

MERRIAM CITY COUNCIL

**CITY HALL
9000 W. 62ND TERRACE
APRIL 27, 2009
7:00 P.M.**

CALL TO ORDER - PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Carl Wilkes

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; Bill Lietzke, Police Chief; Hye Jin Lee, Assistant Community Development Director; Cindy Ehart, Finance Director; Bop Pape, Fire Chief; Susan Hayden, Parks and Recreation Director; Randy Carroll, Public Works Director; and Juli Pinnick, City Clerk.

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 March 23, 2009.
2. Approval of the minutes of the Special Meeting held April 20, 2009.

3. Consider approval of a Memorandum of Understanding for an Emergency Relocation Facility.
4. Consider approval of Byrne Memorial Justice Assistance Grant.
5. Consider approval of 2009 Joint Governmental Agreement with Johnson County Transit for the EasyRide Program.
6. Consider approval of submission of 2009 Economic Stimulus Construction Project Applications to KDOT and authorize the Mayor, City Clerk and City Engineer to sign and execute the applications.
7. Consider approval of an Interlocal agreement with Overland Park for 240 feet of street and drainage improvement on 54th Terrace.

Councilmember Stephens moved that Item 2 be pulled from the Consent Agenda.

COUNCLMEMBER CRABTREE MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEM 1-7 EXCLUDING ITEM 2. THE MOTION WAS UNANIMOUSLY APPROVED.

Councilmember Stephens pointed out that the minutes should reflect the Executive Sessions occurred prior to the Fire Chief Appointment. The correction was noted.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEM 2 AS CORRECTED. THE MOTION WAS UNANIMOUSLY APPROVED.

IV. PRESENTATIONS TO OUTGOING ELECTED OFFICIALS

City Council President Nancy Hupp presented Mayor Wilkes with a certificate of appreciation for his eight years of service as Merriam Mayor. Mayor Wilkes was also presented with a framed print of Merriam Drive Circa 1940.

Irene French presented Mayor Wilkes with a gold leaf for the Giving Tree that will be placed in his honor at the Irene B. French Community Center.

Mayor Wilkes said a few words and congratulated Mayor-Elect Ken Sissom.

V. INSTALLATION OF NEWLY ELECTED OFFICIALS

City Clerk, Juli Pinnick administered the Oath of Office to Councilmembers John Crabtree, Chad Rowe, Chris Hands and Gayle Stephens.

City Clerk, Juli Pinnick administered the Oath of Office to Mayor Ken Sissom.

Mayor Sissom and newly sworn in Councilmembers took their places at the dais.

VI. 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.

There were two Public Hearings held regarding unsafe structures on properties located at 4806 Mastin and 5800 Hadley. Separate minutes were taken for the Public Hearings.

VII. MAYOR'S REPORT

1. Consider approval for a CMB non-consumption on the premises license for the premises located at 5800 Antioch (Hen House).

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL APPROVE A CMB NON-CONSUMPTION ON THE PREMISES FOR THE PREMISES LOCATED AT 5800 ANTIOCH. THE MOTION WAS UNANIMOUSLY APPROVED.

2. Election of City Council President.

COUNCILMEMBER HANDS NOMINATED COUNCILMEMBER HUPP AS CITY COUNCIL PRESIDENT.

COUNCILMEMBER LEAP NOMINATED COUNCILMEMBER STEPHENS AS CITY COUNCIL PRESIDENT.

Councilmember Stephens declined the nomination for City Council President.

**THE NOMINATION WAS UNANIMOUSLY APPROVED.
COUNCILMEMBER HUPP ABSTAINED.**

3. Election of Acting Council President (Vice President).

COUNCILMEMBER BERTONCIN NOMINATED COUNCILMEMBER STEPHENS AS ACTING COUNCIL PRESIDENT.

COUNCILMEMBER HANDS NOMINATED COUNCILMEMBER BURKS AS ACTING COUNCIL PRESIDENT.

Councilmember Burks declined the nomination and supported Councilmember Stephens as Acting Council President.

**THE NOMINATION WAS UNANIMOUSLY APPROVED.
COUNCILMEMBER STEPHENS ABSTAINED.**

4. Consider the appointment of Valerie Kutchko (AL) to the Parks and Recreation Advisory Board for the term expiring December 31, 2009.

Mayor Sissom introduced Valerie Kutchko.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE THE APPOINTMENT OF VALERIE KUTCHKO (AL) TO THE PARKS AND RECREATION ADVISORY BOARD. THE MOTION WAS UNANIMOUSLY APPROVED.

PLANNING COMMISSION

1. SU-1-09 – Special Use Permit to Operate an Indoor Sports and Recreation Skateboard Facility - Located at 9701 West 67th Street in an I-1, Light Industrial, Zoning District.

Assistant Community Development Director Hye Jin Lee presented the background for this item.

The subject property 9701 W 67th St is zoned I-1 (Light Industrial). The southern portion of the site is occupied by a wholesale lumber yard. The applicant is proposing to use approximately fifty percent of the northern most building for an indoor skateboarding facility. The other half of this building is being used by a local automotive dealer as an indoor vehicle storage facility.

The applicant is requesting to operate a controlled indoor skateboard facility that offers a safe environment to BMX bike riders, rollerbladers and skateboarders. The facility will serve youth from ages 5 to 18 and is meant to operate as a facility where parents can leave children while they run errands or as a supervised atmosphere for youth to go after school and on the weekends.

The applicant, Cory Arnold addressed the council stating that he had this same business in Overland Park for over four years. They shared space with a business called Inside Sports which was for baseball and football training. The entire building was purchased by Inside Sports as they needed more space. Mr. Arnold's business then moved out. The facility provides a safe and secure place for kids from ages 5-18 to come and have fun. Mr. Arnold explained that the kids are not allowed to hang out in the parking lots; they are there to skate. The exterior of the building will be updated with parking lot improvements, new signage and lighting.

Mr. Arnold explained that the facility will be secured both inside and out with staff. The facility will have designated sections for beginners, intermediate

and advanced skill levels to ensure safety. Mr. Arnold anticipates the facility being open by mid-June.

Councilmember Crabtree asked about medical personnel on site.

Mr. Arnold replied that during an event there will be medical staff on site and during regular open hours a nurse is always on-call. In addition all skaters will be required to wear helmets, knee and elbow pads.

COUNCILMEMBER BURKS MOVED THAT THE GOVERNING BODY, BASED ON THE EVIDENCE PRESENTED AT THE APRIL 1, 2009 PUBLIC HEARING, AS WELL AS, THE CRITERIA OUTLINED IN 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 SPECIAL USE PERMIT FOR A PRIVATE SPORTS OR RECREATION FACILITY LOCATED AT 9701 WEST 67TH STREET, IN AN I-1, LIGHT INDUSTRIAL ZONING DISTRICT. THE MOTION WAS UNANIMOUSLY APPROVED.

IX. COUNCIL ITEMS

A. Work Session

B. Finance and Administration Committee

1. Discussion regarding amending the Massage Therapy Ordinance related to amortization of Education and Training Requirements.(Chapter 15, section 15-12, B, 8).

Councilmember Burks provided the background for this item. The Finance and Administration Committee recommended approval of an amendment to Ordinance No. 1611 to allow one additional year for massage therapists to meet the educational requirements.

Councilmember Stephens suggested that the additional year begin May 1st rather than January 1st.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL DIRECT STAFF TO DRAFT AN ORDINANCE AMENDING CHAPTER 15 OF THE MERRIAM MUNICIPAL CODE RELATED TO AMORTIZATION OF EDUCATION AND TRAINING BY INCORPORATING THE PROPOSED LANGUAGE INCLUDING A BEGINNING DATE OF MAY 1ST. THE MOTION WAS APPROVED COUNCILMEMBERS HUPP AND LEAP VOTED NAY.

2. Discussion regarding amending the Massage Therapy Ordinance related to Issuance or Denial of Application (Section 15-14 and 15-29).

Councilmember Burks stated that the Committee was unable to come to a consensus on this issue. This issue relates to disallowing convicted felons from obtaining a Massage Business or Therapist license. The proposed language would allow for a convicted felon to obtain those licenses if that felony is five years old and is not a felony involving an assault or sex related crime. Councilmember Burks stated the he personally does not support changing the language and that this language would be imposed to benefit one person.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL DIRECT STAFF TO DRAFT AN ORDINANCE AMENDING CHAPTER 15 OF THE MERRIAM MUNICIPAL CODE RELATED TO ISSUANCE AND DENIAL OF APPLICATIONS FOR MASSAGE THERAPIST AND MASSAGE THERAPY ESTABLISHMENT LICENSES BY INCORPORATING THE PROPOSED LANGUAGE. THE MOTION WAS APPROVED COUNCILMEMBERS HUPP AND BURKS VOTED NAY.

3. Discussion regarding amending the Massage Therapy Ordinance section 15-16,c, related to the hours of operation.

Councilmember Burks commented that this item was not discussed at the Finance and Administration Committee however, there was a massage therapist who had requested additional hours for operation.

Councilmember Bertoncin commented that a store front business should be allowed to operate during the hours that best benefit them. However, the hours of operation regulations also pertain to home based businesses. The hours of operation for a home occupation for massage therapy operating between the hours of 6:00 a.m. and 1:00 a.m. is too disruptive for a residential neighborhood and should be more restrictive. On the other hand, in her opinion, store front businesses should be allowed to set their own hours of operation.

Councilmember Hupp commented that her understanding is that each home occupation has the hours of operation established on a case by case basis.

David A. Hustak, Bodywork by David, 6501 E. Frontage Rd., addressed the council regarding the hours of operation. His business having been opened for five years caters to individuals who work late shifts. Since the passing of the ordinance he has had to turn away several clients. Mr. Hustak requested that the hours be changed to 2:00 a.m.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL DIRECT STAFF TO DRAFT AN ORDINANCE AMENDING CHAPTER 15 OF THE MERRIAM MUNICIPAL CODE INCORPORATING THE LANGUAGE THAT THE BUSINESS SHALL BE CLOSED AND OPERATIONS SHALL CEASE BETWEEN THE HOURS OF 2:00 A.M. AND 6:00 AM. THE

MOTION WAS APPROVED. COUNCILMEMBERS BURKS, HUPP AND ROWE VOTED NAY.

4. Consider approval of amending the 2009 Schedule of Fees.

Councilmember Burks stated that since implementing the new massage therapy regulation it was discovered the Kansas Bureau of Investigations (KBI) charges \$30 for each background check conducted for Massage Therapist and Massage Business license holders. The City has paid the fee for the applications that have been processed so far. The Finance and Administration unanimously recommended approval of adding this fee to the City's Schedule of Fees.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL APPROVE AN AMENDMENT TO THE 2009 SCHEDULE OF FEES TO ADD A BACKGROUND CHECK FEE FOR ALL NEW MASSAGE THERAPIST AND MASSAGE THERAPY ESTABLISHMENT LICENSES. THE MOTION WAS UNANIMOUSLY APPROVED.

C. Community Development/Public Works Committee

1. Update regarding 47th Street.

Hye Jin Lee commented that staff received an e-mail from the Unified Government of Wyandotte County that the funding for this project may not be available this year and may be put off until 2010. Funding is expected to be available January 2010. It was the city's intention to begin construction the summer of 2009. The design could be completed this year however, solicitation of bids may need to be held back until funding can be secured. The plan is to do the construction of 47th St. in 2010. Staff will continue to secure all of the easements. There was a suggestion to solicit bids in the winter and get the notice to proceed in the spring stipulating that the pricing remain valid until then.

Mayor Sissom directed staff to move forward with soliciting bids in the winter for a spring 2010 notice to proceed, contingent upon receiving funding from the Unified Government of Wyandotte County.

Kathy Rowe, 4749 Knox commented that this project has been moved back several times, and what is to stop the Unified Government from moving it back again. The street is very busy and desperately needs to be improved. There is no shoulder and is dangerous. Mrs. Rowe indicated that she is willing to go to the Unified Government to express the importance of this project.

2. Update on development projects

Merriam Village- DDR was contacted and replied that there are no contracts for tenants.

Merriam Pointe- No building permits have been issued for the hotels yet. Apparently there is a holdup in the issuing of the waste water permits from Johnson County Wastewater.

Councilmember Rowe asked staff to make a phone call to Johnson County Wastewater to find out what the hold up is on the permit.

Shawnee Mission Medical Center- Medical Office Building is nearly ready for occupancy.

Pointe at Prairie Haven and Timber Ridge-

City Administrator Phil Lammers commented that staff met with the representatives from both Pointe at Prairie Haven and Timber Ridge. Both projects banks have hired development representatives to manage the properties.

A letter was submitted from the owner of Timber Ridge that indicated that the project may no longer be viable with the current density. Any changes to the density would require each project going back before the Planning Commission.

Pointe at Prairie Haven owners, Bank Liberty, informed the city that the water, sanitary and storm sewer have been installed on the site. They indicated that they hoped the city was still interested in purchasing the park area. The representatives are looking at alternate ways to develop the property. However, with the sewer and water installed, it may be difficult to make many alterations. It is staff's belief that they too, may wish to increase the project density.

Code compliance issues will be kept up according to the owners. Staff indicated that no trespassing signs are needed on the site. Mayor Sissom indicated that there needs to be a barricade or cable to block off the entrance to keep cars that don't belong there out of the site.

Mayor Sissom further added that he is not interested in increasing the density on either of these projects.

Councilmember Stephens stated that the Community Development/Public Works Committee had an excellent presentation on wind turbines.

X. STAFF ITEMS

XI. OLD BUSINESS

1. Take Charge Challenge Update

Councilmember Hands reported that the Take Charge Committee, along with KCPL and Home Depot will be hosting a booth at the Turkey Creek Festival and may possibly have a presence in the parade. There is a need for volunteers at the booth.

XII. NEW BUSINESS

Councilmember Hupp reported that last Friday, she and Councilmember Hands, along with staff from Public Works planted a sunset maple tree at Crestview and Merriam Park Elementary Schools.

XIII. EXECUTIVE SESSION

XIV. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER CRABTREE MOVED TO ADJOURN AT 9:20 PM. COUNCILMEMBER ROWE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,



Juliana Pinnick
City Clerk