

**MERRIAM CITY COUNCIL MINUTES
CITY HALL
9000 W. 62ND TERRACE
FEBRUARY 8, 2010
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Mayor Ken Sissom

Pam Bertoncin
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; Randy Carroll Public Works Director; Bryan Dyer, Community Development Director, Hye Jin Lee, City Engineer; Bob Pape, Fire Chief; Bill Lietzke, Police Chief; Susan Hayden, Parks and Recreation 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 City Council Meeting held January 25, 2009.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE ITEM 1 ON THE CONSENT AGENDA. 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. ***Please note: individuals making Public Comments will be limited to 5 minutes.***

V. MAYOR'S REPORT

1. 2009 City Service Awards.

Mayor Sissom and City Administrator Phil Lammers presented the 2009 Service Awards to the following employees:

5 Years- Cindy Ehart, Ben Petry, Juli Pinnick, Shane Schnoebelen

10 Years- Ross Davis

15 Years- Pat Gantt, Troy Duvanel

20 Years Gary Ramsey, Darren Mclaughlin

30 Years- Bill Lietzke

League recognition for Elected Officials - 8 years Gayle Stephens

Employees receiving Service Awards who were not in attendance:

5 Years- Steve Derendinger, Judy Devere, Terry Dunn

10 Years- Kesone Bouvilom, Ronda Brumbaugh, Barbara Housh, Rick Mosher

25 Years- Dan Kellerman

2. Presentation-Johnson County Solid Waste Plan and proposed regulations-Julie Coon, Johnson County Environmental.

Julie Coon, Johnson County Environmental presented a power point presentation outlining the Johnson Solid Waste Plan. Highlights of the plan include prohibiting yard waste from the landfills by 2011. Increase recycling by 11-58% for both commercial and residential consumers by implementing that every hauler have residential recycling. Implementation of volume-base waste collection rate structure by 2012.

3. Update on Merriam Village.

City Administrator Phil Lammers commented that staff met with the new leasing agent for the development. At that meeting the agent stated that they need an anchor tenant for the site, which will bring other tenants. Mr. Lammers asked what the city could do to assist with the project. Tree trimming was discussed, although it is unclear who owns the property the trees are on. Additional signage was also discussed. It was mentioned last month that a build out deadline is approaching and that a possible extension of that deadline would be requested by the developer. To date there has not been any request received for that extension.

Councilmember Hupp read a letter of gratitude from the Johnson County Christmas Bureau, who had occupied the Circuit City building over the holidays.

4. Update on Merriam Pointe.

Mr. Lammers commented that staff has been focused on keeping up on the bankruptcy filings and deadlines associated with those actions. Another creditor has filed an objection to the Plan and Disclosure Statement. Mr. Lammers contacted a retailer regarding the site. However, the word from that retailer indicated that there is very little movement in new retail sites at this time.

5. Discussion regarding overtime policy.

Mayor Sissom opened the discussion by stating that a while back there was a change to the overtime policy regarding police officers. The policy states that the city was taking the option in the federal law that allows employers to pay police officers at a regular rate for the first three hours of overtime worked. This policy was suggested by the former Assistant City Administrator in an effort to balance the budget a couple of years ago. There are only a couple of area cities that use this option. Mayor Sissom stated that all other departments with the exclusion of the Fire Department are paid at time and one half for every minute of overtime worked.

Councilmember Burks questioned if this item had come before the council or was it an administrative policy.

Mayor Sissom stated that he believes that there was discussion during the budget process on ways to save money and reduce overtime hours, and he believes that this policy was implemented to accomplish that.

Mayor Sissom indicated that some research has been done to determine the financial impact of reversing this policy. It is estimated that the impact would be approximately \$ 13,000-\$14,000. In most cases when an officer works overtime, it is not by choice.

Councilmember Stephens commented that she does not recall the council ever discussing this item.

Councilmember Hupp asked where the funding for this overtime would come from.

Mayor Sissom indicated that the current overtime budget would be able to absorb it; typically budgeted overtime is not totally spent each year.

Finance Director Cindy Ehart confirmed that there have been unexpended funds in the Police Department overtime budget. In 2009 there was \$39,000 unexpended; 2008 \$43,000 unexpended, and 2007 \$57,000 unexpended. For 2009, if this policy were not in place the impact of those overtime dollars would have been \$17,000 - \$30,000 including benefit related costs that are tied to wages.

Police Chief Bill Lietzke explained that this overtime policy was rolled up into the 2006 budget; there was not any discussion of this policy at the council level. There was a lot of discussion behind the scenes. The original proposal was to go to 86 hours before paying overtime on anything in excess of 86 hours, which is the maximum allowed under the

federal law. Chief Lietzke negotiated the policy to 83 hours. This policy has greatly affected morale in the Police Department.

Juli Pinnick, City Clerk stated that this policy is in the Employee Handbook.

Karen Kline, Human Resources Coordinator stated that the revisions to the overtime policy occurred in June 2006 when the Employee Handbook was updated. Any change to the policy will need to be an amendment to the Employee Handbook.

Councilmember Stephens expressed interest in making the change retroactive to January 2010.

The council agreed to bring this change before the council at the next city council meeting with the change being retroactive to January 2010.

VI. PLANNING COMMISSION

1. Consider approval of a Change in Use and Revised Preliminary Development Plan Timber Ridge Located at 67th Street and Wedd Street in a PUD-R, Planned Unit Development-Residential, Zoning District. (Z-1-06/PD3-1209).

Community Development Director Bryan Dyer stated that this item was discussed at the previous council meeting. There was good feedback and additional stipulations placed on the plan. The stipulations have been incorporated into the ordinance and are before the council for approval tonight. The developer has one stipulation that he would like to discuss as well.

There was some discussion related to the stipulation of having two homes completed within one year. Mr. Dyer indicated that there was a lot of discussion regarding this item and that the stipulation for a completed home means that a Certificate of Occupancy will be issued by the Community Development Director. Due to weather factors and other possible issues the 12 month stipulation is reasonable and the developer indicated that it was a feasible timeframe.

There was some discussion regarding the reduction of square footage of the homes from 1,600 square feet to 1,400 square feet.

Davis Waters, Attorney for the developer commented that the goal is to make this project feasible. The developer does not want to put so many stipulations on the homeowners and homes association that it becomes overburdened by these stipulations. Consideration of the stipulations can be accepted by the developer with the exception of three items:

The first is the declaration restrictions that call for natural stone. A new product which is a manufactured stone product would be requested to be allowed for use. The product is a poured concrete that is molded to look like a carved stone product. It is a much more affordable cultured stone product. By allowing the use of this product more of the stone

can be installed on the exterior of the units which will produce a higher quality housing unit. The other request would be to allow the homeowners to determine at what point snow removal would be required. The stipulations currently state "when 2 inches or more accumulates". The developer will include snow removal in the deed restrictions but removing the 2 inch requirement will give the homes association more flexibility. The last request is to remove tree trimming as a stipulation. There may be some homeowners who will have different types of trees planted on their property some may be large growing trees while others with be smaller growing trees. Some homeowners may not feel it is fair to subsidize the trimming of those larger species trees when their trees do not require major trimming every few years.

Mr. Waters added that the square footage issue was reduced to meet the price point on these homes. A quality product can still be produced at the 1,400 and above square foot level.

Mayor Sissom explained that many of the stipulations included in this ordinance like snow removal and tree trimming do not affect the developer. They affect the citizens of Merriam who will be the owners of these homes and members of the homes association. All of these services cost money and if the homes association decides a few years down the road to eliminate a service or two due to increase in cost of homes association fees they should have the latitude to do that. Putting these stipulations on the development plan does not allow them the option to change those things.

The council agreed to a date of completion with a Certificate of Occupancy by December 31, 2010. As well to allow the cultured stone, remove tree trimming and snow removal from the stipulations.

COUNCILMEMBER BURKS MOVED THAT THE GOVERNING BODY, BASED ON THE EVIDENCE PRESENTED AT THE JANUARY 6, 2010 PUBLIC HEARING, AS WELL AS, THE CRITERIA OUTLINED THE CITY'S ZONING ORDINANCE, AS DETAILED IN THE PLANNING COMMISSION STAFF REPORT, UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION TO APPROVE, WITH CONDITIONS, A CHANGE IN USE AND A PRELIMINARY DEVELOPMENT PLAN FOR TIMBER RIDGE LOCATED AT W. 67TH STREET AND WEDD STREET IN A PUD-R PLANNED UNIT DEVELOPMENT RESIDENTIAL WITH THE FOLLOWING CHANGES, REFERENCING ITEM NUMBER NINE (9) TO ALLOW FOR THE USE OF CULTURED STONE, AS WELL AS DELETING STIPULATIONS 13(a), 13(d); RENUMBERING ITEM 13 ACCORDINGLY, AND A CHANGE TO STIPULATION 15 TO REFLECT A COMPLETION DATE OF DECEMBER 31, 2010 BY A CERTIFICATE OF OCCUPANCY BEING ISSUED FOR EACH UNIT AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. (Z-1-09/PD3-1209) THE MOTION WAS APPROVED. COUNCILMEMBER BERTONCIN VOTED NAY.

2. Consider approval of a Revised Final Plat for Property Located at 67th Street and Wedd Street in a PUD-R, Planned Unit Development-Residential, Zoning District. (P-2-09).

COUNCILMEMBER HANDS MOVED THAT THE GOVERNING BODY APPROVE AND ACCEPT THE EASEMENTS AS SHOWN ON THE REVISED FINAL PLAT- TIMBER

RIDGE VILLAS (P-2-09). THE MOTION WAS APPROVED. COUNCILMEMBER BERTONCIN VOTED NAY.

VII. COUNCIL ITEMS

A. Work Session

1. Consider approval of an ordinance relating to the selection of Council President and Council Vice President; establishing section 2-27 and repealing section 2-23 of the Code of Ordinances of the City of Merriam, Kansas.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE AN ORDINANCE RELATING TO THE SELECTION OF COUNCIL PRESIDENT AND COUNCIL VICE PRESIDENT, ESTABLISHING SECTION 2-27 AND REPEALING SECTION 2-23 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS. THE MOTION WAS UNANIMOUSLY APPROVED.

2. Consider approval of an ordinance relating to the procedures applicable to the filling of vacancies on the Merriam City Council; establishing section 2-26 of the Code of Ordinances of the City of Merriam, Kansas.

Councilmember Stephens asked about putting in a 90 day timeframe for selecting a councilmember.

City Attorney Michelle Daise responded that there is no way to enforce a 90 day deadline as the State Statute does not give any procedure for filling the vacancy just that it is to be filled.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE AN ORDINANCE RELATING TO PROCEDURES APPLICABLE TO THE FILLING OF VACANCIES ON THE MERRIAM CITY COUNCIL; ESTABLISHING SECTION 2-26 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS. COUNCILMEMBERS BERTONCIN, CRABTREE, LEAP AND STEPHENS VOTED NAY. MAYOR SISSOM VOTED AYE, BREAKING THE TIE. THE MOTION WAS APPROVED.

3. Consider approval of an ordinance relating to vacancies in the offices of Mayor and Council member, amending Article II of Chapter 2 of the Code of Ordinances of the City of Merriam, Kansas. (first reading), (recommend waiving the first reading.)

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE RELATING TO THE VACANCIES IN THE OFFICES OF MAYOR AND COUNCIL MEMBER. THE MOTION WAS APPROVED. COUNCILMEMBER STEPHENS VOTED NAY.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE AN ORDINANCE RELATING TO VACANCIES IN THE OFFICES OF MAYOR AND COUNCILMEMBER, AMENDING ARTICLE II OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS. COUNCILMEMBERS

BERTONCIN, CRABTREE, LEAP AND STEPHENS VOTED NAY. MAYOR SISSOM VOTED AYE, BREAKING THE TIE. THE MOTION WAS APPROVED.

B. Finance and Administration

1. Monthly Finance Report.

Finance Director Cindy Ehart presented the Finance report for the month of January.

The City's Eligible Depository listing was an item that was typically presented to council for approval as required by statute. The list approved last January remains the same and no changes have been made to that list. If there are any changes to that list, it will be brought before the council for approval.

Councilmember Burks asked about the quarterly Investment Committee meeting that was comprised of the Mayor, City Administrator, Finance Director and Chair of the Finance and Administration Committee. Since there are no longer committees what is the suggestion for a having a council representative present at those Investment Committee meetings?

Phil Lammers suggested the Council President could serve on that committee.

C. Community Development/Public Works

1. Consider approval of a Letter of Understanding between the cities of Fairway, Leawood, Prairie Village, Roeland Park, Mission, Merriam and Johnson County Park and Recreation District for use of agency pools during swim and dive meets.

Parks and Recreation Director Susan Hayden presented the background for this item. This letter of understanding allows season pass members to use these other pools in the event that the Merriam pool is hosting a home swim meet.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE A LETTER OF UNDERSTANDING BETWEEN THE CITIES OF FAIRWAY, LEAWOOD, PRAIRIE VILLAGE, ROELAND PARK, MISSION, MERRIAM AND JOHNSON COUNTY PARK AND RECREATION DISTRICT FOR USE OF AGENCY POOLS DURING SWIM AND DIVE MEETS. THE MOTION WAS UNANIMOUSLY APPROVED.

2. Consider approval of an Interlocal Agreement with the Cities of Fairway, Leawood, Merriam, Mission, Prairie Village, Roeland Park, and Johnson County Park District for 2010 Reciprocal Use of Swimming Pool Facilities ("Super Pass Program").

Parks and Recreation Director Susan Hayden presented the background for this item. This agreement is the second year of the Super Pass Program. The city of Leawood has asked to be included in the agreement for 2010.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE AN INTERLOCAL AGREEMENT WITH THE CITIES OF FAIRWAY, LEAWOOD, PRAIRIE VILLAGE, ROELAND PARK, MISSION, MERRIAM AND JOHNSON COUNTY PARK AND RECREATION DISTRICT FOR 2010 RECIPROCAL USE OF SWIMMING POOL FACILITIES (SUPER PASS PROGRAM). THE MOTION WAS UNANIMOUSLY APPROVED.

3. Authorize staff to negotiate Scope of Services and Fee Schedule of Fees for a KDOT pre-qualified consultant for inspection services related to 2009 Economic Stimulus Overlay Project and ARRA reporting.

City Engineer Hye Jin Lee presented the background for this item. This is a follow up from the last council meeting. Staff solicited a letter of interest for Qualification Based Selection to six KDOT pre-qualified consultant firms. CIP and Public Works staff reviewed and ranked their qualifications. Staff unanimously agreed that HWS was most qualified to perform inspection services as well as KDOT and ARRA reporting as required for KDOT administered projects. In addition to the qualifications of HWS they have equipment available to perform the required testing, rather than having a third party do testing. Staff and KDOT will have to agree on the consultant fee and scope. The contract will be between KDOT, City of Merriam, and the consultant. The billing goes directly to KDOT. The contract will come before the council for approval once the fees and scope have been agreed upon by all parties.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL AUTHORIZE STAFF TO NEGOTIATE SCOPE OF SERVICES AND FEES FOR THE 2009 ECONOMIC STIMULUS OVERLAY PROJECT IN ACCORDANCE WITH KDOT APPROVED QBS PROCESS. THE MOTION WAS UNANIMOUSLY APPROVED.

VII. STAFF ITEMS

1. Fire Department Annual Report.

Fire Chief Bob Pape presented the Fire Department Annual Report.

2. City Administrator Phil Lammers provided an update regarding a request from the Johnson County Emergency Management office to explore the Irene B. French Community Center as an emergency shelter. This proposal would include a generator, pad, switch gear wiring and installation. The generator and installation would be funded through a MARC grant. They would also provide staff training and commitment for other resources in the event of shelter use. Mr. Lammers asked the council to authorize further negotiation with the county for this possible shelter. They are talking with two other entities regarding site selection for such emergency shelter. The consensus of the council was to proceed with discussions with Johnson County Emergency Management for a possible emergency shelter in the City of Merriam.

IX. OLD BUSINESS

1. City of Merriam legislative update.

City Administrator Phil Lammers commented that last week staff and some council members traveled to Topeka for City Hall Days. While there they met with Senator Terrie Huntington and Representative Milak Talia to discuss several issues.

Last year the council produced a legislative agenda that was provided to our state representatives. Mr. Lammers asked if the council desired to add or remove any items from the 2009 Legislative Agenda. The consensus of the council was that all issues listed on the 2009 Legislative Agenda are still relevant and should remain.

2. Mayor Sissom acknowledged the passing of Louis A. Silks, Jr. on February 2, 2010. Mr. Silks served as Merriam's City Attorney for many years, and later as Municipal Judge. Mr. Silks was instrumental in getting the City of Merriam incorporated and writing the beginning charter ordinances of the city, an accomplishment that he was very proud of.

X. NEW BUSINESS

XI. EXECUTIVE SESSION

XII. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER BURKS MOVED TO ADJOURN AT 9:30 PM. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

Approved: 2-22-10

Respectfully submitted,



Juliana Pinnick
City Clerk