lammers clarified the issues for the committee to review which included, felonies, a look-back period on felonies and grandfathering on the education hours and existing businesses. Additionally, to look at what are the other cities are doing regarding the felonies and training hours, and to determine what is involved in meeting those hours.

V. MAYOR'S REPORT

1. Dr. Gene Johnson and Donna Bisfield - Update on the Shawnee Mission School District.

Dr. Johnson addressed the council to provide an update on what is going on in the district and to answer any questions the council may have. Mr. Johnson talked about the district's strategic planning efforts, specialized study programs and construction projects.

Dr. Johnson informed the council that an offer was accepted on the sale of the vacant South Park elementary school. Crest Bible Church will purchase the building if all of the inspections pass.

Councilmember Hupp commented that four years ago the school district sold the West Antioch School. In the bid packet it was clearly evident that the District would not sell the school property to a church and now the district has sold South Park School to a church. Councilmember Hupp asked why the school district changed their policy of not selling their properties to a church.

Dr. Johnson commented that it has never been a policy of the school district to not sell school buildings to a church.

Donna Bisfield, school board president, commented that regarding the West Antioch property, after meeting with neighbors and city staff the issue of a church buying the property had to do with the parking requirements. Specifically if there was adequate parking to accommodate the number of persons attending the church activities. Ms. Bisfield stated that it has never been a policy of the district to not sell property to a church.

Councilmember Hupp expressed that she and other councilmembers were disappointed in the school district's selection of the buyer. The city spent money to design a plan to enhance and grow that area into a viable community, and now we are back to square zero.

Dr. Johnson commented that the district was involved with that design process as well, but it appeared that the issue faded away after the designs were completed.

2. Fire Department Annual Report.

Interim Fire Chief Doug Crockett presented the 2008 Annual Report.

3. Flags for Freedom Committee Presentation - LaVera Howard

LaVera Howard addressed the council regarding the 2009 Flags for Freedom event. The committee is requesting no charge use of the Community Training room one (1) hour per month for four months for event planning, use of the Farmers Market for eight days beginning June 27-July 5, use of the Public Works building for flag assembly, use of the right-of-way along Merriam Drive for flag display, use of the front lawns of the Farmers Market and Irene B. French Community Center for flag display and a camping permit for camping at the Farmers Market for the duration of the event to provide security.

COUNCILMEMBER LEAP MOVED THAT THE COUNCIL SANCTION THE FLAGS FOR FREEDOM 2009 AS A CITY EVENT AND PROVIDE THE REQUESTED ITEMS OF SUPPORT. THE MOTION WAS UNANIMOUSLY APPROVED.

VI. PLANNING COMMISSION

VII. COUNCIL ITEMS

A. Work Session

B. Finance and Administration Committee

C. Community Development/Public Works Committee

1. Discussion regarding Pointe at Prairie Haven and Timber Ridge.

Community Development Director Bryan Dyer asked the council to provide direction for staff regarding the development sites that have been lacking activity and are possible nuisances. All code violations are pursued aggressively. There have been questions from residents and council about what can the city do to make the property owner grade out these sites, plant grass and keep the grass mowed. This cannot be achieved without holding a public hearing to determine if a nuisance exists. In addition a remedy for abating the nuisance must be spelled out after the nuisance is determined. In the event that the property owner does not abate the nuisance, the city would be responsible for abating the nuisance and would bill those charges back to

the property owner through a special tax assessment against the property. Reimbursement to the city could take a considerable amount of time.

Councilmember Bertoncin suggested that city staff send a letter to the property owners to identify the expectations of them to maintain the property and keep it free from code violations.

Councilmember Hands also requested that the property owners post no trespassing signs to keep out unwanted elements.

Councilmember Leap commented that holding a public hearing as soon as possible for these property owners would be the best way to let them know that this issue is serious.

Several councilmembers were in agreement to initiate a meeting with each of the property owners to inform them of the council's expectations of them and the process the city would pursue if those expectations are not met.

Mayor Wilkes directed staff to contact the property owners to meet with city staff and discuss expectations of them to maintain the sites and the steps the city will take if the expectations are not met.

2. Update on development projects

Shawnee Mission Medical Center-Medical Offices are nearly complete.

Peppertree Apartments – first two buildings are ready for leasing.

The Planning Commission approved a site development plan for Stone Solutions on Merriam Dr. for expansion of their business.

A new CIP Inspector, Doug McDaniel has been hired and is out in the field conducting inspections.

Merriam Pointe and Merriam Village- staff has received some inquiries about the sites. So far the inquiries have been very preliminary; some are interested in single buildings.

VIII. STAFF ITEMS

City Administrator Phil Lammers reported on several items including the Fire Chief appointment which will be on next month's agenda. Interviews are scheduled for April 2nd.

The roll out date for the Pharmacy Discount program is April 27th. Promotional materials will be received and displayed for the program.

The Senate Bill related to cities requesting a hearing for alcohol sales to minors is ready to be passed. Police Chief Bill Lietzke did an excellent job testifying at the committee hearing.

Phone books and yellow pages being delivered where they're unwanted was discussed at the CD/PW committee meeting. There does not appear to be much the city can do for residents who do not want these books delivered.

IX. OLD BUSINESS

Councilmember Hands reported on the Take Charge Challenge Committee. Two meetings including an expanded town hall meeting have resulted in 6 programs to encourage people to conserve electricity. One program is the Energy Optimizer, a programmable thermostat offered by KCP&L. Compact Florescent Light bulbs will be available for distribution. Working with both Merriam schools will get the kids involved. Weatherization programs available through the county will be available for low income residents. And there is a 10 under 10 campaign being started, which are 10 ideas that cost under \$10 that you can do to make your home more energy efficient. The committee will have a booth at the Turkey Creek Festival to raise awareness.

Phil Lammers added that local HVAC companies will be able to offer rebates and incentives for customers for more energy efficient units. Councilmember Leap commented that the KCPL Cool Homes Program offers a \$650-\$850 rebate for customers replacing their old air conditioning units.

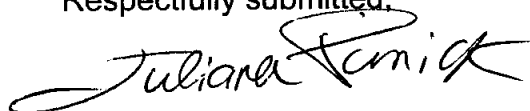
X. NEW BUSINESS

XI. EXECUTIVE SESSION

XII. ADJOURNMENT

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL,
COUNCILMEMBER CRABTREE MOVED TO ADJOURN AT 8:25 P.M.
COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS
UNANIMOUSLY APPROVED.**

Respectfully submitted,



Juliana Pinnick
City Clerk

