

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
August 28, 2014
7:00 PM**

Call to Order

1. **Roll Call** ____ Roberts ____ Longanecker ____ Brown ____ Crooks ____ Cross ____ Troutner
2. **Welcome**
3. **Pledge of Allegiance**

Consent Agenda *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

4. Agenda Approval

Regular Agenda

5. **Public Comments.** Persons who wish to address the City Council regarding items not on the agenda and that are under the jurisdiction of the City Council may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court or other outside tribunals are not permitted. Please notify the City Clerk before the meeting if you wish to speak. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
6. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.
7. Request for Donation to Cops and Bobbers

Business Requiring Action

8. **CONSIDER ORDINANCE NO. 976 GRANTING ANNEXATION FOR SPECIFIC LAND TO THE CITY OF EDGERTON, KANSAS, PURSUANT K.S.A. 12-520**

Motion: _____ Second: _____ Vote: _____

9. **CONSIDER ORDINANCE NO. 977 AMENDING CHAPTER XI, ARTICLE 1, SECTION 11-101 OF THE CODE OF THE CITY OF EDGERTON, KANSAS, CONCERNING THE UNIFORM PUBLIC OFFENSE CODE**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER ORDINANCE NO. 978 AMENDING CHAPTER XIV OF THE EDGERTON, KANSAS MUNICIPAL CODE TO INCORPORATE THE 2014 STANDARD TRAFFIC ORDINANCE, TO AMEND CERTAIN SECTIONS THEREOF, AND TO AMEND LOCAL TRAFFIC REGULATIONS, WHICH SHALL INCLUDE INCORPORATION OF ARTICLE 19 OF CHAPTER 8 OF THE KANSAS STATUTES ANNOTATED ON COMMERCIAL MOTOR VEHICLE SAFETY**

Motion: _____ Second: _____ Vote: _____

11. **CONSIDER ORDINANCE NO. 979 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 179 ACRES OF LAND [LOCATED ON THE SOUTHEAST CORNER OF 191ST STREET AND WAVERLY ROAD] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT**

Motion: _____ Second: _____ Vote: _____

12. **CONSIDER ORDINANCE NO. 980 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 107 ACRES OF LAND [LOCATED AT ON THE SOUTHWEST CORNER OF 191ST STREET AND HOMESTEAD LANE] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT**

Motion: _____ Second: _____ Vote: _____

13. **CONSIDER RENEWAL AND AMENDMENT TO RESIDENTIAL SOLID WASTE AGREEMENT WITH DEFFENBAUGH INDUSTRIES**

Motion: _____ Second: _____ Vote: _____

14. Report by the City Administrator

- Update regarding Conditional Use Permit application for an asphalt and concrete plant at 20125 Sunflower Road
- Set Date for City Council Work Session regarding Sidewalk Maintenance and Snow Removal

15. Report by the Mayor

- League of Kansas Municipalities Annual Conference, October 11-13, Wichita, KS

16. Future Meeting/Event Reminders:

- September 1st - City Hall Closed for Labor Day
- Week of September 1st – Trash Pickup Friday
- September 4th 6:00-7:30 PM - Southwest Johnson County Elected Officials Forum – Hosted by USD 231 at District Office Building, 231 E. Madison St.
- September 9th 7:00 PM – Planning Commission Meeting
- September 11th 7:00 PM – City Council Meeting
- September 17th Noon – Senior Lunch
- September 25th 7:00 PM – City Council Meeting

17. **Adjourn** Motion: _____ Second: _____ Vote: _____

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 976 An Ordinance Granting Annexation For Specific Land To The City Of Edgerton, Kansas, Pursuant K.S.A. 12-520

Department: Administration

Background/Description of Item: In 2013, the Kansas Department of Transportation (KDOT) completed the construction of Homestead Lane from Interstate 35 to 191st Street to support the development of Logistics Park Kansas City. In February 2014, KDOT transferred title to right-of-way for Homestead Lane to the City of the Edgerton.

Kansas Statute K.S.A. 12-520(a)(2) allows the City of Edgerton to annex any land that is owned by or held in trust for the City, regardless of whether the land adjoins the City. Therefore, City Attorney has drafted Ordinance No. 976 as described and diagramed in Exhibits A and B be annexed and become part of the incorporated boundaries of the City of Edgerton, Kansas.

Enclosed is a map of the described property as confirmed by City Engineer. Area 1 is on the west side of Homestead from 199th Street north to the mid-section line. Area 2 is right-of-way on the east side of Homestead from 191st south to the mid-section line acquired from the Holtgraver property. Area 3 is right-of-way north of 199th Street on the east side acquired from Prairie Tree.

Enclosure: Draft Ordinance No. 976 (including Exhibits A and B)
Map

Related Ordinance(s) or Statute(s): K.S.A. 12-520

Recommendation: Approve No. 976 An Ordinance Granting Annexation For Specific Land To The City Of Edgerton, Kansas, Pursuant K.S.A. 12-520

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: August 26, 2014

ORDINANCE NO. 976

**AN ORDINANCE GRANTING ANNEXATION FOR SPECIFIC LAND
TO THE CITY OF EDGERTON, KANSAS, PURSUANT K.S.A. 12-520**

WHEREAS, the Kansas Department of Transportation ("KDOT") recently transferred title to right-of-way for Homestead Lane from KDOT to the City (Deed attached as **Exhibit A**); and

WHEREAS, K.S.A. 12-520(a)(2) allows the City to annex any land that is owned by or held in trust for the City, regardless of whether the land adjoins the City.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. That the property described and diagramed in **Exhibits A** and **B** is hereby annexed to become part of the incorporated boundaries of the City of Edgerton, Kansas pursuant K.S.A. 12-520(a)(2).

Section 2. That pursuant to K.S.A. 12-522, the City Clerk is hereby ordered to file a Certified Copy of this ordinance with the Clerk of Johnson County, the Register of Deeds of Johnson County, and the Johnson County Election Commissioner.

Section 3. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

PASSED by the Governing Body of the City of Edgerton, Kansas, and approved by the Mayor on the 28th day of August, 2014.

(Seal)

Donald Roberts, Mayor

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

Exhibit A

Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745

Mike King, Secretary
William F. Vicory, Chief



Phone: 785-296-3501
Fax: 785-296-0009
Toll Free: 877-461-6817
Hearing Impaired - 711
publicinfo@ksdot.org
<http://www.ksdot.org>

Sam Brownback, Governor

February 21, 2014

Johnson County Engineer's Office
Attn.: Mr. Brian Pietig
1800 W. 56 Hwy
Olathe, Kansas 66061

RE: Release of Highway Right of Way for County Roads
Project No. 35-46 KA 1109-02, Johnson County
C/A 3369 - Tract Nos. 10-12

Dear Mr. Pietig:

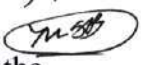
Enclosed is the recorded quitclaim deed for the highway right of way for Homestead Road as part of the referenced highway project. The deed has been recorded in the Johnson County Register of Deeds Office.

Thank you for your patience with this transaction. If you have any questions, please contact this office, (785) 296-6929.

Sincerely,

William F. Vicory, Chief
Bureau of Right of Way

Mike Stock, P.E.

Mike Stock, P.E. 
Engineering Assistant to the
Chief of Right of Way

WFV: MS: msb

Enclosure

C: Mike Stringer, District I Engineer
Steve Willett, District I Land Surveyor
Howard Lubliner, Acting District I Metro Engineer – Olathe
Ami Fulghum, Bureau of Fiscal Services – Procurement and Inventory Section

Johnson County Tr. 10-12 CSA 35-46 KA-1109-02 12/18/13 Job No. 3369 Page 1 of 3
No Sales Validation Required KSA 79-1437e(a)(13)

CHECKED
KA
12/19/2013

QUITCLAIM DEED

THIS DEED, Made December 18, 2013, by and between The State of Kansas, acting by and through Michael S. King, as Secretary of Transportation of the State of Kansas, of the first part, and City of Edgerton of Johnson County, in the State of Kansas of the second part:

WITNESSETH, That said party of the first part, in consideration of the sum of one dollar and other valuable consideration to it duly paid, has sold, and by these presents does Remise, Release and Quitclaim unto the said parties of the second part, their heirs and assigns, forever, all that tract of land situated in the County of Johnson and the State of Kansas described as follows, to-wit:

- ✓ (a) A tract of land in the Southeast Quarter of Section 4, Township 15 South, Range 22 East of the 6th P.M., Johnson County, Kansas; described in deed recorded in Book 201109, Page 7810, and recited verbatim as follows: "(a) A tract of land in the Southeast Quarter of Section 4, Township 15 South, Range 22 East of the 6th P.M., described as follows: BEGINNING at the Southeast corner of said Quarter Section; FIRST COURSE, thence on an assumed bearing of South 88 degrees 29 minutes 07 seconds West, 656.98 feet along the South line of said Quarter Section; SECOND COURSE, thence North 01 degree 30 minutes 53 seconds West, 20.00 feet to the Northerly right of way line of existing 199th Street; THIRD COURSE, thence North 61 degrees 55 minutes 13 seconds East, 111.80 feet; FOURTH COURSE, thence North 88 degrees 29 minutes 07 seconds East, 350.00 feet; FIFTH COURSE, thence North 70 degrees 39 minutes 15 seconds East, 194.76 feet to the Westerly right of way line of existing Homestead Lane; SIXTH COURSE, thence North 02 degrees 12 minutes 32 seconds West, 1186.18 feet along said Westerly right of way line to the North line of the Southeast Quarter of said Southeast Quarter Section; SEVENTH COURSE, thence North 88 degrees 31 minutes 39 seconds East, 20.00 feet along said North line to the Northeast corner of said Southeast Quarter of the Southeast Quarter Section; EIGHTH COURSE, thence South 02 degrees 12 minutes 32 seconds East, 1315.81 feet along the East line of said Quarter Section to the POINT OF BEGINNING. The above described tract contains 1.70 acres, which includes 0.90 acre of existing right of way, resulting in an acquisition of 0.80 acre, more or less."

✓ (b) A tract of land in the Northwest Quarter of Section 3, Township 15 South, Range 22 East of the 6th P.M., Johnson County, Kansas; as described in deed recorded in Book 201204, Page 1961, and recited verbatim as follows: "(a) A tract of land in the Northwest Quarter of Section 3, Township 15 South, Range 22 East of the 6th P.M., described as follows: BEGINNING at the Southwest corner of said Quarter Section; FIRST COURSE, thence on an assumed bearing of North 88 degrees 26 minutes 03 seconds East, 300.63 feet along the South line of said Quarter Section; SECOND COURSE, thence North 01 degree 49 minutes 33 seconds West, 319.56 feet; THIRD COURSE, thence North 23 degrees 37 minutes 38 seconds West, 53.85 feet; FOURTH COURSE, thence North 01 degree 49 minutes 33 seconds West, 2148.99 feet; FIFTH COURSE, thence North 43 degrees 14 minutes 32 seconds East, 102.62 feet; SIXTH COURSE, thence North 88 degrees 10 minutes 23 seconds East, 666.09 feet to the West line of a tract of land described in a deed recorded in Book 3047, Page 6 in the Register of Deeds Office, Johnson County, Kansas; SEVENTH COURSE, thence North 01 degree 49 minutes 37 seconds West, 30.00 feet along said West line; EIGHTH COURSE, thence North 88 degrees 10 minutes 23 seconds East, 306.00 feet to the East line of said tract of land; NINTH COURSE, thence North 01 degree 49 minutes 37 seconds West, 30.00 feet along said East line to the North line of said Quarter Section; TENTH COURSE, thence South 88 degrees 10 minutes 23 seconds West, 1341.25 feet along said North line to the Northwest corner of said Quarter Section; ELEVENTH COURSE, thence South 02 degrees 10 minutes 09 seconds East, 2649.70 feet along the West line of said Quarter Section to the POINT OF BEGINNING. The above described tract contains 19.00 acres, which includes 1.82 acres of existing right of way, resulting in an acquisition of 17.18 acres, more or less."

✓ (c) A tract of land in the Southwest Quarter of Section 3, Township 15 South, Range 22 East of the 6th P.M., Johnson County, Kansas; as described in District Court Case Number 11 CV 8581, tract 12 (a), and recited verbatim as follows: "(a) A PERMANENT EASEMENT for highway right of way, removal of borrow material, or for other highway purposes over and upon a tract of land in the Southwest Quarter of Section 3, Township 15 South, Range 22 East of the 6th P.M., described as follows: BEGINNING at the Northwest corner of said Quarter Section; FIRST COURSE, thence on an assumed bearing of North 88 degrees 26 minutes 03 seconds East, 300.63 feet along the North line of said Quarter Section; SECOND COURSE, thence South 01 degree 49 minutes 33 seconds East, 180.44 feet; THIRD COURSE, thence South 19 degrees 58 minutes 32 seconds West, 53.85 feet; FOURTH COURSE, thence South 01 degree 49 minutes 33 seconds East, 2200.00 feet; FIFTH COURSE, thence South 42 degrees 48 minutes 23 seconds East, 160.60 feet; SIXTH COURSE, thence North 88 degrees 24 minutes 21 seconds East, 585.00 feet; SEVENTH COURSE, thence South 60 degrees 09 minutes 53 seconds East, 105.48 feet to the Northerly right of way line of existing 199th Street; EIGHTH COURSE, thence South 01 degree 35 minutes 39 seconds East, 25.00 feet to the South line of said Quarter Section; NINTH COURSE, thence South 88 degrees 24 minutes 21 seconds West, 1043.02 feet along said South line to the Southwest corner of said Quarter Section; TENTH COURSE, thence North 02 degrees 12 minutes 32 seconds West, 2631.62 feet along the West line of said Quarter Section to the POINT OF BEGINNING. The above described tract contains 18.04 acres, which includes 1.83 acres of existing right of way, resulting in an acquisition of 16.21 acres, more or less."

RESTRICTIVE COVENANT: Grantees, for their heirs and assigns, do hereby covenant and agree, said covenant to run with the land, that the land conveyed herein shall not be used for billboards, signboards or other outdoor advertising purposes.

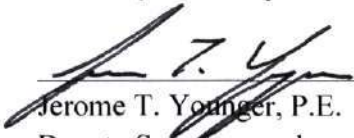
The above described land is subject to easement for the right of ingress and egress, reconstruction, and maintenance of all existing utilities and appurtenances thereto, together with the appurtenance and all the estate, title and interest of said party of the first part therein.

TO HAVE AND TO HOLD ALL and singular the above-described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

I, Jerome T. Younger, P.E., Deputy Secretary and State Transportation Engineer, pursuant to the authority delegated to me by the Secretary of the Kansas Department of Transportation under K.S.A. 75-5005, hereby certify that I have authority to act on behalf of the Secretary of Transportation when the Secretary is absent or unavailable, and further certify I am signing the foregoing document in accordance with that authority.

Michael S. King
Secretary of Transportation

BY:


Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, that on this 13th day of January, 2014, before me, that the undersigned, a Notary Public in and for the County and State aforesaid, came Jerome T. Younger, P.E., Deputy Secretary and State Transportation Engineer for the State of Kansas, who is personally known to me to be the same person who executed the foregoing instrument of writing and such person acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

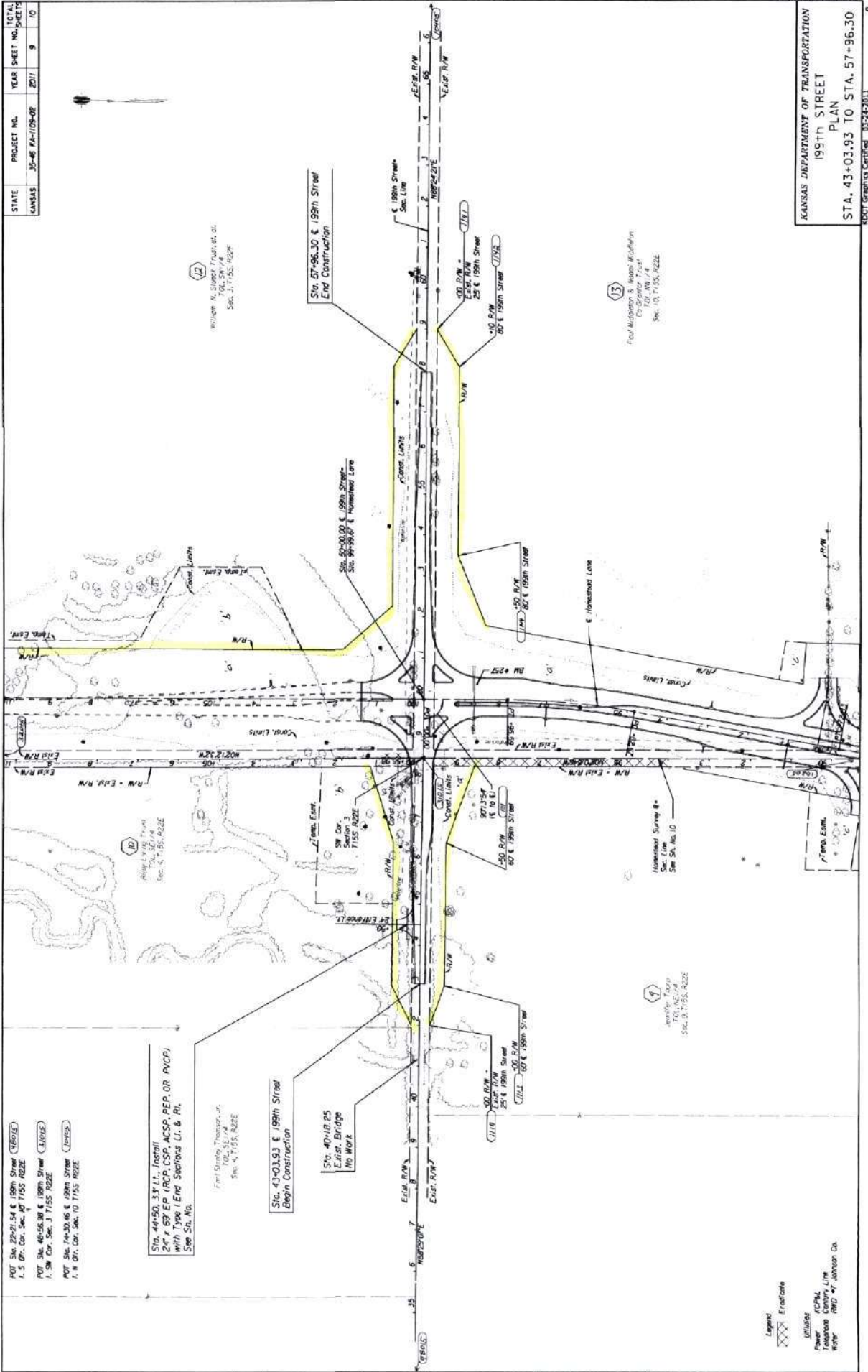

Notary Public

My Commission Expires:

03/12/2017



STATE	PROJECT NO.	YEAR	SHEET NO.	TOTAL
KANSAS	35-46 KA-109-02	2011	9	10



KANSAS DEPARTMENT OF TRANSPORTATION
199TH STREET
PLAN
STA. 43+03.93 TO STA. 57+96.30

KSOT Graphics Center 03-24-2011

DATE	BY	REVISIONS
03/24/2011	J. Johnson	1. Initial Design

Plotted by dmyrand Date: 3/24/2011 File: J:\KDOT\35-46 KA-109-02\Road\gn199th\ROW Only - Do Not Delete\11092P15.dgn

10

Widmer + GmG, Ltd.
TOL 5E14
Sec. 4.7/55. P220

Sls. 99-25 Lt. Remove
Exist. 12"x20" CMP
See Sh. No.

Sta. 96+78.47, Install
6' x 3' Type 2 Curb Inlet Lt.
Install 36" x 36" CRP (ACP) (E)
AND 36" x 11" CRP (ACP)
Storm Sewer (W)
with Type I End Section Lt.

Sta. 93+00, Install
4' x 3' Type 2 Curb Inlet Lt.
Install 15' x 10' CAP (ACP)
Storm Sewer (W)
with Type I End Section Lt.
See Sh. No.

increase in demand for the product.

$\frac{R}{W} = \frac{P}{W}$

140.05	Homebased L.A.	
50	Temp. Emp.	12.9%
235	Homebased L.A.	

Sta. 91+00. Install
4' x 3' Type 2 Curb Inlet Lt.
Install 15" x 58" CRP (RCP)
Storm Sewer (RW)
with Type I End Section R.

See 5th No.

UNITED
Power KCP&L
Telephone Century Link

Water RWD #7 Johnson Co.

KANSAS DEPARTMENT OF TRANSPORTATION
HOMESTEAD LANE
PLAN
STA. 91+00 TO STA. 101+53.62
DOT Graphics Certified 03-15-2011

D.M. #258 Top of Flange Edg Side Transformer Pole
40.87' W. of Sta. 114+36.71 Elev. 987.06

former Pole Base of the SE Corner 193th and Homestead
D08,02

2. Nail end barrier caps in bridge bays. 3. Fill Moil and Weather in corner 1. 4. Centerline East-West Road 5. Centerline North Road	B.M. = 25' ± 36.68 ft.	Cul Square on Concrete @ Sta. 98+70.45	E
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Diagram showing a vehicle on a road. A yellow highlighted area is labeled "10'". A line points to the "10' Road" label.

See Sh. No. _____

with Type I Enclosure

Storm Sewer _____

Sanitary Sewer _____

Utility _____

Water _____

Gas _____

Telephone _____

Electric _____

Other _____

MD • Johnson Co.

Plotted by: L.rocke
File: JMKDOT35-4

DATE	BY	
DATE	BY	
DATE	BY	

75 94231

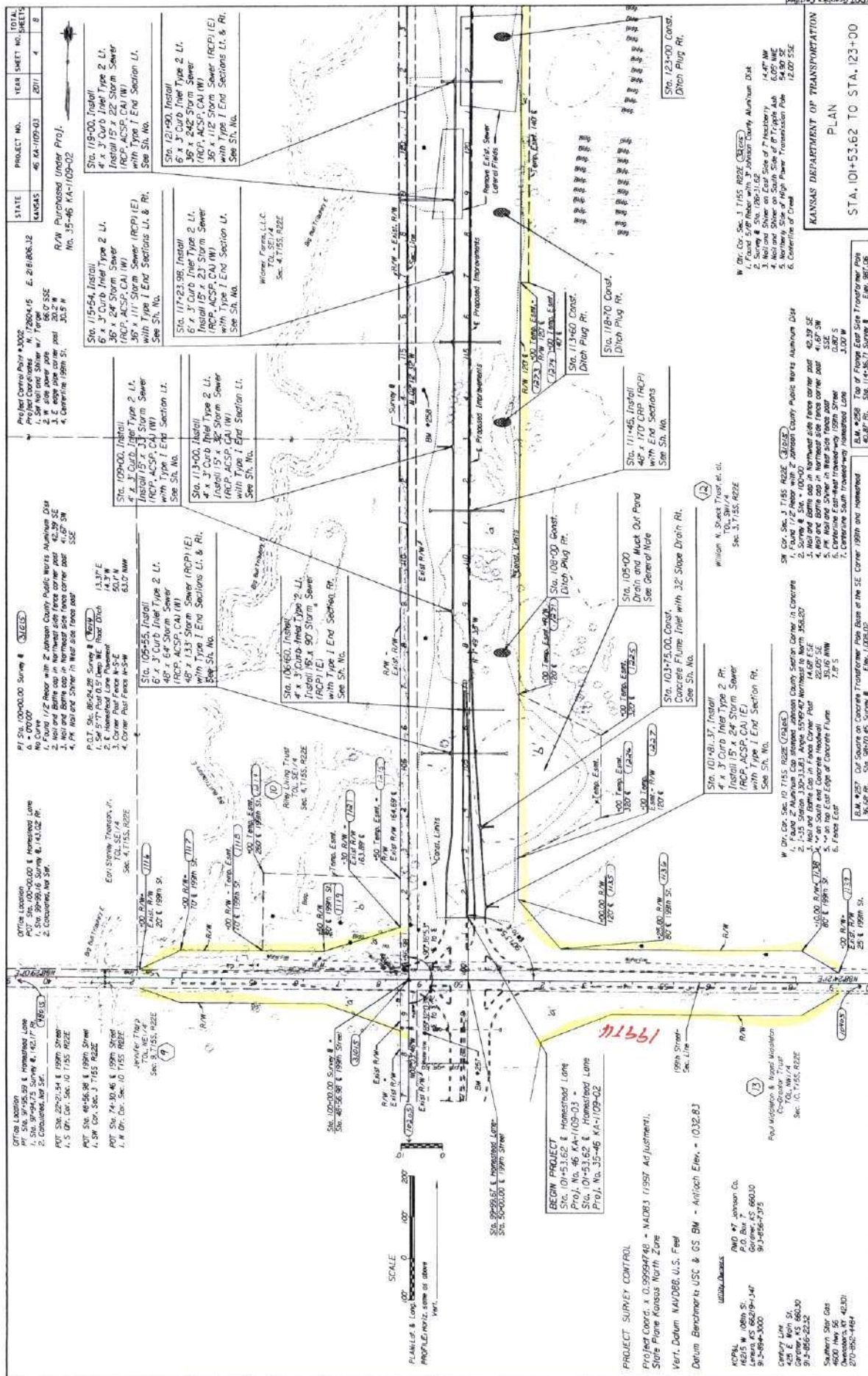
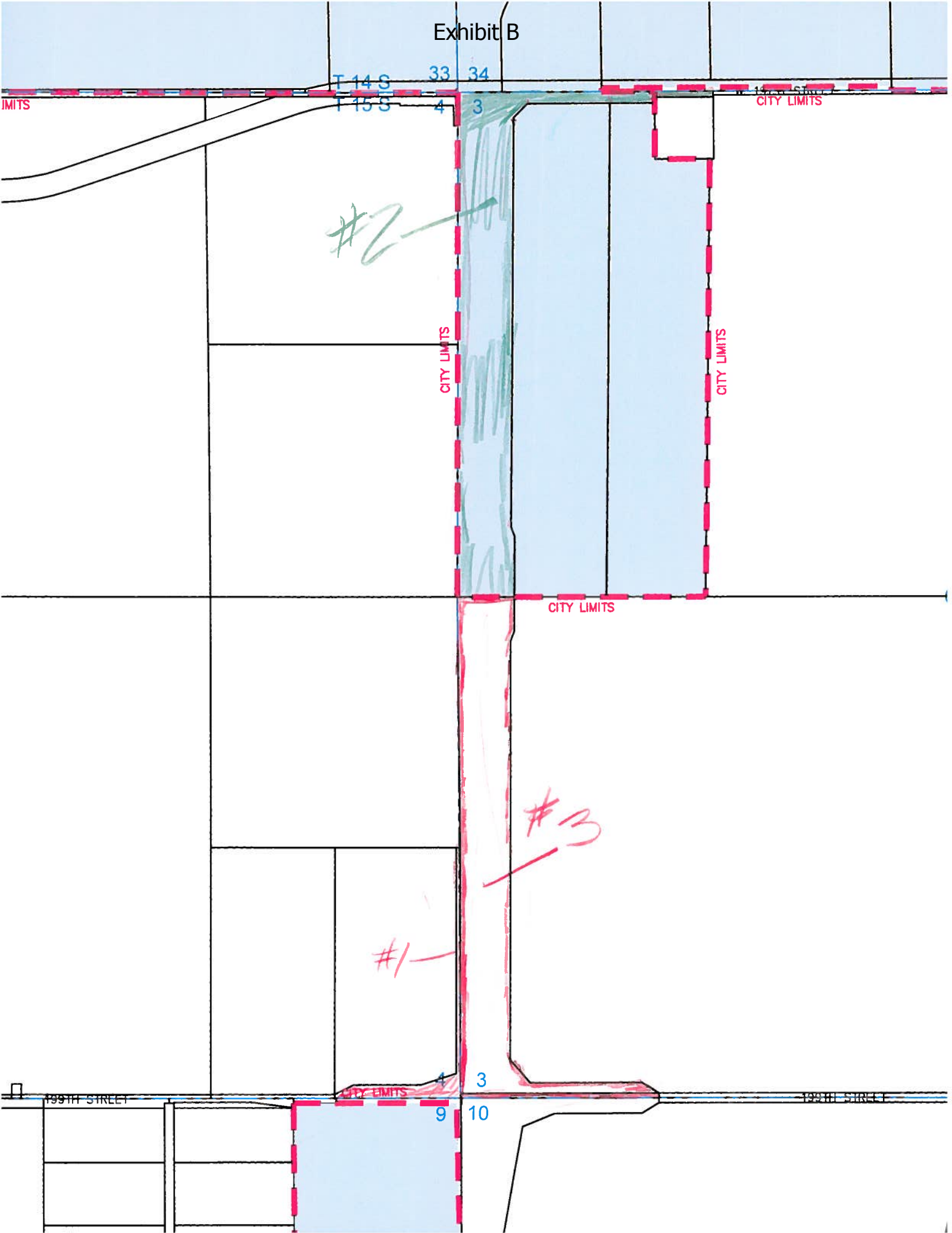


Exhibit B



AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 977 Amending Chapter XI, Article 1, Section 11-101 Of The Code Of The City Of Edgerton, Kansas, Concerning The Uniform Public Offense Code

Department: Administration

Background/Description of Item: Annually, the League of Kansas Municipalities prepares and publishes the code known as the Uniform Public Offense Code (UPOC) for Kansas Cities. This ordinance will adopt the Uniform Public Offense Code Edition 2014, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are omitted, deleted, modified, or changed Section 11-102 of the existing Code of the City of Edgerton.

Please find enclosed with this agenda item an article prepared by the League of Kansas Municipalities regarding the changes in the UPOC.

Enclosure: Draft Ordinance No. 977
August 2014 Article in Kansas Government Journal regarding Changes to 2014 UPOC

Related Ordinance(s) or Statute(s): Edgerton City Code Chapter XI

Recommendation: Approve Ordinance No. 977 Amending Chapter XI, Article 1, Section 11-101 Of The Code Of The City Of Edgerton, Kansas, Concerning The Uniform Public Offense Code

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: August 26, 2014

ORDINANCE NO. 977

AN ORDINANCE AMENDING CHAPTER XI, ARTICLE 1, SECTION 11-101 OF THE CODE OF THE CITY OF EDGERTON, KANSAS, CONCERNING THE UNIFORM PUBLIC OFFENSE CODE

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS:

SECTION ONE. That Chapter XI, Article 1, Section 11-101 of the Code of the City of Edgerton is hereby amended to read as follows:

11-101. UNIFORM CODE INCORPORATED. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Edgerton, Kansas, that certain code known as the "Uniform Public Offense Code," Edition 2014 prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are omitted, deleted, modified, or changed by Section 11-102 of the existing Code of the City of Edgerton. One copy of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 977" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open for inspection and available to the public at all reasonable hours.

SECTION TWO. Former Chapter XI, Article 1, Section 11-101 of the Code of the City of Edgerton is hereby repealed.

SECTION FOUR. This Ordinance shall take effect and be in force after its passage, approval and publication as provided by law.

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 28th DAY OF AUGUST, 2014.

CITY OF EDGERTON, KANSAS

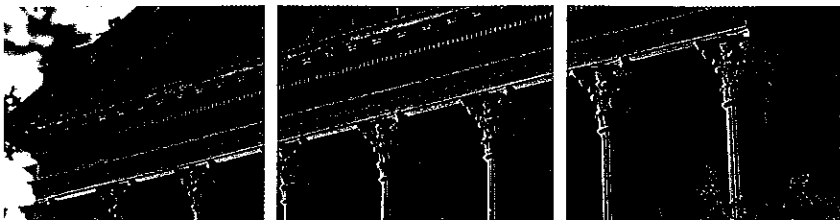
By: _____
Donald Roberts, Mayor

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney



Legal Forum

by Nicole Proulx Aiken

2014 Uniform Public Offense Code and Standard Traffic Ordinance Changes

The 2014 Uniform Public Offense Code (UPOC) and Standard Traffic Ordinance (STO) are available for cities to order. (See the order form in this month's KGJ or order online at www.lkm.org.) Most of the changes to the STO are diminutive in nature. As such, this article focuses on the changes to the UPOC.

Four years ago, the Kansas Legislature recodified the state criminal code. This recodification took effect on July 1, 2011. As noted in Sandra Jacquot's July 2012 Legal Forum, LKM chose to gradually incorporate the changes in the state criminal code to the UPOC. As these changes occurred, cities could still enforce the UPOC, because the publication did not conflict with state law. The 2014 edition reflects all of the changes made by the Legislature in the 2011 recodification. The changes are too numerous to discuss in a single Legal Forum, but the publication and order form provide a list of every section changed. City officials and staff should note that the name of some of the offenses changed. For example, section 3.9 "Criminal Defamation" changed to "Criminal False Communication," section 6.20 "Computer Trespass Computer Password Disclosure" changed to "Unlawful Acts Concerning Computers," section 6.21 "Posting Land" changed to "Taking Wildlife Without Permission on Land Posted 'By Written Permission Only,'" section 7.4 "Interference; Administration of Justice" changed to "Interference with the Judicial Process," section 9.11 "Funeral Picketing" changed to "Unlawful Public Demonstration at a Funeral," and section 11.9 "Permitting Premises to be Used for Commercial Gambling" changed to "Commercial Gambling."

Most noteworthy are the changes to Article 10 in light of HB 2578, the firearms and knives bill passed by the Legislature this year. Here is a list those changes:

- Section 10.1.1 (Criminal Carrying of a Weapon): Subsections (a)(4) and (a)(5) were deleted from this section, because cities can no longer charge individuals for openly carrying a firearm or transporting a loaded firearm in a motor vehicle.

- Section 10.3 (Criminal Disposal of a Firearm): While most of this section remains the same, the offense's name has changed to "Criminal Distribution of Firearms to a Felon."

- Section 10.3.1 (Criminal Possession of a Firearm): This section was deleted. The offenses charged in this section include: (1) unlawfully possessing a firearm by a person who is addicted to a controlled substance; (2) unlawfully possessing a firearm on school property; and (3) refusing to surrender or remove a firearm from school property, can be found in section 10.1 (Criminal Use of a Weapon).

- Section 10.4 (Confiscation, Disposition of Weapons): This section has significantly changed, because confiscated weapons can no longer be destroyed unless they are in poor condition. Instead, weapons must be forfeited to: (1) the law enforcement agency that seized the weapon; (2) the Kansas bureau of investigation for law enforcement; (3) a county regional forensic science center; or (4) the Kansas department of wildlife, parks and tourism. The law enforcement agency that seized the weapon may keep it for its own use or sell or trade the weapon to a properly licensed federal firearms dealer. Weapons must be returned to an individual 30 days after the conclusion of a case, however, if the individual is not convicted of a violation. Before returning the weapon, law enforcement must verify that it was not stolen. This section defines "weapon" as any weapon described in K.S.A. Supp. 21-6301, and amendments thereto, which means bludgeons, sand clubs, metal knuckles, throwing stars, daggers, dirks, billies, blackjacks, slungshots, dangerous knives, straight-edged razors, stilettos, spring guns, and firearms, all fall under these requirements.

In addition to these changes, HB 2578 makes it unlawful to possess a firearm under the influence. After careful consideration, LKM decided not to include this offense in the UPOC. While HB 2578 does not make it unlawful for cities to enforce an ordinance regulating the possession of a firearm, section 7 of the bill takes away a city's authority to regulate the carrying of firearms. HB 2578 defines "possession of a firearm under the influence" as "knowingly possessing or carrying a loaded firearm on or about such person . . . while under the influence of alcohol or drugs . . ." Because the carrying of a firearm is included in the definition of "possession of a firearm under the influence," and there may be extra litigation costs for cities that choose to prosecute this offense, LKM believes every city should make the individual choice if it will prosecute such cases. If a city wishes to prosecute this offense, it should pass an ordinary ordinance making it unlawful to possess a firearm under the influence.

In conclusion, the UPOC significantly changed this year to address all of the changes to the criminal code recodification in 2011, and HB 2578 passed this year. City officials and staff should review every section that has changed. Please feel free to contact me or another attorney at LKM with questions about the changes. We are happy to help.

✻ *Nicole Proulx Aiken is Legal Counsel for the League of Kansas Municipalities. She can be reached at naiken@lkm.org or (785) 354-9565.*

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 978 Amending Chapter XIV Of The Edgerton, Kansas Municipal Code To Incorporate The 2014 Standard Traffic Ordinance, To Amend Certain Sections Thereof, And To Amend Local Traffic Regulations, Which Shall Include Incorporation Of Article 19 Of Chapter 8 Of The Kansas Statutes Annotated On Commercial Motor Vehicle Safety

Department: Administration

Background/Description of Item: Annually, the League of Kansas Municipalities prepares and publishes the code known as the Standard Traffic Ordinance (STO) for Kansas Cities. This ordinance will adopt the Standard Traffic Ordinance for Kansas Cities Edition 2014 except such articles, sections, parts or portions as are omitted, deleted, modified, or changed by Sections 14-102 through 14-105 of the Code of the City of Edgerton. Please find enclosed with this agenda item an article prepared by the League of Kansas Municipalities regarding the changes in the STO.

In addition, the Edgerton City Council held a work session on July 31 that discussed concerns related to truck traffic within the city limits. City Council provided direction to draft several items for consideration as part of the annual adoption of the standard traffic ordinance.

LOCAL ENFORCEMENT OF FEDERAL MOTOR CARRIER SAFETY ACT

City Council provided direction to prepare a local ordinance that would adopt by reference the Kansas Administrative Regulations referencing the Federal Motor Carrier Safety Act (FMCSA). The primary mission of the FMCSA is to reduce crashes, injuries and fatalities involving large trucks and buses. Adopting the Kansas Administrative Regulations, rather than the Federal Motor Carrier Safety Act directly, prevents Edgerton from needing to stay abreast of any changes in the federal regulations. In addition, it would keep the City of Edgerton in line with regulations adopted by the State of Kansas for state highway routes. Below is the language included in the draft ordinance prepared by City Attorney. Fine schedule for this portion of the ordinance will be set by the Municipal Court Judge.

14-204.COMMERCIAL MOTOR VEHICLE SAFETY. There is hereby incorporated by reference for the purpose of regulating commercial motor vehicle safety on the streets and highways of the City of Edgerton, Kansas, Article 19, Chapter 8 of the Kansas Statutes Annotated for the purpose of regulating the size, weight, and load of vehicles within the City of Edgerton, all as set forth in Kansas Article 19, Chapter 8 of the Kansas Statutes Annotated ("K.S.A. Art. 19, Ch. 8) and any amendments thereto. At least one copy of K.S.A. Art. 19, Ch. 8 shall be marked or stamped "Official copy as Adopted by Edgerton, Kansas, Ordinance No. 977" to which shall be attached a copy of the ordinance codified in this section, and filed with the city clerk to be open to inspection and available at all reasonable hours, in accordance K.S.A. 12-3010. The Johnson County Sheriff's Department, municipal judge, municipal prosecutors, municipal public defender and all administrative departments of the city charged with enforcement of the ordinance codified in this section, shall be supplied, at the cost of the city, such number of official copies of K.S.A. Art. 19, Ch. 8 similarly marked, as may be deemed expedient. (Ord.977, 2014).

REGULATING THE USE OF EXHAUST/COMPRESSION BRAKES

City Council provided direction to prepare a local ordinance to prohibit the use of exhaust/compression brakes within the city limits. Below is the language included in the draft ordinance prepared by City Attorney.

Section 175.1. Compression Release Engine Braking System. Section 175.1 is modified to read as follows: It shall be unlawful for the driver of any motor vehicle to use or cause to be used or operated any compression release engine braking system within the corporate limits of the city of Edgerton, Kansas. (Ord. 977, 2014).

EXISTING TRUCK ROUTES WITH EDGERTON CITY LIMITS

City Council discussed the existing truck routes within Edgerton. City Council provided direction to draft an ordinance to consider adding the streets adjacent to Logistics Park Kansas City (LPKC) as truck routes. No other changes to the truck routes were suggested to be considered for change at this time. Below are the routes surrounding LPKC that have been added as official truck routes within the city limits.

- 191st Street from Four Corners Road to Waverly Road
- Homestead Lane from 191st Street to Interstate 35
- Kill Creek Road from 191st Street to 187th Street
- 187th Street from Kill Creek Road to Waverly Road

SPEED LIMITS WITHIN THE CITY LIMITS

The City of Edgerton has added within the corporate city limits several roadways adjacent to Logistics Park Kansas City. Those roadways need to be added to the City Code with the specific speed limits for each. The new roadways with appropriate speed limits that are included in the draft ordinance are listed below.

- 191st Street from Four Corners Road to Waverly Road (40 miles per hour); from Waverly Road east to city limits (35 miles per hour);
- Homestead Lane from 191st Street south to Interstate 35 (40 miles per hour);
- Kill Creek Road from 191st Street to 187th Street (30 miles per hour);
- 187th Street, from Kill Creek Road to Waverly Road (30 miles per hour);

REQUIREMENTS FOR LOADS TO BE COVERED

At the City Council work session, council discussed concerns of loose gravel or small rock spilling onto local roadway. Council provided direction to draft an ordinance to require that every load be covered. In drafting the ordinance, City Attorney did not include this provision at this time due to a concern that this requirement would actually weaken not strengthen the requirement. City Attorney has verified that the STO requires anyone hauling anything that could move from truck to ground is required to secure and/or cover so as not to leave the truck. If something does move, the driver is in violation and could be ticketed. City Attorney did state that if City Council is concerned about dirt, rock, dust, etc. perhaps a provision could be modified to state that any material of that type must be covered. Staff recommends additional discussion at the City Council meeting. Depending on direction provided staff and City Attorney can prepare an ordinance for consideration at the first September city council meeting.

Finally, the City Attorney also did some housekeeping cleanup related to Articles 1 and 2 in the draft ordinance.

Enclosure: Draft Ordinance No. 978
August 2014 Article in Kansas Government Journal regarding Changes to 2014 STO

Related Ordinance(s) or Statute(s): Edgerton City Code Chapter XIV

Recommendation: Approve Ordinance No. 978 Amending Chapter XIV Of The Edgerton, Kansas Municipal Code To Incorporate The 2014 Standard Traffic Ordinance, To Amend Certain Sections Thereof, And To Amend Local Traffic Regulations, Which Shall Include Incorporation Of Article 19 Of Chapter 8 Of The Kansas Statutes Annotated On Commercial Motor Vehicle Safety

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: August 26, 2014

ORDINANCE NO. 978

AN ORDINANCE AMENDING CHAPTER XIV OF THE EDGERTON, KANSAS MUNICIPAL CODE TO INCORPORATE THE 2014 STANDARD TRAFFIC ORDINANCE, TO AMEND CERTAIN SECTIONS THEREOF, AND TO AMEND LOCAL TRAFFIC REGULATIONS, WHICH SHALL INCLUDE INCORPORATION OF ARTICLE 19 OF CHAPTER 8 OF THE KANSAS STATUTES ANNOTATED ON COMMERCIAL MOTOR VEHICLE SAFETY

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

SECTION 1: Article 1 of Chapter XIV of the Edgerton, Kansas Municipal Code is hereby amended to state the following:

ARTICLE 1. STANDARD TRAFFIC ORDINANCE

14-101.UNIFORM CODE INCORPORATED. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Edgerton, Kansas, that certain code known as the "Standard Traffic Ordinance for Kansas Cities" Edition 2014, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are omitted, deleted, modified, or changed by Sections 14-102 through 14-105 of the existing Code of the City of Edgerton. No fewer than one copy of said Standard Traffic Ordinance shall be marked or stamped "Official Copy as Adopted by Ordinance No. 978" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open for inspection and available to the public at all reasonable hours. The Sheriff's Department of Johnson County, Kansas, the municipal judge and all administrative departments of the City charged with enforcement of the Ordinance shall be supplied, at the cost to the city, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient. (Ord.978, 2014, Ord. 941, 2013, Ord. 928, 2012; Ord. 907, 2011; Ord. 896, 2010; Ord. 860, 2009; Ord. 840, 2008; Ord. 830, 2007; Ord. 817, 2006; Ord. 782, 2005; Ord. 768, 2004; Ord. 750, 2003; Ord. 744, 2002; Ord. 729, 2001; Ord. 715, 2000; Ord. 707, 1999; Ord. 697, 1998; Ord. 688, 1997; Ord. 684, 1997; Ord. 675, 1996; Ord. 666, 1995; Ord. 650, 1994; Ord. 634, 1993; Ord. 625, 1992; Ord. 617, 1991; Ord. 604, 1990; Ord. 593, 1989; Ord. 649, 1994; Ord. 578, 1988; Ord. 742, 1987, Ord. 559, 1986)

14-102.PENALTY FOR SCHEDULED FINES. The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than \$10 nor more than \$500, except for speeding which shall not be less than \$30 nor more than \$500. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed \$500, but said fine for subsequent convictions for the same offense may be increased in accordance with Section 201 of the Standard Traffic Ordinance. (Ord. 978, 2014, Ord. 896, 2010; Ord. 865, 2009) (Former Title – Amendment (Driving While License Canceled, Suspended or Revoked; Penalty) repealed: (Ord. 545, 1985)

(Former Title 14-106 – Failure to Comply with Traffic Citation, Ord. 545, 1985)

SECTION 2: Article 2 of Chapter XIV of the Edgerton, Kansas Municipal Code is hereby amended to state the following:

ARTICLE 2. LOCAL TRAFFIC PROVISIONS

14-201. STANDARD TRAFFIC ORDINANCE; MODIFICATIONS.

- (a) **Section 33. Speed Limits.** Except when a special hazard exists that requires lower speed for compliance with Section 32 of the Standard Traffic Ordinance, the limits specified in this Section, or established as hereinafter authorized, shall be the Maximum lawful speed, and no person shall drive a vehicle at a speed in excess of such maximum limits:
- (1) In any business district, 20 miles per hour;
 - (2) In any residential district, 30 miles per hour;
 - (3) In any park, 20 miles per hour;
 - (4) 20 miles per hour in any posted school zone as provided for in KDOT Traffic, Signing Project Number 46-U-1129-01, which establishes a school zone with the following times: 7:30 a.m. to 8:30 a.m.; 11:15 a.m. to 12:45 p.m.; 3:15 p.m. to 4:15 p.m.
 - (5) In any urban district, 30 miles per hour;
 - (6) On any separated multi-laned highway, as designated and posted by the Secretary of Transportation, 70 miles per hour;
 - (7) On any county or township highway, 55 miles per hour;
 - (8) On West Martin Street, 25 miles per hour as provided for in the Edgerton, Kansas Speed Study as provided in the 1997 KDOT Traffic Engineering Assistance Program;
 - (9) On West McDonald Street, 25 miles per hour as provided in the 1997 KDOT Traffic Engineering Assistance Program;
 - (10) On West Fourth Street between West Martin and West McDonald Streets, 25 miles per hour as provided in the 1997 KDOT Traffic Engineering Assistance program;
 - (11) On West Third Street south of Edgewood Drive, 25 miles per hour as provided in the 1997 KDOT Traffic Engineering Assistance Program;
 - (12) On West Fourth Street south of Edgewood Drive, 25 miles per hour as provided in the 1997 KDOT Traffic Engineering Assistance Program;
 - (13) On 191st Street from Four Corners Road to Waverly Road, 40 miles per hour; from Waverly Road east to city limits, 35 miles per hour;
 - (14) On Homestead Lane from 191st Street south to Interstate 35, 40 miles per hour;
 - (15) On Kill Creek Road from 191st Street to 187th Street, 30 miles per hour;
 - (16) On 187th Street, from Kill Creek Road to Waverly Road, 30 miles per hour;
 - (17) On all other highways, 65 miles per hour.
 - (18) No person shall drive a school bus to or from school or inter-school or intra-school functions or activities, at a speed great(er) than 45 miles per hour on any roadway having dirt, sand or gravel surface, and in no event shall a school bus be driven to and from school, or functions or activities, in excess of 55 miles per hour, notwithstanding any maximum speed limit in excess thereof. The provisions of this subsection shall apply to buses used for the

transportation of students enrolled in community colleges or area vocational schools when such buses are transporting students to or from school, or functions or activities.

- (19) The maximum speed limits in this section may be altered as authorized in K.S.A. 8-1559 and 8-1560, and amendments thereto. (Ord. 978, 2014; Ord. 896, 2010; Ord. 865, 2009; Ord. 840, 2008; Ord. 830, 2007; Ord. 816, 2006; Ord. 782, 2005; Ord. 768, 2004; Ord. 750, 2003; Ord. 744, 2002; Ord. 729, 2001; Ord. 728, 2001; Ord. 715, 2000; Ord. 707, 1999; Ord. 688, 1997; Ord. 684, 1997; Ord. 675, 1996; Ord. 650, 1994; Ord. 572, 1987; Ord. 538, 1985)

- (b) **Section 116. Driving Upon Sidewalk.** Section 116 is modified to read as follows: No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway, or to otherwise temporarily access private property adjacent to the public right-of-way. (Ord. 896, 2010)

- (c) **Section 175.1. Compression Release Engine Braking System.** Section 175.1 is modified to read as follows: It shall be unlawful for the driver of any motor vehicle to use or cause to be used or operated any compression release engine braking system within the corporate limits of the city of Edgerton, Kansas. (Ord. 978, 2014).

14-202.IDLING PROHIBITED; MOTOR VEHICLES.

- (a) The following definitions shall apply to this Section:

- (1) IDLE – The motor vehicle operating mode consisting of a non-leaded, throttled engine speed at the revolutions per minute specified by the manufacturer.
- (2) MOTOR VEHICLE – Any road, self-propelled vehicle that is required to be registered and have a license plate by the Department of Motor Vehicles.
- (3) PERSON – Corporations, companies, associates, societies, firms, partnerships, and joint-stock companies as well as individuals, and shall also include all political subdivisions of this state or any agencies or instrumentalists thereof.
- (4) PUBLIC AND PRIVATE PROPERTY – All real estate within the City, including Inter alia, public and private parking lots, on which a motor vehicle may be physically located except for public streets and highways within the City.
- (5) RESTRICTED IDLING ZONES – Areas within City limits that are considered moderate to high emission zones. (Ord. 896, 2010; Ord. 865, 2009)

(Former Title –Same; Traffic Infractions and Traffic Offenses repealed; Ord. 840, 2008; Ord. 830, 2007; Ord. 816, 2006; Ord. 782, 2005; Ord. 768, 2004; Ord. 750, 2003; Ord. 744, 2002; Ord. 729, 2001; Ord. 728, 2001; Ord. 650, 1994; Ord. 593, 1989) (Former Title – Penalty for Scheduled Fines, repealed, Ord. 538, 1985)

- (b) No person shall cause, suffer, allow, or permit the engine of a motor vehicle to idle for more than five (5) consecutive minutes in every sixty (60) minute period if the vehicle is in one of the designated areas of limited idling zones that include:
- (1) Any City parking lot or property;
 - (2) Any City owned or operated park area;
 - (3) Pick-up or drop-off areas on all school property, parking lots, and commercial and industrial delivery or loading zones; and

- (4) Commercial or industrial delivery zones, including, but not limited to, private drives or areas leading to the delivery zone.
- (c) No person shall cause, suffer, allow, or permit the engine of a motor vehicle to idle for more than thirty (30) consecutive minutes in every sixty (60) minute period if the vehicle is loading or unloading in a designated commercial or industrial zone.
- (d) The following exemptions shall apply to this Section:
 - (1) Emergency vehicles in emergency situations, or any motor vehicle used in an emergency capacity, while in an emergency or training mode and not for the convenience of the vehicle operator;
 - (2) Motor vehicles stopped in a line of traffic because of on-highway traffic, an official traffic control device or signal, or at the direction of a law enforcement official;
 - (3) Motor vehicles with mechanical difficulties, over which the driver has no control;
 - (4) Electric utility vehicles when operated for electricity generation or hydraulic pressure to power equipment necessary in the restoration, repair, modification or installation of electric utility service;
 - (5) Motor vehicle is required to operate auxiliary equipment to accomplish the intended use of the vehicle such as loading, unloading, mixing, or processing cargo; controlling cargo temperature; construction operations; lumbering operations; oil or gas well servicing; or farming operations. The exemption does not apply when the vehicle is idling solely for cabin comfort or to operate non-essential equipment such as air conditioning, heating, microwave ovens, or televisions except in the case of a safety or health emergency; and
 - (6) All motor vehicles when temperatures are below thirty-two (32) degrees Fahrenheit and in excess of eighty-five (85) degrees Fahrenheit. (Ord. 896, 2010; Ord. 865, 2009)

(Former Title – Penalty for Scheduled Fines repealed; Ord. 840, 2008; Ord. 830, 2007; Ord. 816, 2006; Ord. 782, 2005; Ord. 768, 2004; Ord. 650, 1994) (Former Title – Driving While License Canceled, Suspended or Revoked: Ord. 562, 1986) (Former Title – Amendment (Driving Under Influence) repealed: Ord. 545, 1985)

14-203. MISCELLANEOUS TRUCK RESTRICTIONS.

- (a) For the purpose of this Section, the following terms, phrases, words and their derivations shall have the following meanings:
 - (1) Truck Tractor: Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
 - (2) Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon the towing vehicle.
 - (3) Semitrailer: Every vehicle, with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

- (4) **Vehicle:** Every device in, upon or by which any person or property is or may be transported or drawn upon a street or highway, except devices moved by human power or used exclusively upon stationary rails or tracts. (Ord. 636, 1993)
- (b) **Heavy Trucks Prohibited.** It shall be unlawful for any person, firm or corporation to drive any truck of a state licensing rating of 24,000 pounds or more upon any of the streets of the City of Edgerton, Kansas except as provided in Subsections (c), (d), and (e) below, or pursuant to Section 14-204 below. (Ord. 636, 1993; Ord. 608, 1990; Ord. 606, 1990; Ord. 575, 1988)
- (c) **Exceptions.** The provisions of Subsection (b) above shall not be applicable to those vehicles engaged in repairing, maintaining or constructing streets, utility services, conducting refuse collections, emergency vehicles, School buses or City vehicles, vehicles carrying wares, merchandise or other article to and from any house, residence, or business establishment within the City provided the vehicle takes the most direct route to and from the facilities on the routes designated in Subsection (d) below. (Ord. 636, 1993)
- (d) **Truck Routes.** The following streets are designated and signed as truck routes in the City of Edgerton: From the East city limits on Sunflower Road, west on Nelson Street to East Second Street, and East Fourth Street from Nelson Street to Morgan (56 Highway), West on Morgan (56 Highway) to East Second Street, South on East Second Street; East Second Street to 207th Street (Braun Street); West on 207th Street (Braun Street) to West Eighth Street (Edgerton Road); North on West Eighth Street (Edgerton Road) to Morgan (56 Highway); On 191st Street from Four Corners Road to Waverly Road; On Homestead Lane from 191st Street to Interstate 35, On Kill Creek Road from 191st Street to 187th Street; and on 187th Street from Kill Creek Road to Waverly Road. (Ord. 978, 2014; Ord. 636, 1993)
- (e) **Parking of Truck Tractor.** The owner/agent of any truck tractor shall be permitted to enter upon street not designated as truck route at the cross street nearest to the house or premises in the direction in which the vehicles are moving for the purpose of parking the truck tractor on private property at the residence of the owner/agent. Nothing in this section shall allow the maintenance of a nuisance or the disturbance of peace of any resident of the area. (Ord. 636, 1993)
- (f) **Hazardous Materials.** It shall be unlawful for any motor vehicle used solely for the transportation of explosives, flammable liquids or liquefied petroleum gases, which for such purpose if provided with a tank or tanks mounted on the frame or chassis of such vehicle or any vehicle without its own motive power but drawn by a motor vehicle, used for this same purpose to be parked or permitted to stand in any area of the city designated as a residential area, longer than is necessary to make a lawful delivery. Fertilizer and ammonia trucks, and hazardous gasses of any kind are included. (Ord. 636, 1993)

14-204.COMMERCIAL MOTOR VEHICLE SAFETY. There is hereby incorporated by reference for the purpose of regulating commercial motor vehicle safety on the streets and

highways of the City of Edgerton, Kansas, Article 19, Chapter 8 of the Kansas Statutes Annotated for the purpose of regulating the size, weight, and load of vehicles within the City of Edgerton, all as set forth in Kansas Article 19, Chapter 8 of the Kansas Statutes Annotated ("K.S.A. Art. 19, Ch. 8) and any amendments thereto. At least one copy of K.S.A. Art. 19, Ch. 8 shall be marked or stamped "Official copy as Adopted by Edgerton, Kansas, Ordinance No. _____" to which shall be attached a copy of the ordinance codified in this section, and filed with the city clerk to be open to inspection and available at all reasonable hours, in accordance K.S.A. 12-3010. The Johnson County Sheriff's Department, municipal judge, municipal prosecutors, municipal public defender and all administrative departments of the city charged with enforcement of the ordinance codified in this section, shall be supplied, at the cost of the city, such number of official copies of K.S.A. Art. 19, Ch. 8 similarly marked, as may be deemed expedient. (Ord.978, 2014).

14-205.PARKING RESTRICTIONS. The following parking restrictions shall apply upon installation of signage or markings in accordance with K.S.A. 8-2003 and the Manual on Uniform Traffic Control Devices:

- (a) On-street parking prohibited within the Burkdoll Addition, a subdivision in the City of Edgerton, on the entire west side of West Fifth Street.
- (b) Parking spaces marked on the pavement, and by a vertical mounted sign bearing the international symbol of access, as reserved for handicapped or those transporting handicapped individuals at:

Edgerton United Methodist Church
300 East Fourth Street
West Side of East Fourth Street

Edgerton Community Building
404 East Nelson
East Side of East Fourth Street

Bank of Knowledge Library
319 East Nelson
West Side of East Fourth Street

U.S. Post Office Edgerton
328 East Nelson
North Side of East Nelson Street

shall be restricted to use by vehicles bearing a special license plate, permanent placard, or temporary placard, issued pursuant to K.S.A. 8-161 or K.S.A. 81,125, and amendments thereto. (Ord. 806, 2006)

SECTION 2: Repeal. Former Articles 1 and 2 of Chapter XIV of the Edgerton Municipal Code are hereby repealed in their entirety.

SECTION 3: Effective Date. This Ordinance shall be effective after its passage, approval and publication once in the City's official paper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF
EDGERTON, KANSAS ON THE 28th DAY OF AUGUST, 2014.

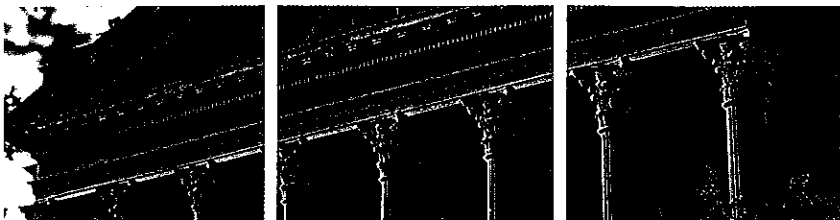
Donald Roberts, Mayor

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney



Legal Forum

by Nicole Proulx Aiken

2014 Uniform Public Offense Code and Standard Traffic Ordinance Changes

The 2014 Uniform Public Offense Code (UPOC) and Standard Traffic Ordinance (STO) are available for cities to order. (See the order form in this month's KGJ or order online at www.lkm.org.) Most of the changes to the STO are diminutive in nature. As such, this article focuses on the changes to the UPOC.

Four years ago, the Kansas Legislature recodified the state criminal code. This recodification took effect on July 1, 2011. As noted in Sandra Jacquot's July 2012 Legal Forum, LKM chose to gradually incorporate the changes in the state criminal code to the UPOC. As these changes occurred, cities could still enforce the UPOC, because the publication did not conflict with state law. The 2014 edition reflects all of the changes made by the Legislature in the 2011 recodification. The changes are too numerous to discuss in a single Legal Forum, but the publication and order form provide a list of every section changed. City officials and staff should note that the name of some of the offenses changed. For example, section 3.9 "Criminal Defamation" changed to "Criminal False Communication," section 6.20 "Computer Trespass Computer Password Disclosure" changed to "Unlawful Acts Concerning Computers," section 6.21 "Posting Land" changed to "Taking Wildlife Without Permission on Land Posted 'By Written Permission Only,'" section 7.4 "Interference; Administration of Justice" changed to "Interference with the Judicial Process," section 9.11 "Funeral Picketing" changed to "Unlawful Public Demonstration at a Funeral," and section 11.9 "Permitting Premises to be Used for Commercial Gambling" changed to "Commercial Gambling."

Most noteworthy are the changes to Article 10 in light of HB 2578, the firearms and knives bill passed by the Legislature this year. Here is a list those changes:

- Section 10.1.1 (Criminal Carrying of a Weapon): Subsections (a)(4) and (a)(5) were deleted from this section, because cities can no longer charge individuals for openly carrying a firearm or transporting a loaded firearm in a motor vehicle.

- Section 10.3 (Criminal Disposal of a Firearm): While most of this section remains the same, the offense's name has changed to "Criminal Distribution of Firearms to a Felon."

- Section 10.3.1 (Criminal Possession of a Firearm): This section was deleted. The offenses charged in this section include: (1) unlawfully possessing a firearm by a person who is addicted to a controlled substance; (2) unlawfully possessing a firearm on school property; and (3) refusing to surrender or remove a firearm from school property, can be found in section 10.1 (Criminal Use of a Weapon).

- Section 10.4 (Confiscation, Disposition of Weapons): This section has significantly changed, because confiscated weapons can no longer be destroyed unless they are in poor condition. Instead, weapons must be forfeited to: (1) the law enforcement agency that seized the weapon; (2) the Kansas bureau of investigation for law enforcement; (3) a county regional forensic science center; or (4) the Kansas department of wildlife, parks and tourism. The law enforcement agency that seized the weapon may keep it for its own use or sell or trade the weapon to a properly licensed federal firearms dealer. Weapons must be returned to an individual 30 days after the conclusion of a case, however, if the individual is not convicted of a violation. Before returning the weapon, law enforcement must verify that it was not stolen. This section defines "weapon" as any weapon described in K.S.A. Supp. 21-6301, and amendments thereto, which means bludgeons, sand clubs, metal knuckles, throwing stars, daggers, dirks, billies, blackjacks, slungshots, dangerous knives, straight-edged razors, stilettos, spring guns, and firearms, all fall under these requirements.

In addition to these changes, HB 2578 makes it unlawful to possess a firearm under the influence. After careful consideration, LKM decided not to include this offense in the UPOC. While HB 2578 does not make it unlawful for cities to enforce an ordinance regulating the possession of a firearm, section 7 of the bill takes away a city's authority to regulate the carrying of firearms. HB 2578 defines "possession of a firearm under the influence" as "knowingly possessing or carrying a loaded firearm on or about such person . . . while under the influence of alcohol or drugs . . ." Because the carrying of a firearm is included in the definition of "possession of a firearm under the influence," and there may be extra litigation costs for cities that choose to prosecute this offense, LKM believes every city should make the individual choice if it will prosecute such cases. If a city wishes to prosecute this offense, it should pass an ordinary ordinance making it unlawful to possess a firearm under the influence.

In conclusion, the UPOC significantly changed this year to address all of the changes to the criminal code recodification in 2011, and HB 2578 passed this year. City officials and staff should review every section that has changed. Please feel free to contact me or another attorney at LKM with questions about the changes. We are happy to help.

✻ *Nicole Proulx Aiken is Legal Counsel for the League of Kansas Municipalities. She can be reached at naiken@lkm.org or (785) 354-9565.*

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 979 Adopting A Recommendation By The City Planning Commission To Approve Rezoning Of Approximately 179 Acres Of Land [Located On The Southeast Corner Of 191st Street And Waverly Road] In Edgerton, Kansas From Johnson County RUR, Rural Zoning To City Of Edgerton L-P Logistics Park Zoning District

Department: Administration

Background/Description of Item: The City of Edgerton received an application RZ-06-23-2014 for rezoning from Patrick Robinson, Edgerton Land Holding Company (ELHC), requesting to rezone approximately 179 acres located on the southeast corner of 191st Street and Waverly Road from Johnson County RUR to City of Edgerton Logistics Park (L-P) zoning. The property requested to be rezoned was annexed into the City of Edgerton in March 2014. ELHC has requested to rezone the parcel to logistics park district to accommodate additional warehouse space as part of Logistics Park Kansas City.

Johnson County Planning staff, on behalf of the City of Edgerton, reviewed this rezoning application with respect to the Edgerton Comprehensive Plan, Zoning and Subdivision Regulations, and the laws in Kansas, in particular the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. Attached is the staff report including the review of this rezoning based on the Golden Criteria. The Planning Commission held a public hearing on August 12, 2014 regarding this rezoning. The Planning Commission recommended approval of the application with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

City Attorney has not reviewed the enclosed draft ordinance. Any revisions will be provided at time of presentation to City Council on August 28, 2014.

Enclosure: Draft Ordinance No. 979
Staff Report from August 12, 2014 Planning Commission
Application RZ-06-23-2014

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 979 Adopting A Recommendation By The City Planning Commission To Approve Rezoning Of Approximately 179 Acres Of Land [Located On The Southeast Corner Of 191st Street And Waverly Road] In Edgerton, Kansas From Johnson County RUR, Rural Zoning To City Of Edgerton L-P Logistics Park Zoning District

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: August 26, 2014

ORDINANCE NO. 979

AN ORDINANCE ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 179 ACRES OF LAND [LOCATED ON THE SOUTHEAST CORNER OF 191ST STREET AND WAVERLY ROAD] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT

WHEREAS, the Planning Commission has recommended that a rezoning request -- from Johnson County RUR, Rural zoning to City of Edgerton L-P Logistics Park -- be approved for approximately 179 acres of land, located on the southeast corner of 191st Street and Waverly Road, the legal description of which is set forth below; and

WHEREAS, all newspaper and mailed notifications were performed and a public hearing was properly held before the City Planning Commission.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. That the following legally described property [at the southeast corner of 191st Street and Waverly Road] is hereby rezoned from Johnson County RUR, Rural Zoning to City of Edgerton L-P Logistics Park Zoning District, and City Staff is directed to reflect said rezoning in the City's Official Zoning map and other City records:

That part of the Northwest Quarter of Section 2, Township 15 South, Range 22 East, in Johnson County, Kansas, described as follows:

Beginning at the Northwest corner of said Northwest Quarter; thence North 88°38'48" East, coincident with the North line of said Northwest Quarter, 2,634.32 feet to the Northeast corner of thereof; thence South 02°16'24" East, coincident with the East line of said Northwest Quarter, 2,193.07 feet to a point on the Northwesterly right-of-way line of Interstate 35; thence South 47°05'38" West, coincident with said right-of-way line, 670.79 feet to a point on the South line of said Northwest Quarter; thence departing said right-of-way line, South 87°46'29" West, coincident with said South line, 1,450.67 feet; thence departing said South line, North 01°09'47" West, parallel with the West line of said Northwest Quarter, 600.00 feet; thence South 87°46'29" West, parallel with the South line of said Northwest Quarter, 726.00 feet to a point on the West line of said Northwest Quarter; thence North 01°09'47" West, coincident with the West line of said Northwest Quarter, 2070.88 feet to the Point of Beginning, subject to that part in existing roads and easements of record.

Also that part of the Northwest Quarter of Section 2, Township 15 South, Range 22 East, in Johnson County, Kansas, described as follows:

Beginning at the Southwest corner of said Northwest Quarter; thence North 01°09'47" West, coincident with the West line of said Northwest Quarter, 600.00 feet; thence departing said West line, North 87°46'29" East, parallel with the South line of said Northwest Quarter, 726.00 feet; thence South 01°09'47" East, parallel with the West

line of said Northwest Quarter, 600.00 feet to a point on the South line of said Northwest Quarter; thence South 87°46'29" West, coincident with said South line, 726.00 feet to the Point of Beginning, subject to that part in existing roads and easements of record.

Also that part of the Southwest Quarter of Section 2, Township 15 South, Range 22 East, in Johnson County, Kansas more particularly described as follows:

Commencing at the Northwest corner of said Southwest Quarter; thence North 87°46'29" East, coincident with the North line thereof, 2,176.67 feet to a point on the Northwestern right-of-way line of Interstate 35; thence South 46°59'34" West, coincident with said right-of-way line, 696.98 feet; thence departing said right-of-way line, South 87°46'29" West, parallel with the North line of said Southwest Quarter, 1,650.67 feet to a point on the West line thereof; thence North 02°00'19" West, coincident with said West line, 455.26 feet to the Point of Beginning containing 871,206 square feet, or 20.000 acres, more or less, subject to that part in existing roads.

Section 2. That the Governing Body, in making its decision on the rezoning, considered City Staff's comments and recommendations. The Governing Body also based its decision on the following criteria:

- a) The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- b) Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties.
- c) The extent to which the zoning amendment may detrimentally affect nearby property has been addressed.
- d) The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial.
- e) Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of Edgerton.

Section 3. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 28th DAY OF AUGUST, 2014.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney



EDGERTON
global routes. local roots.

404 East Nelson
Edgerton, KS 66021
P: 913.893.6231
EDGERTONKS.ORG

STAFF REPORT

August 11, 2014

To: Edgerton Planning Commission
Fr: Beth Linn, City Administrator
Mike Mabrey, City Superintendent/Zoning Administrator
Re: Application RZ-06-23-2014 for rezoning of approximately 179 acres at the southeast corner of 191st Street and Waverly Road from RUR, County Rural Zoning District, to L-P, Logistics Park Zoning District

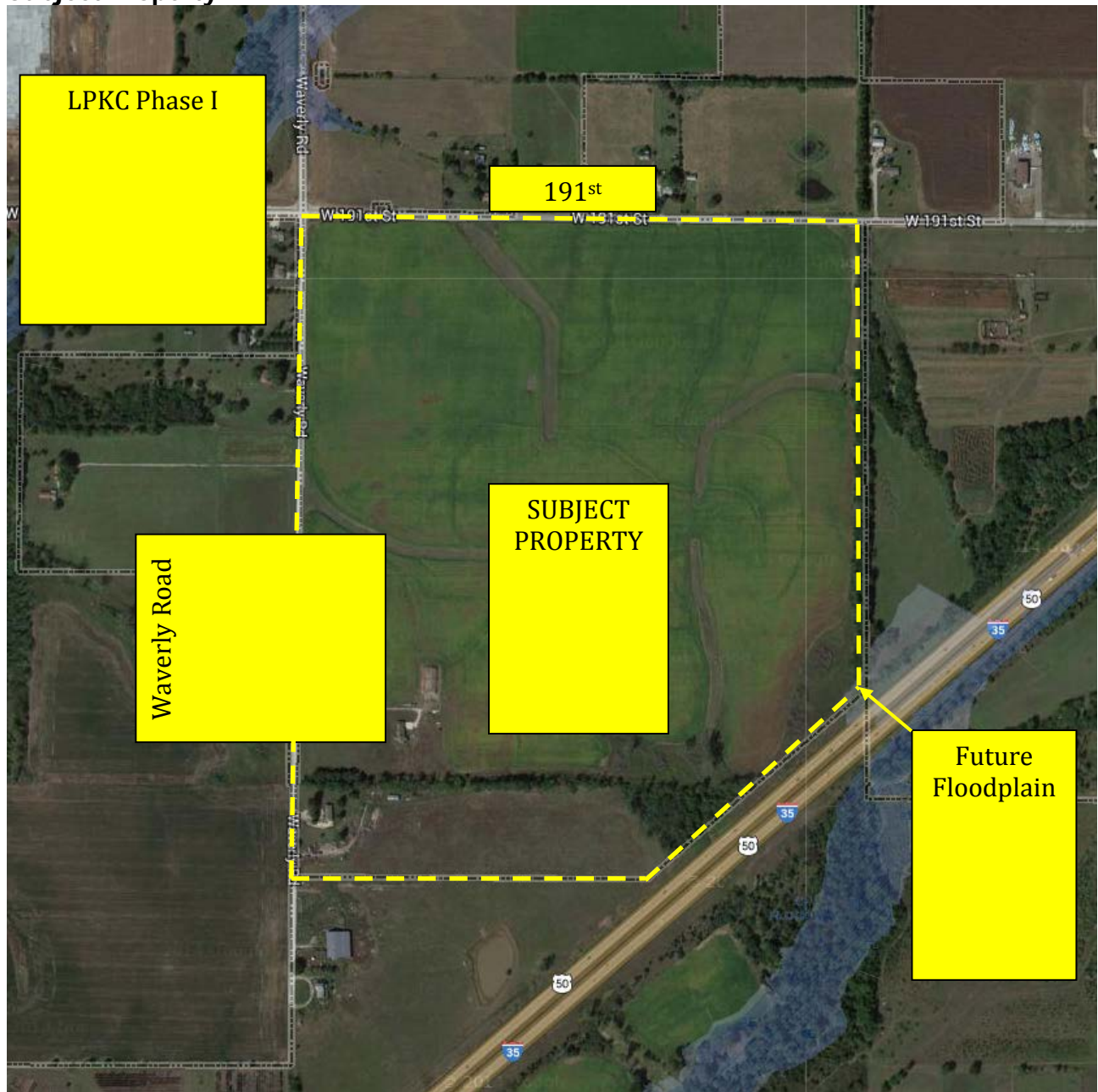
APPLICATION INFORMATION

Applicant:	Patrick Robinson, Edgerton Land Holding Company
Property Owner:	Edgerton Land Holding Company
Requested Action:	Rezoning from RUR, County Rural Zoning District, to L-P, Logistics Park Zoning District
Legal Description:	Part of Section 2, Township 15, Range 22
Site Address/Location:	Approximately 179 acres at the Southeast Corner of 191 st Street and Waverly Road
Existing Land Use:	Vacant
Existing Zoning and Uses:	County RUR, Rural District zoning
Existing Improvements:	None
Site Size:	Approximately 179 acres

Reason For Rezoning Request: The subject property is the second phase of development of Logistics Park Kansas City, a warehouse development. The first phase is partially constructed to the northwest. The requested zoning is L-P, Logistics Park. The City's Unified Development Code (UDC) defines this district as a limited multimodal industrial zone created to support activities related to trade, rail and other transport services.

Background Information: The applicant for this project is BNSF's partner for developing warehousing. The subject property is located at the Southeast Corner of 191st Street and Waverly Road. The land included in the second phase has about 2,634 ft. of frontage on 191st and 3,126 ft. of frontage on Waverly. The property is entirely within the City of Edgerton. The applicant has provided a Preliminary Site Plan indicating plans for warehouse uses.

Subject Property

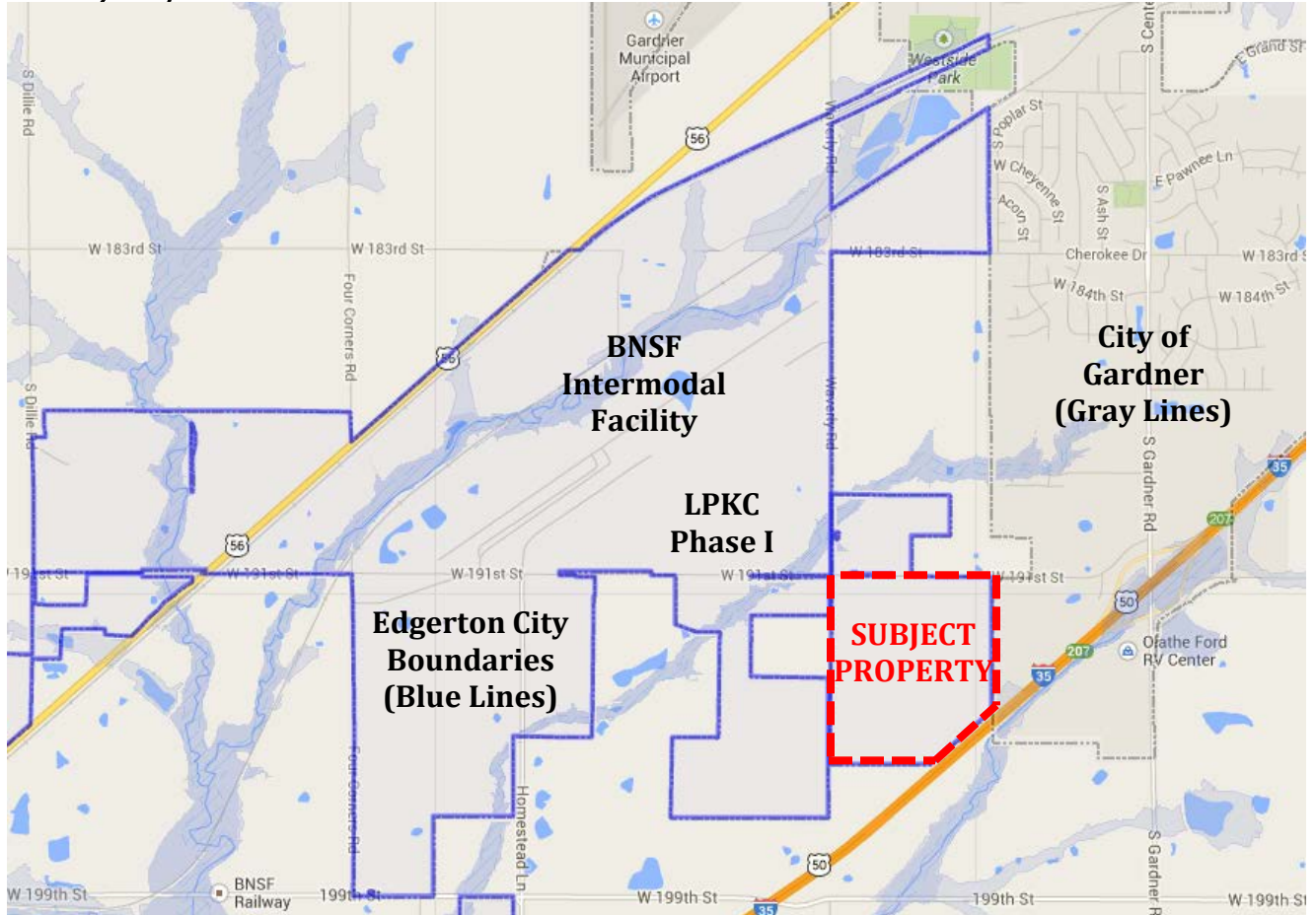


Infrastructure and Services:

- a. Waverly Road is gravel surfaced adjacent to this property and dead-ends on the property adjacent to the south. 191st Street is 26 feet wide, paved, with no shoulders. Both streets are planned for future improvement to pavement that will support intermodal and logistic park traffic. Edgerton Land Holding Company is a party to the tri-party agreement regarding development of Logistics Park Kansas City. That agreement outlines the mechanism for construction and financing of Waverly Road. 191st Street will need to be upgraded in the future as development occurs in the area.

- b. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane.
- c. A small portion of the southeast corner of the property is located within Zone X, 1% Future Conditions flood plain.
- d. The property does not currently have sanitary sewer service.
- e. The property is located within the service area of Rural Water District No. 7. A 12-inch water main is located along the Waverly Road property frontage. Though no water main currently exists on 191st Street east of Waverly Road, about 1,000 feet of main will be constructed to serve the JB Hunt Container Storage project on the north side of 191st. The property owner will need to extend the main further to the east, by about 1,600 feet, to serve the eastern portion of this development.
- f. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, approximately 1.5 miles to the west.

Vicinity Map



Property Zoning History

The subject property was annexed to the City of Edgerton in March of 2014, in anticipation of this development. Prior to that, the property was in unincorporated Johnson County and zoned RUR, Rural District.

Staff Analysis

Staff has reviewed this rezoning application with respect to the Edgerton Unified Development Code, the laws in Kansas, and the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. The following is staff's review.

1. Need for the Proposed Change. The subject property has County RUR, Rural Zoning, which allows only agricultural, residential, and residential accessory uses. The anticipated uses of the property are warehouse and warehouse accessory uses. The L-P Zoning District is the most compatible designation for these uses.
2. Magnitude of the Change. The existing County zoning is considered a holding designation due to the property's location next to other existing and planned logistics park development. The property is vacant. The magnitude of change is not considered extreme or rare when property is being developed for its planned end use as shown on Edgerton's Future Land Use Map within the Comprehensive Plan (attached).
3. Whether or not the change will bring harm to established property rights. The properties likely most affected by this proposed zoning are the parcels in residential use adjacent to the north and south. Separate Preliminary and Final Site Plan reviews and approvals are required before building permits can be issued. As part of these Site Plan reviews, attention to buffering and setbacks particularly adjacent to the residential uses should be given to mitigate the impact as the area transitions from residential to industrial.
4. Effective use of Land. Logistics Park development, at this location, is an effective and efficient use since the property is adjacent to other existing and planned logistics park warehouses, container storage, and the intermodal rail yard facility. Warehousing will concentrate activity near the rail yard facility rather than dispersing it throughout the community.
5. The extent to which there is a need in the community for the uses allowed in the proposed zoning. Placing warehouse facilities near the intermodal rail yard puts an intermediate destination for some of the goods in transit in close proximity to their rail origin, reducing truck traffic in the surrounding area and allowing for more efficient goods distribution.
6. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The BNSF Intermodal Facility and LPKC Phase I are located to the northwest. Cargo container storage facilities are also under development to the north and west. There are homes on rural acreage, farming, and vacant land to the south and to the north, and northeast, across 191st Street; and farming and vacant land to the east in the adjacent City of Gardner.

The area is in transition from rural to industrial, with intermodal warehouse development, extensive road improvements, and the new I-35 interchange at Homestead Lane. The character of the area is changing significantly. The regional parks to the southwest and floodplain areas will generally remain undeveloped, acting

as open space, which will help to retain some of the existing rural character of the area.

7. Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties. The proposed zoning is compatible with warehousing and container storage uses to the north and west. At the time of Site Plan review, with the proper attention to buffering and setbacks, stormwater management, and transition of uses, the few remaining residential uses to the north and south can be protected.
8. Suitability of the uses to which the property has been restricted under its existing zoning. With the construction of the intermodal freight terminal and other logistics park uses to the north and west, the existing County zoning is no longer appropriate for this property. The best use of this property is industrial.
9. Length of time the subject property has remained vacant under the current zoning designation. The property has been held vacant in anticipation of this application since being purchased by the developer. Prior to purchase, the property was in agricultural use in unincorporated Johnson County.
10. The extent to which the zoning amendment may detrimentally affect nearby property. As noted, at the time of Site Plan review, with the proper attention to buffering and setbacks, stormwater management, and possibly transition of uses, the residential uses to the north and south can be protected.
11. Consideration of rezoning applications requesting Planned Development Districts (PUD) for multifamily and non-residential uses should include architectural style, building materials, height, structural mass, siting, and lot coverage. This is not a request for a PUD.
12. The availability and adequacy of required utilities and services to serve the uses allowed in the proposed zoning. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. As development continues, Waverly Road and 191st Street will be improved to a standard that can accommodate the anticipated development of this property. Edgerton Land Holding Company is a party to the tri-party agreement regarding development of Logistics Park Kansas City. That agreement outlines the mechanism for construction and financing of Waverly Road. 191st Street will need to be upgraded in the future as development occurs in the area. Utilities will be provided by the developer in conjunction with development of the property.
13. The extent to which the uses allowed in the proposed zoning would adversely affect the capacity or safety of that portion of the road network influenced by the uses, or present parking problems in the vicinity of the property. Waverly Road and 191st Street will be improved to a standard that can accommodate industrial development traffic in the area. On-street parking will not be allowed on either street. The developer will be required to comply with the City's UDC off-street parking requirements as part of the Site Plan review process.
14. The environmental impacts that the uses allowed in the proposed zoning would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of air, noise, light, etc, will be addressed as part of the Site Plan review process.

15. The economic impact on the community from the uses allowed in the proposed zoning. Prior to the development of the BNSF intermodal and logistics park, there were few commercial and industrial uses within the City. Warehousing and related uses allowed in the L-P District have the potential to benefit the residents and community in a positive way by providing needed jobs and tax revenues.
16. The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial. There would be little gain to the public health, safety and welfare of Edgerton and the property owner would be denied a use compatible with adjacent development if the zoning is denied. The community would be adversely impacted due to the lost opportunity for jobs and tax revenue if logistics park uses were to locate in another nearby community.
17. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton. The Future Land Use Map (attached) within the Comprehensive Plan designates roughly the west half of the subject property for Industrial development; the majority of the east half of the property for Mixed Use Retail, Office and Medium Density Residential development; and a small area at the southeast corner of the property for Mixed Use Office and Medium Density Residential development. However, the recently completed Southwest Area Plan (attached) designates the entire property as industrial use. Staff believes that in this instance, given the evolving demand for Logistics Park warehouse uses in the community since the adoption of the Comprehensive Plan three years ago, the Southwest Area Plan and industrial zoning for the entire property is justified economically and practically and is preferable to strictly following the three year old suggested land uses in the Plan.
18. The recommendation of professional staff. See Recommendation below

Recommendation

City staff recommends **approval** of the proposed rezoning of the subject property from County RUR, Rural District to L-P, City of Edgerton Logistics Park Zoning District, with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

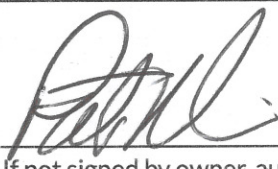
Reasons for Recommendation for Rezoning: (Incorporate all or part of #1-18 above in motion)

Attachments

City of Edgerton Future Land Use Map
Southwest Area Plan Map
Application RZ-06-23-2014

LOCATION OR ADDRESS OF SUBJECT PROPERTY: SE CORNER 191ST & WAVERLYPURPOSE FOR REZONING: ENLARGEMENT OF L-P DISTRICTREQUESTED REZONING CHANGE: FROM RUR TO L-P
(Current Zoning) (Proposed Zoning)LEGAL DESCRIPTION: ATTACHEDCURRENT LAND USE: AGRICULTUREPROPERTY OWNER'S NAME(S): PATRICK ROBINSON PHONE: 816.888.7380COMPANY: EDGERTON LAND HOLDING CO. FAX: 816.888.7399MAILING ADDRESS: 5015 NW CANAL ST. RIVERSIDE MO 64150
Street City State ZipAPPLICANT/AGENTS NAME(S): SAME PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: _____
Street City State ZipENGINEER/ARCHITECT'S NAME(S): DAN COOK PHONE: 913.317.9500COMPANY: P-I-C FAX: 816.800.0951MAILING ADDRESS: 5015 NW CANAL ST. RIVERSIDE MO 64150
Street City State ZipSIGNATURE OF OWNER OR AGENT: 

If not signed by owner, authorization of agent must accompany this application.

FOR OFFICE USE ONLYCase No.: RZ- 6-23-2014 Amount of Fee Paid: \$ 250⁰⁰ Date Fee Paid: 6/25/14Received By: Debra Stragg Date of Hearing: 8/12/2014**REZONING INSTRUCTIONS**

CERTIFIED LETTERS: The applicant will be responsible for mailing notices (see attached Property Owner Notification Letter) of the public hearing for the requested rezoning by certified mail, return receipt requested, to all owners of land within the notification area: two hundred (200) feet within the city limit, one thousand (1,000) feet in the unincorporated area of the subject property. These notices must be sent a minimum of twenty (20) days prior to the public hearing. Information regarding ownership

vs. 9-9-11

That part of the Northwest Quarter of Section 2, Township 15 South, Range 22 East, in Johnson County, Kansas, described as follows:

Beginning at the Northwest corner of said Northwest Quarter; thence North $88^{\circ}38'48''$ East, coincident with the North line of said Northwest Quarter, 2,634.32 feet to the Northeast corner of thereof; thence South $02^{\circ}16'24''$ East, coincident with the East line of said Northwest Quarter, 2,193.07 feet to a point on the Northwesterly right-of-way line of Interstate 35; thence South $47^{\circ}05'38''$ West, coincident with said right-of-way line, 670.79 feet to a point on the South line of said Northwest Quarter; thence departing said right-of-way line, South $87^{\circ}46'29''$ West, coincident with said South line, 1,450.67 feet; thence departing said South line, North $01^{\circ}09'47''$ West, parallel with the West line of said Northwest Quarter, 600.00 feet; thence South $87^{\circ}46'29''$ West, parallel with the South line of said Northwest Quarter, 726.00 feet to a point on the West line of said Northwest Quarter; thence North $01^{\circ}09'47''$ West, coincident with the West line of said Northwest Quarter, 2,070.88 feet to the Point of Beginning, subject to that part in existing roads and easements of record.

Also that part of the Northwest Quarter of Section 2, Township 15 South, Range 22 East, in Johnson County, Kansas, described as follows:

Beginning at the Southwest corner of said Northwest Quarter; thence North $01^{\circ}09'47''$ West, coincident with the West line of said Northwest Quarter, 600.00 feet; thence departing said West line, North $87^{\circ}46'29''$ East, parallel with the South line of said Northwest Quarter, 726.00 feet; thence South $01^{\circ}09'47''$ East, parallel with the West line of said Northwest Quarter, 600.00 feet to a point on the South line of said Northwest Quarter; thence South $87^{\circ}46'29''$ West, coincident with said South line, 726.00 feet to the Point of Beginning, subject to that part in existing roads and easements of record.

Also that part of the Southwest Quarter of Section 2, Township 15 South, Range 22 East, in Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of said Southwest Quarter; thence North $87^{\circ}46'29''$ East, coincident with the North line thereof, 2,176.67 feet to a point on the Northwesterly right-of-way line of Interstate 35; thence South $46^{\circ}59'34''$ West, coincident with said right-of-way line, 696.98 feet; thence departing said right-of-way line, South $87^{\circ}46'29''$ West, parallel with the North line of said Southwest Quarter, 1,650.67 feet to a point on the West line thereof; thence North $02^{\circ}00'19''$ West, coincident with said West line, 455.26 feet to the Point of Beginning containing 871,206 square feet, or 20.000 acres, more or less, subject to that part in existing roads.

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 980 Adopting A Recommendation By The City Planning Commission To Approve Rezoning Of Approximately 107 Acres Of Land [Located At On The Southwest Corner Of 191st Street And Homestead Lane] In Edgerton, Kansas From Johnson County RUR, Rural Zoning To City Of Edgerton L-P Logistics Park Zoning District

Department: Administration

Background/Description of Item: The City of Edgerton received an application RZ-07-11-2014 for rezoning from Patrick Robinson, Edgerton Land Holding Company (ELHC), requesting to rezone approximately 107 acres located on the southwest corner of 191st Street and Homestead Lane from Johnson County RUR to City of Edgerton Logistics Park (L-P) zoning. The property requested to be rezoned was annexed into the City of Edgerton in March 2014. ELHC has requested to rezone the parcel to logistics park district to accommodate additional warehouse space as part of Logistics Park Kansas City.

Johnson County Planning staff, on behalf of the City of Edgerton, reviewed this rezoning application with respect to the Edgerton Comprehensive Plan, Zoning and Subdivision Regulations, and the laws in Kansas, in particular the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. Attached is the staff report including the review of this rezoning based on the Golden Criteria. The Planning Commission held a public hearing on August 12, 2014 regarding this rezoning. The Planning Commission recommended approval of the application with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

City Attorney has not reviewed the enclosed draft ordinance. Any revisions will be provided at time of presentation to City Council on August 28, 2014.

Enclosure: Draft Ordinance No. 980
Staff Report from August 12, 2014 Planning Commission
Application RZ-07-11-2014

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 980 Adopting A Recommendation By The City Planning Commission To Approve Rezoning Of Approximately 107 Acres Of Land [Located At On The Southwest Corner Of 191st Street And Homestead Lane] In Edgerton, Kansas From Johnson County RUR, Rural Zoning To City Of Edgerton L-P Logistics Park Zoning District

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: August 26, 2014

ORDINANCE NO. 980

AN ORDINANCE ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 107 ACRES OF LAND [LOCATED ON THE SOUTHWEST CORNER OF 191ST STREET AND HOMESTEAD LANE] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT

WHEREAS, the Planning Commission has recommended that a rezoning request -- from Johnson County RUR, Rural zoning to City of Edgerton L-P Logistics Park -- be approved for approximately 107 acres of land, located on the southwest corner of 191st Street and Homestead Lane, the legal description of which is set forth below; and

WHEREAS, all newspaper and mailed notifications were performed and a public hearing was properly held before the City Planning Commission.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. That the following legally described property [located on the southwest corner of 191st Street and Homestead Lane] is hereby rezoned from Johnson County RUR, Rural Zoning to City of Edgerton L-P Logistics Park Zoning District, and City Staff is directed to reflect said rezoning in the City's Official Zoning map and other City records:

TRACT 1:

The West ½ of the Northeast ¼ of Section 4, Township 15, Range 22, in Johnson County, Kansas EXCEPT that portion lying North of 191st Street as now established.

TRACT 2:

The Southeast ¼ of the Northeast ¼ of Section 4, Township 15, Range 22, in Johnson County, Kansas.

Section 2. That the Governing Body, in making its decision on the rezoning, considered City Staff's comments and recommendations. The Governing Body also based its decision on the following criteria:

- a) The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- b) Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties.
- c) The extent to which the zoning amendment may detrimentally affect nearby property has been addressed.
- d) The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial.
- e) Consistency with the Comprehensive Plan, Utilities and Facilities Plans,

Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of Edgerton.

Section 3. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 28th DAY OF AUGUST, 2014.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

STAFF REPORT

August 11, 2014

To: Edgerton Planning Commission
Fr: Beth Linn, City Administrator
Mike Mabrey, City Superintendent/Zoning Administrator
Re: Application RZ-07-11-2014 for rezoning of approximately 107 acres at the southwest corner of 191st Street and Homestead Lane from RUR, County Rural Zoning District, to L-P, Logistics Park Zoning District

APPLICATION INFORMATION

Applicant: Patrick Robinson, Edgerton Land Holding Company

Property Owner: Edgerton Land Holding Company

Requested Action: Rezoning from RUR, County Rural Zoning District, to L-P, Logistics Park Zoning District

Legal Description: Part of Section 4, Township 15, Range 22

Site Address/Location: Southwest Corner of 191st Street and Homestead Lane

Existing Land Use: Agriculture

Existing Zoning and Uses: County RUR, Rural District zoning

Existing Improvements: Home and farm buildings

Site Size: Approximately 107 acres

Reason For Rezoning Request: The subject property would be the third phase of development of Logistics Park Kansas City, a warehouse development. The first phase is partially constructed to the northeast and the second phase, to the east, is under review by the City. The requested zoning is L-P, Logistics Park. The City's Unified Development Code (UDC) defines this district as a limited multimodal industrial zone created to support activities related to trade, rail and other transport services.

Background Information

The applicant for this project is BNSF's partner for developing warehousing. The subject property is located at the Southwest Corner of 191st Street and Homestead Lane, between Four Corners Road and Homestead Lane. The land included in the third phase has about 1,340 feet of frontage on 191st Street, about 1,350 feet of frontage on Homestead Lane, about 2,072 ft. of frontage on Four Corners Road, and is entirely within the City of Edgerton. The applicant has provided a Preliminary Plat and Site Plan indicating plans for warehouse uses.

Subject Property



Infrastructure and Services:

- a. Both Homestead Lane and 191st Street are recently constructed, paved streets that are designed to support intermodal and logistics park traffic. Four Corners Road is 21 feet wide, paved, with no shoulders, and should be improved to pavement that will support intermodal and logistic park traffic. Proceeding east on 191st Street and south on Homestead Road provides access to Interstate 35.
- b. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane.
- c. Federally designated floodplain touches the southeast property corner, but otherwise, there are no floodplain areas on the property.
- d. The property does not currently have sanitary sewer service.
- e. The property is located within the service area of Rural Water District No. 7. A 12-inch water main is located along the 191st Street property frontage. A 2.5-inch water main is located along the Four Corners Road frontage, and no water mains are along Homestead Road.

1. Need for the Proposed Change. The subject property has County RUR, Rural Zoning, which allows only agricultural, residential, and residential accessory uses. The anticipated uses of the property are warehouse and warehouse accessory uses. The L-P Zoning District is the most compatible designation for these uses.
2. Magnitude of the Change. The existing County zoning is considered a holding designation due to the property's location near other existing and planned logistics park development. The property is vacant, with a home and farm buildings that will be removed in conjunction with this proposed development. The magnitude of change is not considered extreme or rare when property is being developed for its planned end use as shown on Edgerton's Future Land Use Map within the Comprehensive Plan (attached).
3. Whether or not the change will bring harm to established property rights. The BNSF intermodal yard is located immediately to the north, across 191st Street, and other large parcels annexed into the City in anticipation of future industrial development adjoin to the northeast, east, and south. The property likely most affected by this proposed zoning is the parcel in farm and residential use across Four Corners Road to the west, with an existing home located about 315 feet to the west of the northwest corner of the proposed rezoning request. Separate Preliminary and Final Site Plan reviews and approvals are required before building permits can be issued. As part of the Site Plan reviews, attention to buffering and setbacks particularly adjacent to the residential uses should be given to mitigate the impact as the area transitions from residential to industrial.
4. Effective use of Land. Logistics Park development, at this location, is an effective and efficient use since the property is adjacent to other existing and planned logistics park warehouses, container storage, and the intermodal rail yard facility. Warehousing will concentrate activity near the rail yard facility rather than dispersing it throughout the community.
5. The extent to which there is a need in the community for the uses allowed in the proposed zoning. Placing warehouse facilities near the intermodal rail yard puts an intermediate destination for some of the goods in transit in close proximity to their rail origin, reducing truck traffic in the surrounding area and allowing for more efficient goods distribution.
6. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The BNSF Intermodal Facility is directly north across 191st Street. An intermodal-related grain transfer facility, LPKC Phase 1, and other intermodal-related industrial development are located to the northeast, and LPKC Phase II is planned about one mile to the east. A large greenhouse and tree farming operation is located to the southeast, across Homestead Lane. There is one home on rural acreage about 315 feet to the west. Land within the City, expected to develop with intermodal related improvements, adjoins to the east and south.

The area is in transition from rural to industrial, with intermodal warehouse development, extensive road improvements, and the new I-35 interchange at Homestead Lane. The character of the area is changing significantly. The regional parks to the southwest and floodplain areas will generally remain undeveloped, acting as open space, which will help to retain some of the existing rural character of the area.

7. Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties. The proposed zoning is compatible with the rail terminal yard and warehousing uses to the north, northeast and east. As part of the Site Plan reviews, attention to buffering and setbacks particularly adjacent to the residential uses should be given to mitigate the impact as the area transitions from residential to industrial.
8. Suitability of the uses to which the property has been restricted under its existing zoning. With the construction of the intermodal freight terminal and other logistics park uses to the north and east, the existing County zoning is no longer appropriate for this property. The best use of this property is industrial.
9. Length of time the subject property has remained vacant under the current zoning designation. The property has been held vacant in anticipation of this application since being purchased by the developer. Prior to purchase, the property was in residential and agricultural use in unincorporated Johnson County.
10. The extent to which the zoning amendment may detrimentally affect nearby property. As noted as part of the Site Plan reviews, attention to buffering and setbacks particularly adjacent to the residential uses should be given to mitigate the impact as the area transitions from residential to industrial.
11. Consideration of rezoning applications requesting Planned Development Districts (PUD) for multifamily and non-residential uses should include architectural style, building materials, height, structural mass, siting, and lot coverage. This is not a request for a PUD.
12. The availability and adequacy of required utilities and services to serve the uses allowed in the proposed zoning. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. Both Homestead Lane and 191st Street are recently constructed, paved streets that are designed to support intermodal and logistics park traffic. Four Corners Road is 21 feet wide, paved, with no shoulders, and should be improved to pavement that will support intermodal and logistic park traffic. Utilities will be provided by the developer in conjunction with development of the property.
13. The extent to which the uses allowed in the proposed zoning would adversely affect the capacity or safety of that portion of the road network influenced by the uses, or present parking problems in the vicinity of the property. As mentioned above, Four Corners Road should be improved to a standard that can accommodate industrial development traffic in the area. On-street parking will not be allowed on Four Corners, 191st, or Homestead. The developer will be required to comply with the City's UDC off-street parking requirements as part of the Site Plan review process.
14. The environmental impacts that the uses allowed in the proposed zoning would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of air, noise, light, etc, will be addressed as part of the Site Plan review process.
15. The economic impact on the community from the uses allowed in the proposed zoning. Prior to the development of the BNSF intermodal and logistics park, there were few commercial and industrial uses within the City. Warehousing and related uses allowed

in the L-P District have the potential to benefit the residents and community in a positive way by providing needed jobs and tax revenues.

16. The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton, and the property owner would be denied a use compatible with adjacent development, if the zoning is denied. The nearby communities would be adversely impacted due to the lost opportunity for jobs and tax revenue if logistics park uses were to locate in another nearby community.
17. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton. The Future Land Use Map (attached) within the Comprehensive Plan designates the subject property for industrial development. The proposed development is consistent with industrial uses planned for this area in the Comprehensive Plan.
18. The recommendation of professional staff. See Recommendation below

RECOMMENDATION

City staff recommends **approval** of the proposed rezoning of the subject property from County RUR, Rural District to L-P, City of Edgerton Logistics Park Zoning District, with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

Reasons for Recommendation for Rezoning: (Incorporate all or part of #1-18 above in motion)

ATTACHMENTS

Application RZ-07-11-2014

City of Edgerton Future Land Use Map

LOCATION OR ADDRESS OF SUBJECT PROPERTY: SW CORNER 191ST E. HOMESTEAD

PURPOSE FOR REZONING: ENLARGEMENT OF L-P DISTRICT

REQUESTED REZONING CHANGE: FROM RUR TO L-P
(Current Zoning) (Proposed Zoning)

LEGAL DESCRIPTION: ATTACHED

CURRENT LAND USE: AGRICULTURE

PROPERTY OWNER'S NAME(S): PATRICK ROBINSON PHONE: 816.888.7380

COMPANY: EDGERTON LAND HOLDING CO. FAX: 816.888.7399

MAILING ADDRESS: 5015 NW CANAL ST. RIVERSIDE MO 64150
Street City State Zip

APPLICANT/AGENTS NAME(S): SAME

PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: _____
Street City State Zip

ENGINEER/ARCHITECT'S NAME(S): DAN COOK PHONE: 913.317.9500

COMPANY: P-I-C FAX: 816.800.0951

MAILING ADDRESS: 5015 NW CANAL ST. RIVERSIDE MO 64150
Street City State Zip

SIGNATURE OF OWNER OR AGENT: 

If not signed by owner, authorization of agent must accompany this application.

FOR OFFICE USE ONLY

Case No.: RZ- 07-11-2014 Amount of Fee Paid: \$ _____ Date Fee Paid: _____

Received By: Delora Stragg Date of Hearing: 8/12/14

250⁰⁰

REZONING INSTRUCTIONS

CERTIFIED LETTERS: The applicant will be responsible for mailing notices (see attached Property Owner Notification Letter) of the public hearing for the requested rezoning by certified mail, return receipt requested, to all owners of land within the notification area: two hundred (200) feet within the city limit, one thousand (1,000) feet in the unincorporated area of the subject property. These notices must be sent a minimum of twenty (20) days prior to the public hearing. Information regarding ownership

RZ
PP
PS

> 07-11-2014

8/12/14

LOGISTICS PARK KANSAS CITY PHASE III LEGAL DESCRIPTION

TRACT I:

The West 1/2 of the Northeast 1/4 of Section 4, Township 15, Range 22, in Johnson County, Kansas EXCEPT that portion lying North of 191st Street as now established.

TRACT II:

The Southeast 1/4 of the Northeast 1/4 of Section 4, Township 15, Range 22, in Johnson County, Kansas.

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Renewal and Amendment To Residential Solid Waste Agreement With Deffenbaugh Industries

Department: Administration

Background/Description of Item: In 2011, the City of Edgerton solicited bids to provide residential solid waste collection and disposal services. Beginning January 1, 2012, the City of Edgerton contracted with Deffenbaugh Industries to provide this service. The contract to provide residential services ends December 31, 2014. The agreement may be renewed upon mutual agreement of the parties no later than four (4) months prior to the expiration date.

If the City would like to renew the agreement the terms must be agreed upon by September 1, 2014. A Deffenbaugh representative presented to the Edgerton City Council draft terms of renewal for consideration to the Governing Body at the August 14, 2014 city council meeting. Deffenbaugh has provided a draft Renewal and Amendment to the Residential Solid Waste Agreement for consideration. Staff and City Attorney have not completed the review of that amendment. A complete review will be presented to the City Council on August 28th for consideration. A Deffenbaugh representative will also be present.

If the City Council prefers not to accept the renewal options with Deffenbaugh, the Council should direct staff to solicit bids through a formal bid process similar to 2011.

Enclosure: Current Deffenbaugh Industries Contract dated December 8, 2011
Draft Renewal and Amendment to Residential Solid Waste Agreement

Related Ordinance(s) or Statute(s): Chapter VIII Article 5 Solid Waste

Recommendation:

Funding Source: General – General Government – Trash Contract; Sewer – Treatment Plant - Trash

Prepared by: Beth Linn, City Administrator
Date: August 26, 2014

RESIDENTIAL SOLID WASTE SERVICE AGREEMENT

This **Residential Solid Waste Service Agreement** ("Agreement") is made and entered into this 8th day of December, 2011, by and between Deffenbaugh Industries, Inc. ("DII"), a Missouri corporation, and the City of Edgerton, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas ("City").

WHEREAS, the parties desire that DII will provide all of the equipment, materials, labor, and disposal facilities necessary for the collection, transportation, and disposal of acceptable solid waste, recyclable materials, and yard waste generated by the residents of the City of Edgerton ("Services"), subject to the following terms and conditions of this Agreement.

1. Scope of the Contract

- (a) At a cost of \$13.66 per month for each single family residential unit (or "residence" or "resident") within the City, DII will provide weekly same-day service for the collection and disposal of "Acceptable" Residential Solid Waste, Recyclable Materials, and Yard Waste.
- "Acceptable Residential Solid Waste" means normal or typical household garbage, rubbish or refuse, and excludes (i) "Hazardous Waste" and (ii) "Bulky Items" such as construction and demolition waste, household appliances, beds, chairs, mattresses, box springs, hot water tanks, washers, dryers, refrigerators and tubs.
 - "Hazardous Waste" means medical waste, large batteries, paint, items containing an engine or compressor, items containing CFCs or PCBs (such as white goods), and any radioactive, volatile, flammable, explosive, or toxic substance, including any substance listed or characterized as toxic or hazardous by any applicable federal, state, or local law.
 - "Acceptable Recyclable Materials" means newsprint, corrugated cartons, magazines, brochures, unshredded office paper, chipboard cardboard, catalogues, certain #1 PETE and #2 HDPE plastics, certain #3 through #7 plastics, aluminum food and/or beverage cans, and steel food and/or beverage cans. This list of acceptable recyclable materials may be revised, expanded, or reduced from time to time by mutual written agreement between DII and City. Any change to the list of Acceptable Recyclable Materials will be published to each resident by DII at least thirty (30) days prior to the effective date of the change.
 - "Acceptable Yard Waste Materials" means grass clippings, leaves, tree trimmings, and other like materials from residences within the City.
- (b) DII, at its cost, shall provide each residence one (1) 95-gallon plastic cart for the collection of bagged Acceptable Residential Solid Waste. Additional or overflow waste outside the cart will be collected only if properly packaged in a plastic bag, not to exceed 35-gallons in capacity or 45 lbs in weight, and tagged with a sticker purchased through

the City or directly from DII at a charge of \$1.25 per sticker. Carts and stickered bags must be placed at the curb by 7:00 a.m. on the designated collection day.

If resident desires an additional solid waste container, DII will provide the same and thereafter DII will be paid an additional \$5.00 per month, regardless of whether the additional container is used by the resident.

- (c) In the case of qualified elderly and/or handicapped residents, trash collection may occur with smaller carts or without the use of carts accompanied with houseline service.
- (d) DII, at its cost, shall provide each residence one (1) 65-gallon plastic cart for the collection of Acceptable Recyclable Materials. Additional or overflow recycling material may be placed in a cardboard box or plastic waste container that is clearly marked "Recycling." Carts and any additional or overflow Recyclable Materials must be placed at the curb by 7:00 a.m. on the designated day of collection.
- (e) DII shall collect Acceptable Compost (Yard Waste) Materials on a once per week basis. All yard waste must be set out in either biodegradable paper or cornstarch based bags, in containers marked as Compost or Yard Waste, or in bundles not exceeding four feet (4') in length and eighteen inches (18") in diameter and tied with biodegradable twine or string only. No single bag, container, or bundle shall exceed 65 pounds in weight. Yard waste set outs are limited to a combined total of eight (8) bags, containers, or bundles per week except for the months of March, April, August, September, October, and November when the limit shall be twelve (12) bags, containers, or bundles per week.

During the two-weeks following Christmas Day, DII shall collect up to two (2) Christmas trees from each residence as part of the Yard Waste program.
- (f) DII shall retain ownership of all carts provided for residential use, and shall be responsible for maintenance of such due to normal wear and tear, and/or damage caused by DII during the collection process. Damage to carts as a result of misuse by the resident is the responsibility of the resident. DII shall deliver additional new carts upon the request of a resident, and shall replace carts damaged by a resident, at DII's cost billable to and payable by the resident.
- (g) Should the observance of a legal holiday occur on a weekday, collection by the DII will be delayed by one (1) day for that week. The City shall inform each resident of its designated collection day and any holidays recognized by DII that will result in a collection delay. Currently, DII observes the following days: New Year's Day, Martin Luther King Day, Labor Day, July 4th, Memorial Day, Thanksgiving Day, and Christmas Day. DII reserves the right to add or remove observed holidays and will provide notice to the City if changes are made.
- (h) Each resident is allowed one individual Bulky Item per week to be picked up at no additional charge. Bulky item pickups must be scheduled three (3) business days in advance. Additional bulky items over the one (1) free weekly item will be collected at a

rate of \$15 for furniture or small appliances not containing CFC's or Freon; \$25 for large appliances or appliances containing CFC or Freon; and \$20/yard for Construction & Demolition (C&D) materials (roll-off container required).

Large Appliance pickup and CFC & Freon Appliance pickups will occur quarterly on days agreed upon by the City and Deffenbaugh.

C&D materials are delivered to the C&D recycling center and require separate collection. Because of this and because materials of this nature are usually generated in substantial quantities, a roll-off container is required. The rate for collection will be \$20/cubic yard.

- (i) DII will provide two "unlimited" days on the scheduled trash day following Memorial Day and Christmas to allow for up to ten (10) extra bags of MSW to be collected without Overage Stickers in addition to the MSW in the resident's cart.
- (j) DII will provide containers for MSW and Recycling for city events at no charge. Portable toilet (Johnny on the Spot) drop-off, service and pickup are available to the City at a 50% discount.
- (k) DII shall provide MSW and Recycling service to the following City facilities at the rates listed below. In the event a commercial container is not practical or feasible, polycarts will be used to provide an equivalent amount of cubic yardage (4, 95-gallon polycarts is equivalent to a 2-yard dumpster).

Recycling carts are provided at no charge. Additional carts may be added as necessary for City use.

a. City Hall

- | | | |
|----------------------------|-------------------|---------------|
| i. MSW, 2-yard dumpster | Weekly collection | \$45.00/month |
| ii. RY, 65-gallon polycart | Weekly collection | \$0.00/month |

b. Wastewater Treatment Facility

- | | | |
|-----------------------------|-------------------|-----------------------------------|
| i. MSW, 4-yard dumpster | Weekly collection | \$65.00/month |
| ii. RY, 65-gallon polycarts | Weekly collection | \$0.00/month |
| iii. Sludge dumpster | As needed | \$100/month, \$38/ton, \$150/haul |

c. Sheriff's Office Sub Station

- | | | |
|----------------------------|-------------------|---------------|
| i. MSW, 95-gallon polycart | Weekly collection | \$20.00/month |
| ii. RY, 65-gallon polycart | Weekly collection | \$0.00/month |

d. Future facility services available at rates listed above.

- (l) DII will dispose of the Acceptable Residential Solid Waste at a landfill facility in full compliance with all federal, state and local laws.
- (m) The Services to be performed by DII pursuant to this Agreement shall be accomplished in a thorough, diligent, and professional manner so that the residents within the City are provided, reliable, courteous and high-quality solid waste collection services at all times.

2. **Term and Termination**

The Term of this Agreement is for a period of three (3) years commencing on January 1, 2012 and ending December 31, 2014. The Agreement may be renewed upon the mutual agreement of the parties no later than four (4) months prior to the expiration date. All subsequent contract extension shall be in increments of two (2) years.

3. **Notice to Residents**

The City shall notify all residents of the designated day of collection and the pertinent requirements set forth above for the proper placement of Residential Solid Waste for collection by Contractor.

4. **Annual Price Adjustment**

The residential unit price set forth in paragraph 1 above shall be firm for the duration of this Agreement. A price increase may be requested in contract extensions in accordance with the percentage increase of the Consumer Price Index. This option for a price increase will only be requested if Deffenbaugh deems it necessary due to CPI changes and only then accepted if the City Council approves.

DII will invoice City in arrears for Services rendered on a monthly basis with payment due upon City's receipt of the invoice. DII may impose a charge of one and one-half percent (1.5%) per month up to a maximum of eighteen percent (18%) per year on all account balances at or exceeding sixty (60) days past due.

The pricing quote set forth in paragraph 1 is based on a current average diesel fuel pricing of \$3.79 per gallon. If the price of fuel exceeds \$4.00 per gallon on a rolling 3-month basis during the term of this contract, a 6% surcharge may be added.

5. **Quarterly Report of Number of Residential Units**

At the time of submission, invoicing by DII will be based on eight hundred, fifty-five (855) single residential units. Thereafter, the City will update DII on a monthly basis of the total number of occupied residential units within the City limits, and the invoice for Services will be adjusted accordingly.

6. **Missed Pickups**

- (a) A weekly Collection Report showing the number of successful collections from residential units and any missed pickups may be sent to the City upon request. The report may include pertinent photographs where necessary to explain missed pickups due to a resident's failure to properly contain and set out Acceptable Waste Materials.
- (b) In the event of failure by DII to perform any Service where the resident has properly contained and placed the materials as set forth in paragraph 1 above, DII agrees to make a special pickup within twenty-four (24) hours of receipt of notice of the missed pickup in order to correct that error of operation at no additional charge. DII will pay the City \$10.00 for every missed pickup not properly collected within 72 hours of the designated collection date providing the materials were of the correct type (not containing

unacceptable materials), arranged correctly, and that DII was notified within 48 hours of the missed pickup.

(c) In the event any resident shall place an item for collection that does not reasonably satisfy the requirements set forth above in paragraph 1, the resident shall either:

1. Prepare the waste in a manner suitable for collection (e.g. break down or separate items into bags or containers of approved size and weight); or
2. Arrange with DII for a special pickup of such item at the resident's cost to be determined by DII.

If option (b)(1) is selected by the resident, DII shall have no obligation to make a special pickup as described in paragraph 7(a) above, and the resident shall be required to wait for such collection until the next regularly scheduled collection day. If option (b)(2) is selected by the resident, DII shall make such special pickup within two (2) business days of receipt of notice from the resident, and shall bill the resident directly for such special pickup.

(d) Upon completion of all pickups, Deffenbaugh will return carts to an upright position at the curb. If any items fall from carts or trucks during a pickup, Deffenbaugh will immediately remove them from the street or area where they fell.

7. Title to Waste

DII acquires title to Acceptable Residential Solid Waste, Recyclable Materials, and Yard Waste when loaded onto DII's trucks. Title to and liability for any non-conforming Residential Solid Waste, Recyclable Materials, or Yard Waste, including Hazardous Waste, will remain with resident at all times even if loaded onto DII's trucks.

8. Independent Contractor Status

DII shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City. DII shall have exclusive control over the details of the Services performed hereunder, and shall be solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between City and DII.

9. Repair of Damage

DII shall, at no cost to the City, repair all damage caused by DII to either public or private property in the execution of Services under this Agreement, with the exception of wear and tear to roadways, pavement, and parking lots incidental to the weight of DII's vehicles and containers. All repairs made by DII pursuant to this provision shall be made in a manner and time acceptable to the City.

10. Non-Assignment / Successors

Neither party may assign this Agreement or any part hereof without the prior written consent of the other. Notwithstanding the foregoing, DII shall have the right to assign its

rights and delegate its duties under this Agreement to (i) an entity into which DII is merged or consolidated, or (ii) an entity that purchases all or substantially all of DII's assets or outstanding stock ("Permitted Assignment"). Any assignee under a Permitted Assignment will be entitled to all of DII's rights and interests under this Agreement, and will be liable for all of DII's obligations and duties under this Agreement. This Agreement will be binding upon and inure to the benefit of each of the parties hereto and its respective successors and permitted assigns.

11. Compliance with Laws

- (a) DII shall comply with all federal, state and local laws and regulations applicable to DII and the Services provided under this Agreement. DII, at its sole cost and expense, shall obtain and maintain throughout the term of this Agreement, all permits, licenses and approvals necessary or required for DII to perform the Services.
- (b) In the execution and performance of this Agreement, DII shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. DII is an equal opportunity employer.

12. Insurance

DII shall secure and maintain throughout the duration of this Agreement insurance in such types and amounts as set forth below. A Certificate of Insurance Coverage shall be filed with the City and shall name as an additional insured the City of Edgerton, Kansas.

- Workers Compensation Insurance complying with the statutory requirements of the State of Kansas and Employer's Liability Insurance having liability limits of not less than \$1,000,000 each occurrence.
- Comprehensive Automobile Liability Insurance with a combined single limit (bodily injury and property damage) of not less than \$3,000,000 each occurrence.
- Comprehensive General Liability Insurance with a limit of not less than \$3,000,000 per occurrence (bodily injury and property damage combined).

13. Indemnification

DII agrees to indemnify and hold harmless the City and its residents from all loss, liabilities, claims, costs, expenses, attorney fees, damages, actions or suits of any kind, whether in the nature of bodily injury or damage to property of the City or its residents, arising out of DII's negligent performance of Services under this Agreement, or DII's negligent failure to comply with all applicable permits, licenses, laws or regulations.

14. Default and Termination

This Agreement may be terminated by the City immediately in the event of the failure by DII to comply with any material condition of this Agreement and such failure has not been cured within ten (10) days following DII's receipt of a written notice of default from the City. Further, the City may terminate this Agreement at any time by giving thirty (30) days prior written notice to DII in the event the City, in its sole discretion, shall

determine that it does not then have, or will not have, adequate funds that may be lawfully used to make the payments required for the Services under this Agreement.

15. Notices

Any notice required to be provided under this Agreement will be in writing and will be deemed duly given upon the date received by the intended recipient if delivered by hand or by overnight courier, or three (3) days following the date deposited in the United States Mail, certified with return receipt requested, postage prepaid, addressed to the recipient at the address set forth below (or at such change of address as one party advises the other).

CITY

City of Edgerton
Attn: Beth Linn
404 E Nelson Street
Edgerton, KS 66021

DII

Deffenbaugh Industries, Inc.
Attn: Legal Department
2601 Midwest Drive
Kansas City, KS 66111

16. Captions; Interpretation

The section headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. The terms of this Agreement are the product of negotiation between the parties and are not to be construed as being drafted solely by one party and no presumption is to arise there from in favor of either party.

17. Severability

If any provision of this Agreement is deemed invalid and unenforceable by any court of competent jurisdiction or under any statute, regulation, ordinance, executive agreement or other rule of law, such provision will be deleted or modified, at the election of the parties, but only to the extent necessary to comply with such ruling, statute, regulation, ordinance, agreement or rule, and the remaining provisions of this Agreement will remain in full force and effect.

18. Dispute Resolution

The parties agree to work in good faith with each other to resolve any dispute arising out of the terms and Services under this Agreement. Should an impasse result over a dispute, the parties agree to submit the dispute to mediation or to another type of dispute resolution process agreed to by the parties, prior to the institution of any legal proceedings. The fees and expenses of the dispute resolution process shall be shared

equally by the parties. In the event either party institutes an action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses incurred to defend or prosecute such action.

19. Consequential Damages

In no event will either party be liable to the other for special, incidental, consequential, or punitive damages, or lost profits.

20. Non-Waiver

The failure of any party to insist upon strict performance of any of the terms, conditions, and provisions of this Agreement shall not be deemed a waiver of future compliance and shall in no way prejudice the remaining provisions of this Agreement.

21. Choice of Law/Jurisdiction/Venue

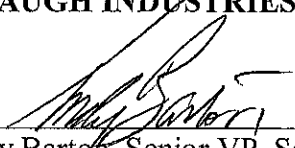
This Agreement shall be construed in accordance with the laws of the State of Kansas, without regard to conflict of laws principles. The parties agree, and hereby give their consent, that jurisdiction and venue of any action brought to enforce, relating to, or arising out of this Agreement will be exclusively in the federal and state courts having jurisdiction in the county where the Services are provided.

22. Force Majeure

Neither party will be responsible for any failure or delay in the performance of all or any part of this Agreement caused by acts of God and nature, intervention of government, war or threat of war, conditions similar to war, acts of terrorism, sanctions, blockades, embargoes, strikes, lockouts or other similar causes or circumstances which cannot reasonably be prevented by the party whose performance has been delayed or who has failed to perform. However, the party so affected promptly will give notice thereof to the other party whenever such contingency or other act or circumstance becomes reasonably foreseeable, and will use commercially reasonable efforts to overcome the effects thereof as promptly as possible, and will promptly give notice to the other party after the cessation of such effects. Neither party, however, will be required to resolve a strike, lockout or other labor problem in a manner which it alone does not, in the party's sole discretion, deem reasonably proper and advisable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

DEFFENBAUGH INDUSTRIES, INC.

By: 
Andy Barton, Senior VP, Sales & Marketing

Date: 12-12-11

CITY OF EDGERTON, KANSAS

By: 
Donald Roberts, Mayor

Date: 12-8-11

RENEWAL AND AMENDMENT TO
RESIDENTIAL SOLID WASTE SERVICE AGREEMENT

This Renewal and Amendment ("Amendment") is hereby incorporated into the existing agreement known as the Residential Solid Waste Service Agreement ("Agreement"), entered into by and between City of Edgerton ("City") and Deffenbaugh Industries, Inc. ("DII") on December 8, 2011. City and DII mutually agree to modify and renew the Agreement as stated herein, and if any conflict exists between the terms of the original Agreement and this Amendment, the terms of this Amendment shall govern.

WHEREAS, City and DII agree as follows:

1. The Agreement shall be renewed for a term of two (2) years commencing January 1, 2015 ("Renewal Term"). The residential unit price of \$13.66 per month will be effective for the Renewal Term and subject to the Annual Price Adjustment provision in paragraph 4 of the Agreement.

2. The Agreement may be terminated by either party with or without cause upon ninety (90) days advance written notice.

3. DII agrees to designate a Route Supervisor who will be present within the city limits of the City on the designated residential collection day for the purpose of monitoring the services provided under the Agreement.

4. City understands that it may contact DII about service requests and missed pickups by calling 913-631-3300 during DII's regular business hours of 8:00 a.m. to 5:00 p.m. weekdays and after hours at 913-631-5020.

5. DII agrees to contact Ripple Glass about the feasibility of establishing a glass recycling program within the City, and agrees to service any glass collection container if such a program is approved and implemented by Ripple.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed the dates written below.

CITY OF EDGERTON, KANSAS

DEFFENBAUGH INDUSTRIES, INC.

Name: _____

Name: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____