

**MERRIAM CITY COUNCIL MINUTES  
CITY HALL  
9001 WEST 62<sup>ND</sup> STREET  
September 9, 2019  
7:00 P.M.**

**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  
Brian Knaff  
David Neal  
Bob Pape  
Jason Silvers

Staff present: Chris Engel, City Administrator; Nicole Proulx Aiken, City Attorney; Todd Allen, Acting Police Chief; Meredith Hauck, Assistant City Administrator; Bryan Dehner, Fire Chief; Jim MacDonald, Acting Public Works Director; Jenna Gant, Communication and Public Engagement Manager; Sari Maple, Human Resource Manager; Anna Slocum, Parks and Recreation Director; Bryan Dyer, Community Development Director 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.***

Brian Shapley, 8904 W 49<sup>th</sup> Ter., commented that he has missed a couple of Merriam City Council meetings as he has been to other cities council meetings in Fairway and Shawnee to speak on the inclusive non-discrimination ordinances proposed by those cities. He wanted to thank the city council for approving the non-discrimination ordinance last year. Because of what Merriam did on that issue, now many more cities in the area are doing the same and looking to pass inclusive non-discrimination ordinances.

**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 August 26, 2019.
2. Confirm the appointment of Brian Dailey to the Board of Structure Appeals for the term expiring December 31, 2019.
3. Confirm the appointment of Rueben Cozmyer to the Board of Structure Appeals for the term expiring December 31, 2021.
4. Consider acceptance of the bid from Toshiba Business Solutions for multi-function copier/printer/scanner devices including service and maintenance.
5. Consider approval of a budget adjustment of \$2,750 from Transient Guest Fund Contingency to Transient Guest Fund/Special Events.
6. Consider approval of 2019 Audit Engagement letter with Allen Gibbs Houlik (AGH).

Councilmember Silvers asked that item 5 be removed from the consent agenda.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEMS 1-6; EXCLUDING ITEM 5. COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

Councilmember Slivers asked if there were other line items in the budget that could be adjusted to help reduce the amount needed to transfer. He specifically asked about the VIP tent and questioned who has access to the VIP tent.

Parks and Recreation Director Anna Slocum responded that the VIP tent is a way to acknowledge the sponsors of the event. That dollar amount is needed to separate out that space and is used as a thank you to the sponsors. She further commented that those costs have been adjusted as much as possible in an effort to reduce the budget. Expenses for the VIP area include the tent, soda, water and a few snacks, as well as the fencing for that area.

City Administrator Engel added that the anticipated budget transfer amount was originally \$ 5,500 and due to fundraising efforts and staff's work, savings were found.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE A BUDGET ADJUSTMENT OF \$2,750 FROM TRANSIENT GUEST FUND CONTINGENCY TO TRANSIENT GUEST FUND/SPECIAL EVENTS.**

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

**V. MAYOR'S REPORT**

1. Pat Gantt 911 Save Video, Overland Park Fire Department.

Fire Chief Bryan Dehner played a video of Fire Captain Pat Gantt and his story of his son, Trevor, calling 911 and essentially saving his dad's life during a cardiac event a few months ago. Captain Gantt commented that it is good to be back at the fire department after his heart attack. He has been at the Merriam fire station since he began working as a volunteer in 1991.

2. Presentation of Life Saving Award to MPO Matthew Hirsch.

Acting Police Chief Todd Allen presented Master Police Officer (MPO) Matthew Hirsch with the Life Saving Award. Officer Hirsch responded to a non-breathing female call and administered CPR until the fire/medics arrived and continued CPR until she was transported to the hospital. The patient has made a full recovery.

**VI. COUNCIL ITEMS**

**A. Finance and Administration**

1. Community Center Update.

Assistant City Administrator Meredith Hauck presented the monthly Community Center update.

2. Consider approval of a property conveyance agreement between the City of Merriam and Johnson County Library Board (JCL).

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

The City began conversations with the Library and Johnson County in spring 2017 about an opportunity to co-locate a new branch on the same site as the new community center after learning the Johnson County Library Board had identified the Antioch branch as a location that needed to be rebuilt as part of their master plan. In November 2018, the City Council and Johnson County Library Board approved a Memorandum of Understanding (MOU) that outlined JCL's intent to build an approximately 16,000 sq. ft. library branch that provides library

services to the general public on the same site as the new community center. As part of the MOU, the City agreed to sell the land to JCL for a sum of \$1.00.

The next step in the process is for both the City and JCL to approve the Property Conveyance Agreement. It outlines the following:

The anticipated timeline for the library project (summarized in Exhibit D) indicates a 2021 Q3 – Closing on property; 2021 Q4 - Construction Kick Off; and 2023 – Library Opening.

The City will utilize this property during construction of the community center as open space once the community center construction is complete until the library project begins.

The City and JCL will cooperate on the maintenance and on-going use of shared infrastructure within the site, including the plaza space between the buildings, parking structure, and the internal access drive. The specific details of the on-going maintenance and use will be negotiated in the next agreement. In addition, JCL will construct portions of the plaza that are on their property or directly adjacent to it.

The final agreement between the two parties will be the Shared Parking and Maintenance Agreement (referenced in both the MOU and the Property Conveyance Agreement). It will be brought forth for City Council and JCL Board no later than 90 days prior to the 2021 closing date.

Councilmember Neal voiced some concerns over the agreement, specifically regarding control of the entire campus if the JCL were to change their mind and wanted to put something different on the site.

Ms. Hauck responded that the City and JCL had considerable discussion regarding this. Section 6 of the Memorandum of Understanding (MOU) states that both parties will work in cooperation to finalize and execute all documents and agreements necessary to complete the project. In order to access their site, they must use the City's access road and they have no parking spaces on their site, so to use it for another purpose, they would have to get access to their site and would have to acquire parking space. The MOU states that this site has to house a branch of the library that is open to the public. The City's legal team felt that this offered the City protection in that regard.

Councilmember Diebold commented that every aspect of this agreement has to be agreed to by both the City and JCL, so he feels there are checks and balances to the agreement and that either party can terminate the agreement if things can't get worked out.

Mayor Sissom commented that the library board has already expended some funds for the site and are continuing to expend funds for design of the project, so it would appear that they are committed to building on this site and both parties have to work in good faith to make the project happen.

Councilmember Frisby commented that there appears to be no mediation or arbitration in the agreement and that if either party is not satisfied with something then they just sever the agreement. He feels like that is extreme and would prefer it go to mediation or something before that would occur. He asked for the City attorney's opinion on the arbitration aspect.

City Attorney Nicole Proulx Aiken commented that arbitration occurs when parties are at the point of litigation. She does not favor arbitration in general, and it is not needed in this agreement.

Councilmember Hupp commented that her experience in working with the library board is that when the cities of Shawnee and Lenexa were negotiating similar agreements it takes a lot of patience, understanding and good faith and these same issues have been heard during both of those negotiations and it simply works out. It appears that maybe some are trying to overthink every scenario. Both legal teams have looked over these agreements and both are comfortable with the agreements as they are being presented.

Ms. Hauck commented that the JCL and City have both worked very hard and have been able to come to an agreement on a variety of issues and concerns up to this point. If either party backs away from this agreement, the city is left with a piece of land that will be green, flat and could easily be incorporated into the Community Center Plaza and/or additional parking.

Councilmember Silvers asked if down the road the library does not maintain the facility or they decide to use the site for a book depository or a library warehouse facility, which is not the purpose it was originally agreed to be used for, what recourse would the city have.

Ms. Hauck responded that the MOU states that this site has to house a branch of the library that is open to the public. This was language specifically added by Merriam, and if they were to attempt to use it for any other use, the city would have to approve that use through the Planning Commission process.

Councilmember Neal expressed concerns regarding the construction timeline and if the library does not construct the building as outlined in the agreement and simply let it sit for a few years.

Ms. Hauck stated that under the MOU, the agreement is terminated if the library board does not submit for a building permit within 180 days of the property transfer, and if they fail to begin vertical construction within 45 days following issuance of a building permit. However, that issue has an allowance for negotiation if there are circumstances that would prevent construction. The agreement provides for such an allowance, but only if mutually agreed to by both parties.

Councilmember Neal asked about the 180 day investigation period to undertake studies and feasibility of the site. This also allows the library board to back out if the project is not feasible due to the property conditions. In his opinion this clause and language is very broad and he would prefer specific site conditions be detailed in the agreement under this allowance.

Ms. Hauck indicated that the library board has already taken this project to the Board of County Commissioners for their 2020 budget and they have already conducted and received many studies and testing on the property. They have a lot of information about the site conditions currently as the city has been sharing information that has been gathered regarding the site conditions throughout our construction project.

Councilmember Diebold commented that he feels the 180 day investigation period is reasonable as there is really no sure way to know what is below the ground so giving them allowance to investigate the site appears to be reasonable.

Ms. Hauck pointed out that this 180 day investigation period occurs before the closing date on the property. So if something is discovered that would prevent them from moving forward with their project, the city still retains ownership of the property.

Councilmember Pape asked about the closing date on the property.

Ms. Hauck explained the closing will occur in the third quarter of 2021. In the meantime, the library is moving forward with design of the building, and there are other agreements that will be finalized prior to the closing.

Billy Crook, 6633 Wedd St. spoke in favor of the agreement having a first right of refusal clause.

**COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE A PROPERTY CONVEYANCE AGREEMENT BETWEEN THE CITY OF MERRIAM AND JOHNSON COUNTY LIBRARY BOARD. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS APPROVED. COUNCILMEMBER NEAL VOTED NAY.**

3. Consider approval of an ordinance adopting the 2019 Standard Traffic Ordinance (STO). (recommend waiving the first reading)

Acting Police Chief Todd Allen reviewed the changes to the 2019 Standard Traffic Ordinance (STO). It was recommended to waive the first reading of the ordinance as the changes have been in effect at the state level since July.

Councilmember Frisby made some comments about the alternate ADA signs that he has been pushing to get approved at all levels of government. While he will no longer be a councilmember after January, he asked that the council continue to support and advocate for the change of the signage.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE ADOPTING THE 2019 STANDARD TRAFFIC ORDINANCE (STO). COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE AN ORDINANCE ADOPTING THE 2019 STANDARD TRAFFIC ORDINANCE (STO). COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

4. Consider approval of an ordinance adopting the 2019 Uniform Public Offense Code (UPOC). (recommend waiving the first reading)

Acting Police Chief Todd Allen reviewed the changes to the 2019 Uniform Public Offense code (UPOC). It was recommended to waive the first reading of the ordinance as the changes have been in effect at the state level since July. The City Attorney has recommended a companion ordinance be adopted along with the UPOC regarding controlled substances.

**COUNCILMEMBER DIEBOLD MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE ADOPTING THE 2019 UNIFORM PUBLIC OFFENCE CODE (UPOC). COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER DIEBOLD MOVED THAT THE COUNCIL APPROVE AN ORDINANCE ADOPTING THE 2019 UNIFORM PUBLIC OFFENCE CODE (UPOC). COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

5. Consider approval of an ordinance amending sections of Chapter 44 of the Merriam Code of Ordinance related to controlled substances. (recommend waiving the first reading)

**COUNCILMEMBER SILVERS MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE RELATED TO CONTROLLED SUBSTANCES. COUNCILMEMBER FRISBY SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER FRISBY MOVED THAT THE COUNCIL APPROVE AN ORDINANCE RELATED TO CONTROLLED SUBSTANCES. COUNCILMEMBER KNAFF SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

6. Appointment of City voting delegates for the Kansas League of Municipalities Annual Conference.



The League of Kansas Municipalities (LKM) membership Bylaws provide the city the opportunity to represent the city in the conduct and management of the affairs of the League. Their annual business meeting and policy session will be held on Monday afternoon October 14, 2019 during the Annual Conference which is October 12-14 this year. During that business meeting, city representatives are given the opportunity to vote on League issues.

The Bylaws prescribe the total number of votes provided to each member city based on population. The City of Merriam is allowed 3 voting delegates and may be any elected or appointed officer and may be elected as a voting delegate by the governing body. Voting delegates must be registered in advance by September 21<sup>st</sup>. Up to three alternate delegates are also allowed.

Typically, the city council elects members of the governing body who will be attending the conference. Once the voting delegates have been selected, the City Clerk will file the appropriate paperwork with the League by September 27. Councilmembers Neal and Hands will be attending the League conference this year.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPOINT COUNCILMEMBERS DAVID NEAL AND CHRISTINE HANDS AS VOTING DELEGATES TO REPRESENT THE CITY AT THE 2019 KANSAS LEAGUE OF MUNICIPALITIES CONFERENCE. COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

7. Special Sales Tax renewal presentation.

City Administrator Chris Engel presented information regarding the sales tax rate in Merriam compared to other surrounding cities rates.

Merriam has a current tax rate of 9.475%. This rate is not the lowest in our area, however, many cities with lower base sales tax rates such as Prairie Village, Leawood, Overland Park Roeland Park and Lenexa have additional CID and TDD sales taxes that are added when making purchases at businesses within those taxing districts. Mr. Engel displayed a chart depicting the various rates of these cities and their additional CID and TDD sales taxes. One example showed Overland Park with a base sales tax rate of 9.100% but when making purchases

at certain retail developments within Overland Park, that sales tax rate could be as high as 10.600%.

Merriam does not have any CID or TDD taxing districts so the sales tax rate is always 9.475% no matter where goods are purchased in Merriam. This information was displayed to reveal the true sales tax rates of our surrounding cities based on the location within those cities where goods are purchased.

Staff is recommending renewing the  $\frac{1}{4}$  cent sales tax for streets, bridges and associated drainage as well as, stormwater drainage projects and debt service for only those types of improvements, if needed. Mr. Engel displayed a chart depicting what a  $\frac{1}{4}$  cent sales tax represents on a variety of purchases. A \$100 purchase results in \$0.25 of sales tax.

It is anticipated that the city will conduct a mail-in ballot in late January 2020 for renewal of the  $\frac{1}{4}$  cent sales tax. A mail-in ballot allows every registered voter in Merriam the opportunity to vote and decide if they want to renew the tax. If approved, the tax would be in effect January 1, 2021 and last for 10 years.

City staff will continue to provide information regarding the sales tax renewal at several upcoming city council meeting as well as, a plan to hold two public meeting to provide information and answer questions from residents.

#### 8. Monthly Finance Report.

Finance Director Cindy Ehart presented the Finance Report for the month of August.

Mayor Sissom presented Ms. Ehart with a Certificate of Appreciation for her 15 years of service to the City of Merriam. Ms. Ehart is retiring and her last day at Merriam will be September 23, 2019, she thanked the council for their support during her tenure as Finance Director.

City Administrator Chris Engel commented that the search for a new Finance Director is going well. There were 39 qualified applicants who submitted for the position. Of those 39 applicants, 24 of the applicants were either Finance Directors or Assistant Finance Directors. Once an applicant is selected, staff will bring that recommendation forward to the council for appointment.

### **B. Community Development/Public Works/CIP**

#### 1. CIP Update.(included in packet)

**VII. STAFF ITEMS**

**VIII. NEW BUSINESS**

**IX. EXECUTIVE SESSION**

**X. ADJOURNMENT**

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

**APPROVED: September 23, 2019**

Respectfully submitted,

*Juliana Pinnick*

Juliana Pinnick  
City Clerk