

**MERRIAM CITY COUNCIL MINUTES  
MERRIAM CITY HALL  
9001 W 62<sup>ND</sup> STREET  
Monday, September 28, 2020  
7:00 P.M.**

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

**I. CALL TO ORDER**

Mayor Ken Sissom called the meeting to order at 7:00 P.M.

**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; Bryan Dyer, Community Development Director; Donna Oliver, Finance Director; and Juli Pinnick, City Clerk.

**III. PUBLIC ITEMS**

In response to COVID-19, public comment that normally occurs during the City Council meeting has been temporarily suspended. Members of the public are still encouraged to share comments about matters that may or may not appear on the agenda. Public Comments are limited to five (5) minutes or a maximum of 850 words for written submissions.

**Please note: Public Comments will only be taken *via email* to the City Clerk at [jpinnick@merriam.org](mailto:jpinnick@merriam.org) prior to 6:00pm on the date of the meeting. *In accordance with the Governing Body Rules of Procedure, the City reserves the right to refuse Public Comments that are personal, impertinent or slanderous.***

S. Henderson, 5821 Mackey St. commented, I am writing in response to a public comment made by Sam Matier. I live on Mackey St. here in Merriam. When I

moved into the neighborhood 2 years ago in the spring, a litter of feral kittens were in my back yard in a window well. That year I adopted one of those, and my daughter found homes for 3, so 4 of the 5 were homed.

A neighbor who has since moved knew the process by the local animal shelters to trap and neuter ferals, thereby decreasing the future populations. Feeding them makes it easier to trap them. She was able to get neutered.

Since that time, on my own, I trapped a cat, which I think was more of a stray domestic who no longer has a home for whatever reason. I took it to two shelters and was turned away because they were full. The SPCA on Antioch told me to call Merriam Animal Control at the police department. Well that was a frustrating experience because I found out there is no animal control in Merriam, at least none that will come get feral cats and take them away. Also, I sought out a program I heard of that would come to your neighborhood and trap several cats at once for you and take them away, neuter and bring them back to release (which they say is the only humane way they will do it.) Unfortunately when they got my address as Johnson County instead of K.C. Kansas, they would not proceed to schedule it. The COVID happened and all the services for this shut down all summer.

So the only option is to trap and release, which myself and another neighbor have done for 4 cats at our own expense. Kansas City Spay and Neuter (now call Pet Resource) will spay or neuter, and gives them a rabies shot for \$35. So as a citizen, I think I and other neighbors have made the recommended attempts to decrease the feral population and its working.

Mr. Matier I have only known because he walks his dog off leash down our street and the dog Bella has run up into my yard and garage and startled me and chased my cat, which is not appreciated.

#### **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 September 14, 2020.
2. Consider approval of an agreement to purchase tasers in 2021.

Councilmember Hands requested item 2 be pulled from the consent agenda.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEM 1. COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

Councilmember Hands asked what fund the tasers would be purchased from.

Police Chief Darren McLaughlin commented that the tasers will be purchased using funds from the Equipment Reserve Fund.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEM 2. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

## **V. MAYOR'S REPORT**

1. Consider approval of a resolution terminating the Merriam Pointe Redevelopment Agreement.

Mayor Sissom explained that the next four items on the Agenda are all related to Tract B of the Merriam Pointe Redevelopment Project. Staff will make a presentation covering all four items and then there will be a series of motions related to these items. All items must be approved in order for the project to move forward. Once the presentation is over, Council will have the opportunity to ask questions.

Mr. Engel displayed a visual history of the development beginning in 2004 which depicted the development of the Merriam Pointe project. This TIF project has been very successful in the fact that in 2004 there was a large vacant building and vacant land which included a very large drainage ditch that was deemed undevelopable. The old vacant building was torn down and over the course of 16 years there have been four successful care dealerships opened.

To illustrate the success of the development, Mr. Engel noted that in 2019 those four dealerships have produced \$2 million in property tax revenue and \$1 million in sales tax revenue. This amount of revenue to the city's general fund is more than all residential property taxes collected in Merriam. By the city investing with the businesses in the community, it has allowed property tax mill rates to remain steady which helps all residents in Merriam.

While many of the lots in the development were built out, the Tract B parcel, remained a drainage ditch. In late 2016, the owner of Tract B, Mr. Richard Webb, approached the city with his vision to make the tract a developable site by re-channeling the water and filling in the ditch. This would be an expensive endeavor and Mr. Webb was able to secure some

investment partners to help get the site to a developable state. He approached the city to become an equity partner through TIF incentives. The City entered into a Redevelopment Agreement (RDA) with Mr. Webb for this project. The city's total investment in the project would be \$6 million. Prior to the development of the lot by Mr. Webb, the lot was assessed at \$0 and did not generate any tax revenue.

Today, the lot is a pad ready site for development of a car dealership. In 2019, the Reed family purchased the Hyundai dealership and the lot next to Hyundai and began building the Reed Dodge Chrysler Jeep Ram dealership. Once that dealership began construction, the Reed family wanted to purchase Mr. Webb's Tract B for a parking lot expansion of the new Dodge Chrysler Jeep Ram dealership. Because the city has a Redevelopment Agreement (RDA) with Mr. Webb, he is unable to sell to the Reed dealership. In order for Mr. Webb to be able to sell tract B to the Reed dealership, the city's RDA with Mr. Webb must be terminated.

Mr. Engel further explained the history and details of the Redevelopment Agreement (RDA).

In March 2011 the City executed a Redevelopment Agreement (RDA) for the Merriam Pointe project with Merriam Investors, LLC and Hendrick Automotive Group. Over the next several years, Merriam Pointe became the location of three new successful automobile dealerships. In 2016, Hendrick was released from that agreement after the successful completion of their development responsibilities leaving only the City of Merriam and Merriam Investors as participants.

Beginning in early 2016, the City began additional conversations with Merriam Investors and Merriam Luxury Imports aka Richard Webb, owner of Infiniti of Kansas City, about their desire to construct a new dealership south of Infiniti over a drainage area known as "Tract B." At that time, Mr. Webb indicated the cost to develop the site would be prohibitive without the assistance of \$6 million dollars in tax increment financing (TIF), as well as the purchase of surplus city property.

By 2017, city staff had negotiated the sale of the surplus property and drafted a Second Amended and Restated Redevelopment Agreement (RDA) with Merriam Investors and Merriam Luxury Imports granting up to \$6 million in TIF funding for the construction of a new dealership. City Council approved the new RDA on July 24, 2017 and Mr. Webb had until July 24, 2020 to construct his dealership. By early 2020, Mr. Webb had completed millions of dollars of site work to transform the drainage area into a pad-ready, revenue-producing site. However, due to his difficulties in securing a final tenant the City Council voted on May 11, 2020 to approve a Third Amended and Restated Redevelopment Agreement (RDA) that extended his completion deadline until

December 31, 2021.

Shortly after, the Mayor was approached by Mr. Reed requesting the City further work with Mr. Webb to facilitate the sale of Tract B from Mr. Webb to Mr. Reed. Mr. Reed is the new owner of Reed Hyundai and Reed Chrysler Dodge Jeep Ram (currently under construction to the south of Tract B). Mr. Webb was still having difficulty securing an end-user and desired to sell to Mr. Reed. However, due to restrictions within the existing RDA, Mr. Webb is unable to sell Tract B without a newly constructed dealership and still receive TIF reimbursement for his completed drainage improvements.

It is a City Council Goal to support existing businesses. Yet, it is important to all parties, especially the City, that this transaction be a true “win-win-win.” While Mr. Reed obtaining the property and Mr. Webb being reimbursed for his expenses are clear “wins” for them, it’s important to understand what the City gains in this transaction. This proposed agreement: decreases the City’s contribution to the deal by reducing the TIF reimbursement from \$6 million to \$5 million; increases the sales tax generated due to Mr. Reed’s multiple brands vs Mr. Webb’s single brand; and terminates the Merriam Pointe TIF years early returning all property taxes to the general tax rolls.

After many discussions between the principals, attorneys, and lenders, as well as several meetings with staff, including Mayor Sissom, a series of new agreements have been drafted that honor the intent of the existing RDA between the City and Mr. Webb while allowing for the sale of Tract B to Mr. Reed for the expansion of his new dealership as well as the possibility of future brand expansion.

The Termination Agreement indicates what obligations still exist and must be met for the successful termination of the existing RDA to occur. Specifically, the property must be sold to Mr. Reed, the site work completed by 12/31/21, and Mr. Webb must submit up to \$5 million in TIF-eligible expenses. Once complete, Mr. Webb will be eligible to receive up to \$5 million dollars in TIF-reimbursement from funds the City will deposit into an escrow account upon approval of the agreement. The Acknowledgement and Release and Assignment of Developer Rights releases Merriam Investors, LLC from their obligations under the existing RDA because they have been satisfied and assigns their developer rights to MLI. The Escrow Agreement outlines when and how the escrow funds will be distributed, or returned to the City for non-performance. The Termination and Release of Covenants, Easements and Reservations is signed by all property owners in Merriam Pointe and clears the property of all rights and restrictions.

Mr. Engel outlined what the Termination Agreement will accomplish:

**RDA (current agreement)**

45,000 sq. ft. dealership  
 \$6 million in TIF (\$4M increment + \$2M)  
 Payable once operational  
 Has until 12/31/21 to open  
 Only contemplates single brand  
 TIF runs until July 2023

**Termination Agreement (recommended)**

4-ac outdoor showroom + potential expansion  
 \$5 million in supplemental TIF  
 Payable at completion of construction  
 Has until 12/31/21 to complete construction  
 Chrysler, Dodge, Jeep, Ram + future use  
 TIF terms upon completion & returns to tax rolls

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE A RESOLUTION TERMINATING THE MERRIAM POINTE REDEVELOPMENT AGREEMENT AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING DOCUMENTS. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

2. Consider approval of a resolution transferring funds from the I-35 TIFB CIP Fund to the I-35 TIFB District Fund.

City Administrator Chris Engel stated that this item is another piece of the termination agreement. Once the termination and escrow agreement with Mr. Webb is approved, the City will need to fund an escrow account with \$5 million from I-35 TIFB funds. Currently the City has I-35 TIFB money in the following 2 funds:

I-35 TIFB District Fund	\$2,016,715
I-35 TIFB CIP Fund	<u>\$4,465,388</u>
Total	\$6,482,103

The I-35 TIFB District Fund collects TIF funds and makes expenditures per developer agreements. At the end of the year, excess TIF funds are transferred to the CIP fund to pay for capital improvements within the TIF boundaries.

In order to fund the escrow agreement referenced in the agreement with Mr. Webb, the City will need to transfer \$3 million back from the I-35 TIFB CIP Fund to the I-35 TIFB District Fund. The resolution is necessary to authorize the Finance Director to make this \$3 million transfer.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE A RESOLUTION TRANSFERRING FUNDS FROM THE I-35 TFB CIP FUND TO THE I-35 TIFB DISTRICT FUND. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**VI. PLANNING COMMISSION**

1. Consider approval of a preliminary development plan for an automobile dealership located at 7020 and 7000 W. Frontage Rd.

Community Development Director Bryan Dyer presented the background for this item. This item is also connected to the Termination Agreement. 7000 W. Frontage Road is currently owned by Merriam Luxury Imports, LLC. Merriam Luxury Import's principal member is Richard Webb. Mr. Webb is also the principal member of Infiniti of Kansas City. Mr. Webb has provided a letter stating that Reed Family Properties can act as owner/agent for the property located at 7000 W. Frontage Road.

As part of the original 2004 approval of the Merriam Pointe development, 7000 W. Frontage Road was conceived to remain a drainage way. In 2017, Mr. Webb received city approval to construct a 44,998 square foot dealership on the property. Before the dealership could be constructed a significant amount of dirt work and drainage improvements needed to occur on the property. Following city approval, Mr. Webb began working on those improvements, which have recently been completed.

Reed Family Properties is now requesting approval of a final plat and preliminary development plan to combine the 7000 W. Frontage Road lot with their existing automobile dealership that is under construction immediately to the south at 7020 W. Frontage Road. The final plat (Merriam Pointe Eighth Plat – PA20-000002) for the two properties is also on this City Council agenda.

Reed Family Properties is purchasing 7000 W. Frontage Road to add needed vehicle storage and parking for the Jeep Chrysler Dodge Ram dealership they are constructing. The additional property will provide 364 parking more spaces bringing the total number of spaces for the development to 615.

Reed Family Properties has future plans to construct a new automobile dealership on the 7000 W. Frontage Road lot. The submitted preliminary development plan has been designed for the potential of another dealership. A new preliminary development plan will need to be approved prior to the construction of the new dealership.

On September 2, 2020, the Planning Commission held a public hearing and received no comments from the public. The Planning Commission then closed the public hearing and based on information supplied by the applicant, as well as the criteria outlined in the Merriam Code and Kansas law as outlined in the Planning Commission Staff Report, unanimously recommended approval of the rezoning and associated preliminary

development plan, with conditions which were outlined in the Action Form and Staff Report included in the City Council Agenda Packet.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL CONCUR WITH THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE, WITH CONDITIONS, A PRELIMINARY DEVELOPMENT PLAN FOR THE PARKING LOT EXPANSION FOR AN AUTOMOBILE DEALERSHIP LOCATED AT 7000 AND 7020 W. FRONTAGE RD. AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. COUNCILMEMBER SILVERS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

2. Consider acceptance of the dedication of easements on Merriam Pointe Eighth Plat.

Community Development Director Bryan Dyer commented that this is the final item related to the Merriam Pointe Termination Agreement. The applicant, Reed Family Properties, represented by BHC Rhodes Engineering is requesting approval of a final plat to combine the property they currently own (7020 W. Frontage Road) with property they are in the process of purchasing from Merriam Luxury Imports (7000 W. Frontage Road). Reed Family Properties has also submitted an application requesting approval of a preliminary development plan (PUD20-000002) that combines the two properties and expands the Reed Jeep Chrysler Dodge Ram dealership (under construction) parking lot onto the property being acquired from Merriam Luxury Imports. That preliminary development plan is on this City Council agenda.

If approved, the final plat will combine Merriam Pointe Sixth Plat, Lot 1 (7000 W. Frontage Road) and Merriam Pointe Seventh Plat, Lot 1 (7020 W. Frontage Road) into one lot. The proposed final plat conforms with the submitted preliminary development plan for the subject properties.

A condition of approval is that the Merriam Pointe Eighth Plat be filed with the county prior to the issuance of an occupancy permit for the parking lot expansion.

The subject property is zoned PUD-G (Planned Unit Development - General) District and the proposed final plat will create one (1) lot (Lot 1: 363,077 sq. ft./8.3352 acres).

At their September 2, 2020 meeting, the Planning Commission unanimously approved the plat and forwarded it to the City Council for the acceptance of easements with conditions.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL ACCEPT THE DEDICATION OF EASEMENTS SHOWN ON THE MERRIAM**

**POINTE EIGHTH PLAT. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

3. Consider approval of an ordinance amending Chapter 74, Article XI-Solar Collection Systems of the Merriam Code of Ordinances.

Community Development Director Bryan Dyer provided the background for this item.

At the June 8, 2020 meeting, the City Council reviewed a staff memo concerning the city's solar collection system ordinances in Chapter 74, Article XI of the Merriam Code. After reviewing the memo, Council approved a motion directing the Planning Commission to draft, review, and consider amendments to the city's zoning ordinances related to the issuing of permits for solar collection systems. Before approving the motion, Council expressed a desire to streamline the solar collection system permitting process. Specifically, the Council requested the Planning Commission consider removing the conditional use permit and Planning Commission review requirements, allowing solar collection systems to face the right-of-way, and removing language concerning the abandonment and/or disrepair of solar collection systems.

At the August 5, 2020, Planning Commission meeting, Commissioners discussed Council's comments and concurred with their suggestions. The Commission then directed staff to draft an ordinance amending Chapter 74, Article XI – Solar Collection Systems.

Included in the Council Agenda Packet are “marked up” and “clean” versions of the draft ordinance. The ordinance removes the conditional use permit and Planning Commission review requirements, eliminates the abandonment and/or disrepair provisions, and allows solar collection systems to face the right-of-way. The installation of solar collection systems still requires the issuance of a building permit. The review of a solar collection system building permit will include determining if the installation complies with the requirements outlined in Chapter 74, Article XI. Code enforcement can pursue solar collection systems that are in disrepair through Merriam Code's nuisance provisions.

On September 2, 2020, the Planning Commission held a Public Hearing on the draft ordinance amending the Solar Collection System sections of the Merriam Code. There were no Public Comments and following the closing of the Public Hearing, the Planning Commission unanimously recommend approval of the draft ordinance.

Councilmember Hands asked when these provisions were last updated and how many solar panel collection systems have been installed.

Mr. Dyer responded that these regulations were last updated in 2011 and he estimates there have been about 15 solar collection installations. He will verify that number and report back to council.

Councilmember Yadrich asked if solar panel installations would be covered by the sustainability grants being offered in 2021.

Mr. Dyer responded yes, that solar panel installations would be covered through the sustainability grant program.

**COUNCILMEMBER YADRICH MOVED THAT THE COUNCIL CONCUR WITH THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE AN ORDINANCE AMENDING CHAPTER 74 OF THE MERRIAM CODE OF ORDINANCES RELATED TO INSTALLATION OF SOLAR COLLECTION SYSTEMS. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

## **VII. COUNCIL ITEMS**

### **A. Finance and Administration**

1. Consider approval of a Coronavirus Relief Fund Subrecipient Grant agreement with Johnson County.

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

The CARES Act established the Coronavirus Relief Fund (CRF) and appropriated \$150 billion in funding to state and local governments to cover costs incurred due to the COVID-19 public health emergency. In April, Johnson County received approximately \$116 million in CRF funding directly from the U.S. Treasury and subsequently received an additional \$8 million from the State for a total of approximately \$124 million. In June, the County announced its intention to divide the original allocation of \$116 million into three phases, including 45% or approximately \$50 million going to local government.

A committee of city and county representatives worked to develop a proposed method of sharing the Phase 1 funds to the various cities in Johnson County, which included immediate reimbursement of actual expenses incurred in response to the COVID-19 emergency and review and approval of potential additional expenses anticipated or desired through the remainder of 2020. Each city is eligible to receive a total allocation for both

categories that is based upon population. For Merriam, the total possible allocation is \$348,842.85. To date, the City has been reimbursed for \$67,749.57 in actual expenses and has received preliminary approval from the County for an additional \$281,093.28 in actual expenses, which will be submitted for reimbursement in the coming months.

The County has submitted a Subrecipient Grant Agreement ("Agreement"), which sets forth the terms and conditions associated with the City's acceptance of these funds. The Agreement defines the costs eligible for reimbursement as the necessary expenditures related to the City's response to COVID-19 and incurred between March 1, 2020 and December 30, 2020. Additionally, the Agreement includes provisions associated with reimbursement procedures, records retention, reporting requirements, and other standard federal contract terms. Finally, the Agreement and CARES Act may be amended as legislative changes are made or additional guidance becomes available.

Ms. Hauck displayed a chart depicting the expenses that the city has been reimbursed for to date and a list of planned expenses in the future. Planned expenses include upgrades to the city's technology operations, including a laptop pool that will allow employees to check out a laptop if they need to work from home, upgrades to the court software that will allow for texting and email of defendants. Upgrades to the city restroom facilities will include contactless doors faucets, soap and towel dispensers. There will also be air and surface sanitation equipment purchased.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE A SUBRECIPIENT GRANT AGREEMENT WITH JOHNSON COUNTY FOR CORONAVIRUS RELIEF FUNDS. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

2. Consider approval of an ordinance establishing a Federal Grant Fund. (recommend waiving the first reading)

Assistant City Administrator Meredith Hauck commented that this item is related to the Cares Funding and in order to better track expenditures and grant reimbursements related to the CARES Funding, staff recommends creating a new Federal Grant Fund. This fund will allow both the expenditures and reimbursements to be handled within the same fund. Without its creation, these unbudgeted expenditures will be funded out of existing department budgets within the General Fund and the Equipment

Reserve Fund, which could result in individual department expenditures exceeding their budgets.

There was some discussion regarding the fund and utilizing the fund for other grants.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE ESTABLISHING A FEDERAL GRANT FUND. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE AN ORDINANCE ESTABLISHING A FEDERAL GRANT FUND. COUNCILMEMBER NEAL SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

3. Monthly Finance Report. (August – included in packet)

Finance Director Donna Oliver commented that the sales tax collections have been coming in better than anticipated.

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

1. Community Development Update.

Community Development Director Bryan Dyer provided the following Community Development updates:

Switzer Senior Villas project has only landscaping to complete and they have been issued a Certificate of Occupancy.

The Reed car dealership has received their Certificate of Occupancy and they will be moving in soon.

**VIII. STAFF ITEMS**

**IX. NEW BUSINESS**

**X. EXECUTIVE SESSION**

**XI. ADJOURNMENT**

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER PAPE MOVED TO ADJOURN AT 8:15 PM. COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

Approved: October 12, 2020

Respectfully submitted,  
*Juliana Pinnick*  
Juliana Pinnick  
City Clerk