

**MERRIAM CITY COUNCIL MINUTES**

**CITY HALL**

**9001 WEST 62 STREET**

**December 14, 2020**

**7:00 P.M.**

**This was a virtual meeting via Zoom.**

**I. CALL TO ORDER - PLEDGE OF ALLEGIANCE**

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

**II. ROLL CALL**

The following Councilmembers were present via Zoom meeting:

Scott Diebold  
Chris Evans Hands  
Bruce Kaldahl  
Brian Knaff  
David Neal  
Bob Pape  
Jason Silvers  
Whitney Yadrich

Staff present via Zoom meeting: Chris Engel, City Administrator; Ryan Denk, City Attorney; Meredith Hauck, Assistant City Administrator; Jim MacDonald, Public Works Director; Jenna Gant, Communication and Public Engagement Manager; Darren McLaughlin, Police Chief; Bryan Dyer, Community Development Director; Donna Oliver, Finance Director; and Park and Recreation Director Anna Slocum.

**III. PUBLIC ITEMS**

In response to COVID-19 and remote City Council meetings, the public comment process that normally occurs during the City Council meeting has temporarily changed. Members of the public are still encouraged to share comments about matters that may or may not appear on the agenda by the following process below:

Submit public comment to the Assistant City Administrator at [mhauck@merriam.org](mailto:mhauck@merriam.org) by 6 p.m. on the date of the meeting; comments are limited to 500 words; must include "Public Comment" in the subject line; commenters must include their name and their address. Late submissions, submissions without "Public Comment" in the subject line; and comments without name and address will not be read into the public record. In accordance with the *Governing Body Rules of Procedure*, the City reserves the right to refuse Public Comments that are

personal, impertinent or slanderous.

Merry Christmas from René and Billy Croan at 6633 Wedd Street if we don't talk again before the 25th.

We pledge allegiance to the flag, of the United States of America, and to the republic for which it stands...

I would like to bring back this tradition.

Perhaps you guys have been doing the pledge individually, before the zoom starts, and if so my apologies for jumping to conclusions.

I've been trying to put my finger on it, and one of the things I miss most dearly about our city council meetings from before COVID-19 began was the Pledge of Allegiance, which everyone in the room said together. It takes only a few seconds to recite these words and come *together* across distance and generations. And, I cannot remember a time when people needed to come together more than we do today.

If we cannot do so physically, we may at least in spirit, as Americans, as one nation under God, indivisible, with liberty, and justice for all.

Thanks, and I wish you a joyful holiday season!

#### **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 so requests, in which case that item will be removed from the Consent Agenda and considered separate.

1. Consider approval of the minutes of the City Council meeting held November 23, 2020.
2. Consider approval of the 2021 Farmers Market Operating schedule
3. Consider approval of an agreement with Jonson County CARS for the 2021 East Frontage Road improvements from 67<sup>th</sup> Street to 75<sup>th</sup> Street.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEMS 1-3. COUNCILMEMBER SILVERS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

## V. MAYOR'S REPORT

### 1. 2021 Merriam Legislative Agenda Draft

City Administrator Chris Engel provided the background for this item.

Each year City Council adopts a legislative agenda that establishes its legislative priorities for the upcoming session. The agenda is the result of discussions with the League of Kansas Municipalities, Northeast Johnson County Chamber, Johnson County, neighboring managers, department heads and the city's legislative lobbyist, Stuart Little. Each item has a note that indicates the items status and what organizations are supporting that item in their 2021 platforms.

The 2021 Draft Agenda incorporates the following two new items:

- Pandemic Response – supports financial and administrative support to cities and a clarification on the authority of cities to respond during emergencies.
- Energy Efficiency – supports a statewide energy plan and the establishment of incentives to encourage energy efficiency similar to those in Missouri. This position supports Merriam City Council sustainability goals.

The remaining items are holdovers from 2020; some are exactly the same, others contain updated wording but no substantial changes.

This draft was reviewed by Stuart Little, and he agrees it contains the appropriate items to address.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL THE 2021 LEGISLATIVE AGENDA AS PRESENTED. COUNCILMEMBER NEAL SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

## VI. COUNCIL ITEMS

### 1. Consider approval of an agreement with Johnson County for Enforcement of County Health Order

City Administrator Chris Engel provided the background for this item.

On November 13, 2020, the BOCC, sitting as the Johnson County Board of Public Health, adopted Johnson County Board of Public Health Order No. 002-20 (the "Health Order"). Among other things, the Health Order established certain social distancing requirements and limitations on gatherings for individuals, businesses, and activities. The Health Order became effective in all of Johnson County as of 12:01 A.M. on Monday,

November 16, 2020, and shall remain in effect through 11:59 P.M. on January 31, 2021, unless otherwise amended, revoked, or replaced.

The Health Order was issued by the County pursuant to certain statutory authority, namely K.S.A. 65-119. This type of order could generally be enforced by the district attorney pursuant to K.S.A. 65-127 and, depending on the situation, K.S.A. 65-129. However, there has been concern over the practical ability to enforce such rules given the backlog of cases currently pending in district court.

However, pursuant to K.S.A. 19-101d, the Board of County Commissioners has the power to enforce certain of its "resolutions" by prosecution in the Johnson County Codes Court. To help alleviate District Court pressures, and presumably better allow the County to enforce its own Health Order, on November 19, 2020, the County adopted Resolution No. 108-20 establishing noncompliance with the Health Order as a violation of the Johnson County Code.

However, due to the city's home rule authority, there is some question as to whether the County can enforce its own resolutions in Johnson County Codes Court within city limits, absent an agreement by the applicable city to allow for that enforcement. Accordingly, the County has requested the cities approve an agreement with the County allowing for County enforcement of the Health Order, as incorporated into the County Code. That Agreement is presented tonight to the City Council for consideration and approval.

The City Attorney has worked with other city attorneys and the County on preparing and finalizing an acceptable form of Agreement, which provides for the following:

- The County, and not the City, will be responsible for enforcement of the Health Order within the City limits. The City agrees to reasonably cooperate with the County in the sharing of information related to enforcement, and to also assist in educating its citizens as to the requirements of the Health Order.
- The Agreement is limited only to Johnson County Board of Public Health Order No. 002-20. No other orders would be covered by this Agreement (there are not currently any in effect, but if there should be, the County and the City could amend the Agreement appropriately).
- The county health order and its enforcement apply only to businesses and are mostly concerned with hours of operation, gathering size and distancing. The wearing of masks is part of statewide order and is enforced separately through the district attorney's office.

Either party can terminate the Agreement at any time, if deemed in the best

interests of the City or County.

Overland Park, Leawood and Prairie Village approved this agreement last week.

City Attorney Ryan Denk commented that in speaking with the County Attorney, she indicated that for enforcement in county codes court, they would need this agreement between the cities and county which allows cities to defer enforcement through the County. This only covers the existing County Health Order.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE AN AGREEMENT WITH JOHNSON COUNTY FOR THE ENFORCEMENT OF THE COUNTY HEALTH ORDER. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

2. Consider approval of the ETC Citizen and Business Survey Tools

Assistant City Administrator Meredith Hauck provided the background for this item.

The Council discussed the 2021 Citizen and Business ETC surveys at its November 9 and November 23 meetings. The next step in this process is to approve the tools used for each survey.

The majority of the questions asked on each tool are set by ETC to allow the City to benchmark against past results and other communities across the country. Questions 16 and 17 on the ETC Citizen survey were customized based on current community issues. As requested at the November 23 meeting, updates were made to question 16.5 in the Citizen Survey and question 29 on the Business Survey.

This meeting is the deadline to approve the survey tools in order to stay on schedule for distributing the survey in early January. Question 16.5 is asking about bringing a grocery store to Merriam and if residents are willing to use public incentives to get a grocery store.

Council discussed the survey questions about using public incentives to bring a grocery store to Merriam, focusing on if the survey results indicate that there is little public support for such incentives. Council concluded that even if that result occurred, they would have a sense of the level of public sentiment. Then, should a future larger development project opportunity occur that included a grocery store, Council would be better prepared to build an information and communication plan to address that sentiment.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE THE ETC CITIZEN AND BUSINESS SURVEY TOOLS. COUNCILMEMBER**

**YADRICH SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

3. Consider approval of a Resolution amending the Employee Handbook

Assistant City Administrator Meredith Hauck provided the background for this item.

In late 2019, the City hired a new Finance Director and Human Resources Manager. As part of the transition of these departments, staff conducted a review of the existing employee handbook. A number of minor updates were identified to bring it into alignment with current law, policies, and practices and to provide clarification, as needed.

These proposed updates have been vetted by the Department Head team.

A summary memo, as well as red-line and clean versions of each affected policy were included in the agenda packet. If approved, all changes would go into effect on January 1, 2021.

**COUNCILMEMBER SILVERS MOVED THAT THE COUNCIL APPROVE A RESOLUTION AMENDING THE EMPLOYEE HANDBOOK OF MERRIAM, KANSAS. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

4. Consider approval of the final pay request for McCarthy Building Companies for the Merriam Community Center project

Assistant City Administrator Meredith Hauck provided the background for this item.

McCarthy Building Companies has completed their work on the Merriam Community Center project, and staff is requesting approval to issue the final payment of \$87,777.64.

With this final payment, the total amount of McCarthy's contract is \$33,232,947.07. In January 2019, the City Council approved a guaranteed maximum price of \$32,500,205.00 for McCarthy's contract. The overage of \$732,742.07 is due to change orders requested by the City. Each change order was approved either by staff or Council in accordance with the City's purchasing policy for this project. Budgeted owner contingency was used to pay for costs associated with these change orders, and overall, the project remains on target to come in under the \$36.6 million budgeted.

Staff will provide a financial update on the full community center project in January.

Councilmember Knaff commended city staff for all their hard work on the Community Center project.

**COUNCILMEMBER DIEBOLD MOVED THAT THE COUNCIL APPROVE THE FINAL PAY REQUEST TO MCCARTHY BUILDING COMPANIES FOR THE MERRIAM COMMUNITY CENTER PROJECT. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

5. Consider approval of an ordinance amending Chapter 47 of the Merriam Code of Ordinances related to hiking and biking trails (*recommend waiving first reading*)

Parks and recreation Director Anna Slocum provided the background for this item.

Chapter 47; Article III; Section 47–90 is in need of updating to remain in compliance with the American with Disability Act (ADA). The change by the Department of Justice requires local governments to revise policies allowing other power driven mobility devices “OPDMD” to be used by individuals with mobility issues in areas open to pedestrian use.

Staff is recommending the following changes to the Municipal Code.

1. Retitling the section eliminating the term Parcourse from the title.
2. Adding the definitions of various modes of motorized transportation that are easily identifiable.
3. Defining Permitted and restricted allowing electric-assisted bicycles and motorized wheelchairs on designated paths while still allowing authorized individuals the ability to access the areas with necessary equipment.

Electric-assisted bicycles and motorized wheelchairs are limited in speed. The change specifically does not allow for other motorized conveyances. Since many trail systems are interconnected, this change will align the code with other metropolitan cities while addressing the ADA requirements.

The Park and Recreation Advisory Board has reviewed the code and recommend approval.

Councilmember Silvers asked if motorized wheelchairs include mobility scooters.

City Attorney Ryan Denk commented that the definition of motorized wheelchairs would include mobility assistance scooters.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE AMENDING CHAPTER 47 OF THE MERRIAM CODE OF ORDINANCES RELATED TO HIKING AND**

**BIKING TRAILS. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE AN ORDINANCE AMENDING CHAPTER 47 OF THE MERRIAM CODE OF ORDINANCES RELATED TO HIKING AND BIKING TRAILS. COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

6. Year-End Financial Update

Finance Director Donna Oliver commented that there was a question regarding the final numbers on the demolition of the Irene B French Center. The final payout to the contractor was \$107,915.00 which included the two change orders for the additional sewer line disconnection and removal of two cisterns.

For the 2020 budget year, it appears that the ending fund balance for the General Fund will be the same as forecasted when the 2020 budget was approved in August of 2019. The deferment of some major expenditures and an increase in use taxes, which is taxes collected in internet purchases as well, the retail sales tax collections were better than anticipated with the pandemic helped with the ending fund balance for the General Fund.

The Transient Guest Tax Fund did have a loss of revenue as travel is low under the current situation. There were reduced expenses for that fund as well but there will still be an ending fund balance of approximately \$138,000 less than anticipated.

City Administrator Chris Engel reminded the council that for the 2021 budget, some expenses were moved from the Transient Guest Tax Fund to the General Fund to help offset any projected loss of revenue.

An overall look at the total of all funds is projected to have an ending fund balance of \$25,306, 213. In August of 2020 staff had projected an ending balance of \$20,468,723, so the ending balance has improved over the past few months. Reductions in expenditures for capital improvement projects as well as better than anticipates sales tax collections has helped the bottom line. One example of this would be the demolition of the Irene B. French Center which was originally budgeted at \$650,000; that project came in at only \$107,915 so that was a huge savings.

There was some discussion regarding the Transient Guest Tax and a statute that allows anyone staying over 30 days in a hotel not being required to pay the transient guest tax and if there is a way to determine how often that occurs with the Merriam hotels and possible explore a way to opt out of that provision. Staff will conduct some research and provide an update to the council when the information is available.



7. November Finance Report (*in packet*)
8. CIP Update (*in packet*)

## **VII. STAFF ITEMS**

City Administrator Chris Engel thanked the council for their support this past year with all the challenges of the pandemic. Council was very involved in making suggestions to staff on ways to reduce expenses and supporting staff all along the way.

Councilmember Pape thanked all city staff for their hard work this past year and their willingness to reduce their budget and make concessions where needed.

Councilmember Hands echoed Councilmember Pape's comments and further commented that staff has made many accommodations in their regular operations this past year in response to the pandemic and she thanked all the staff for their diligence and hard work.

Councilmember Silvers commented that while working at home since March he has been able to see so many things that city staff does on a daily basis that he was unaware of.

Councilmember Neal echoed many comments shared by the other councilmembers, specifically their efforts in keeping staff and the public safe during the pandemic.

Mayor Sissom commented that last week he was able to attend a staff event and he received many comments from staff members about how much they enjoy working for the City of Merriam. He has also received emails from staff thanking him and the City Council for their support.

## **VIII. EXECUTIVE SESSION**

## **IX. ADJOURNMENT**

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER PAPE MOVED TO ADJOURN AT 8:19 PM. COUNCILMEMBER YADRICH SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

Approved: January 11, 2021

Respectfully submitted,

*Juliana Pinnick*  
City Clerk