

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
July 14, 2016**

**Call to Order**

1. **Roll Call** \_\_\_\_ Roberts \_\_\_\_ Longanecker \_\_\_\_ Crooks \_\_\_\_ Troutner \_\_\_\_ Brown \_\_\_\_ Crist
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
5. Approve City Council Meeting Minutes June 23, 2016
6. Approve 2016 Annual Review of City of Edgerton Water Conservation Plan

**Regular Agenda**

7. **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.
8. **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.
9. Discussion regarding Beekeeping within the City Limits

**Business Requiring Action**

10. **CONSIDER RESOLUTION NO. 07-14-16A OF THE CITY OF EDGERTON, KANSAS, AUTHORIZING IMPROVEMENTS TO THE SEWERAGE SYSTEM OF THE CITY; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

11. **CONSIDER ORDINANCE NO. 1018 AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2016, OF THE CITY OF EDGERTON, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

12. **CONSIDER RESOLUTION NO. 07-14-16B PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF GENERAL**

**OBLIGATION BONDS, SERIES 2016, OF THE CITY OF EDGERTON, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 1018 OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

- 13. CONSIDER ORDINANCE NO. 1019 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 62 ACRES OF LAND [LOCATED WEST OF WAVERLY ROAD AND NORTH OF BURLINGTON NORTHERN SANTA FE RAILROAD] IN EDGERTON, KANSAS FROM CITY OF EDGERTON "A-G" AGRICULTURE ZONING DISTRICT TO CITY OF EDGERTON "L-P" LOGISTICS PARK ZONING DISTRICT**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

- 14. CONSIDER ORDINANCE NO. 1020 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 71 ACRES OF LAND [EAST SIDE OF WAVERLY ROAD AND SOUTH OF 183RD STREET AND SOUTH OF 185TH STREET] IN EDGERTON, KANSAS FROM JOHNSON COUNTY AG, TO THE L-P, LOGISTICS PARK DISTRICT**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

- 15. CONSIDER ORDINANCE NO. 1021 PROVIDING FOR THE RANGE OF SALARIES AND COMPENSATION OF VARIOUS CITY OFFICERS AND EMPLOYEES OF THE CITY OF EDGERTON, KANSAS**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

- 16. CONSIDER ORDINANCE NO. \_\_\_\_\_ AMENDING ARTICLE 4 OF CHAPTER V OF THE EDGERTON, KANSAS MUNICIPAL CODE TO CREATE PROVISIONS PERTAINING TO LICENSING MOBILE FOOD VENDERS WITHIN THE CITY**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

- 17. CONSIDER ORDINANCE NO. 1022 AMENDING SECTION 15-401 OF ARTICLE 4 OF CHAPTER XV OF THE CITY CODE TO SPECIFICALLY REFERENCE A "WATER EMERGENCY PLAN" THAT WILL BE MAINTAINED AND KEPT CURRENT BY THE GOVERNING BODY'S ADOPTION OF RESOLUTIONS**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

- 18. CONSIDER RESOLUTION APPROVING A WATER EMERGENCY PLAN FOR THE CITY OF EDGERTON, KANSAS, AND AUTHORIZING THE CITY ADMINISTRATOR TO IMPLEMENT SAID PLAN AS NEEDED**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**19. Report by the City Administrator**

**20. Report by the Mayor**

**21. Future Meeting/Event Reminders:**

- July 16<sup>th</sup> 8:00 PM – Downtown Summer Movie Night (Alexander and the Terrible, Horrible, No Good, Very Bad Day)
- July 20<sup>th</sup> Noon – Senior Lunch
- July 28<sup>th</sup> 7:00 PM – City Council Meeting
- August 9<sup>th</sup> 7:00 PM – Planning Commission Meeting
- August 11<sup>th</sup> 7:00 PM – City Council Meeting (including 2017 Budget Hearing)
- August 17<sup>th</sup> Noon – Senior Lunch
- August 25<sup>th</sup> 7:00 PM – City Council Meeting

**22. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b) (6) FOR PRELIMINARY DISCUSSION RELATED TO ACQUISITION OF REAL PROPERTY TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**RECONVENE INTO OPEN SESSION**

**23. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b) (2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**RECONVENE INTO OPEN SESSION**

**24. Adjourn** Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**City of Edgerton, Kansas  
Minutes of City Council Regular Session  
June 23, 2016**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on June 23, 2016. The meeting convened at 7:00 p.m. with Mayor Roberts presiding, and City Clerk Janeice L. Rawles recording.

**1. ROLL CALL**

Charlie Troutner	present
Darius Crist	present
Clay Longanecker	present
Jody Brown	present

Cindy Crooks	absent
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With a quorum present, the meeting commenced.

Staff in attendance:	City Administrator Beth Linn
	Community Development Director Kenny Cook
	City Attorney Patrick Reavey
	Public Works Superintendent Trey Whitaker

**2. WELCOME**

**3. PLEDGE OF ALLEGIANCE**

**CONSENT AGENDA**

4. The agenda for June 23, 2016 was considered.
5. City Council meeting Minutes of June 9, 2016 was considered.

Motion by Longanecker, seconded by Crist, to approve the consent agenda.

Motion was approved, 4-0.

**6. PUBLIC COMMENTS**

NONE

**7. DECLARATION**

None

**8. PRESENTATION FROM JOHNSON COUNTY REGARDING THE ¼-CENT PUBLIC SAFETY SALES TAX TO FUND CONSTRUCTION OF A NEW COUNTY COURTHOUSE AND A CORONER FACILITY.**

Ed Eilert, Chairman of the Board of the Johnson County Board of Commissioners, was present to provide information and a power point presentation about the ¼-cent public safety sales tax. The new sales tax, if passed, would help to construct a new courthouse and a Coroner Facility. The ¼-cent sales tax would drop off in ten years. The current courthouse does not meet the American Disability Act and there is not a Coroner Facility located within Johnson County. The Johnson County current Coroner Facility is located in Wyandotte County, Kansas. He noted cost estimates were done on renovating the current facility, however those estimates came in higher than constructing a new facility. The voters of Johnson County will be able to vote on the ¼-cent sales tax in the November general election. Council member Crist offered thanks to Commissioner Eilert for a very interesting presentation. Mayor Roberts and council also thanked Mr. Eilert for coming to the council meeting and for his presentation.

**9. PRESENTATION FROM MIAMI COUNTY CONSERVATION DISTRICT REGARDING GRANT FOR HILLSDALE LAKE WATER CONSERVATION AND AWARENESS GRANT**

Beth Linn, City Administrator, introduced Lesley Rigney, District Manager with Miami County Conservation District. The Miami County Conservation District has received a three year grant to do monitoring, education and conservation practices in the watershed. It was noted part of the provisions of the grant is to have matching funds. The Conservation District is requesting \$2,500.00 from the City of Edgerton. The conservation District also needs new members. Discussion occurred and the city staff was directed to apply this number to the budget.

**10. DISCUSSION REGARDING BEEKEEPING WITHIN THE CITY LIMITS**

Beth Linn, City Administrator, introduced Joli Winer with the North East Kansas Bee Keepers Association. Ms. Winer gave some background information on the association, there are 600 members in this area and they meet monthly in Lawrence, Kansas. She advised that there is a risk and you can get stung. The bees need water to be provided in the close proximity, or they will travel to the closest pool, perhaps even a neighbor's pool. The Cities of Shawnee, Overland Park, Lenexa, and Lawrence have city ordinances that address Beekeeping. The council members have been asked to review the information presented tonight and be prepared to discuss at the next regular meeting.

**BUSINESS REQUIRING ACTION**

**11. LEASE PURCHASE AGREEMENT FOR STREET SWEEPER**

City Administrator Beth Linn presented information to Mayor and City Council about the agreement for the street sweeper. Staff solicited lease purchase proposals from Arvest Bank, Central Bank and Commerce Bank. The lowest cost lease proposal is the proposal from Commerce Bank. Edgerton resident and member of the audience commented that Edgerton picked the best model available. The Mayor stated that governments have to go through a bid process and the city staff has completed the bid process and the results are in the agenda packet tonight.

Motion by Longanecker, seconded by Brown, to approve Commerce Bank to handle the lease purchase of the Street sweeper.

Motion was approved 4-0.

**EXECUTIVE SESSION**

**12. A MOTION TO RECESS INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (B) (2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR WAS CONSIDERED.**

Motion by Brown, seconded by Crist, to recess into executive session for ten minutes and to include city attorney and city administrator.

Motion was approved, 4-0.

Meeting recessed at 8:20 pm.

Motion by Crist, seconded by Longanecker, to reconvene meeting with no action taken.

Motion was approved, 4-0.

Meeting reconvened at 8:30 pm.

**BURNS & MCDONNELL/CAS CONSTRUCTION AGREEMENT**

**13. AN AGREEMENT WITH BURNS & MCDONNELL/CAS CONSTRUCTION ON THE BASIS OF A STIPULATED PRICE WAS CONSIDERED.**

After review from last meeting and looking at the current handout the stipulated price with guaranteed maximum price at \$2,821,000.00, the council also discussed the extended warranty being \$24,000 for the second year.

Motion by Longanecker, seconded by Crist, to approve the agreement after City Attorney and staff have reviewed the final document.

Motion was approved, 4-0.

**BG CONSULTANTS / EWWTP**

**14. AN AGREEMENT WITH BG CONSULTANTS FOR CONSTRUCTION ADMINISTRATION AND OBSERVATION SERVICES FOR THE EDGERTON WASTEWATER TREATMENT PLANT PUMP STATION AND FORCE MAIN WAS CONSIDERED.**

In 2015 the City Council approved a preliminary design build agreement with Burns & McDonnell/CAS Construction. Kansas Department of Health and Environment requires full-time inspection for construction of any sanitary sewer main and pump station. Staff is recommending BG Consultants for the inspection of this project since the BG Inspection team is already in the Edgerton area.

Motion by Brown, seconded by Crist, to approve the agreement with BG Consultants pending City Attorney approval.

Motion was approved, 4-0.

#### **15. REPORT BY THE CITY ADMINISTRATOR**

First item is the Skid Steer that public works is looking to purchase, they are going to need to change directions. There are communication problems with the company they were going to purchase from, so now they have chosen a different type of machine and from another company. City Attorney is to contact old company and make sure we are not obligated in any way to them.

Motion to approve the contract with John Deere for the 328E Skid Steer on contingent that the bobcat is out.

Motion was approved, 4-0

Second item is the July 3<sup>rd</sup> community picnic and fireworks show. Tegan Meadors, Park and Recreation Coordinator is looking for volunteers. Council members; Troutner, Crist, Longanecker, and Crooks have offered to help at the event.

Beth Linn, City Administrator, introduced Olivia Kindle. The city office staff would like to say "Thank you" and hope you had a great day helping in the office and "Welcome Back" to the City of Edgerton Council Meeting.

#### **16. REPORT BY THE MAYOR**

Mayor Roberts would like to thank all the volunteers that helped with the Frontier Days Event. The estimated turn out for Saturday night's concert was between 2000-3000 people. The council received one complaint, there were not enough trash receptacles available. Mayor Roberts would like to see a report from the Sheriff's Department on how the event went from their perspective. Next big event will be the 3<sup>rd</sup> of July event.

#### **17. FUTURE MEETING/EVENT REMINDERS:**

- June 25<sup>th</sup> 8:00 pm Downtown Summer Movie Night (Minions)
- June 30<sup>th</sup> 7:00 pm City Council Budget Work Session
- July 3<sup>rd</sup> 6:00 pm (Fireworks 9:45) – Community Picnic and Firework Show (rainout date July 5<sup>th</sup>)
- July 4<sup>th</sup> – City Offices – CLOSED
- July 12<sup>th</sup> – 7:00 pm Planning Commission Meeting
- July 14<sup>th</sup> 7:00 pm City Council Meeting

#### **18. ADJOURN** Motion: Brown Second: Longanecker Vote: 4-0

Meeting adjourned at 9:15 pm.

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Janeice L. Rawles, CMC  
City Clerk

Approved by the Governing Body on \_\_\_\_\_



## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider 2016 Annual Review of City of Edgerton Water Conservation Plan

**Department:** Utilities

**Background/Description of Item:** The City of Edgerton is required to have a Water Conservation Plan that is adopted by the Governing Body and filed with the Kansas Water Office. The City Council last approved the Water Conservation Plan December 2012. The Kansas Water Office would prefer the document be reviewed on an annual basis. In addition, as a part of the Hillsdale Area Water Cooperative (HAWC) water marketing contract, the City of Edgerton is required to annually review and/or update their Water Conservation Plan.

The purpose of the Water Conservation Plan is to provide the City of Edgerton means for managing water resources in the event of an emergency or weather-related event. Staff has reviewed the current plan and made a few changes to reflect several conservation measures approved by the City Council including the Automated Metering Infrastructure (AMI) project and the recently approved water rate structure and fees.

Additionally, Kansas Water Office has reviewed the plan and recommended additional changes, including to update the City's latest water use history. All changes are tracked in the attached document.

Once approved by City Council, staff will submit the updated plan to Kansas Water Office (KWO) who will submit the plan to Division of Water Resources (DWR) with a recommendation for approval.

Staff will plan to annually bring the plan to City Council for review in April of each year.

Enclosures: Draft Water Conservation Plan (with recommended changes tracked)

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve 2016 Annual Review of City of Edgerton Water Conservation Plan with Recommended Changes

**Funding Source:** N/A

Prepared by: Michael Mabrey, Utility Superintendent  
Date: July 6, 2016

**Water Conservation Plan**  
**for the**  
**City of Edgerton, Kansas**

| **Approved ~~December 13, 2012~~ July 14, 2016**

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## WATER CONSERVATION PLAN

### INTRODUCTION

The City of Edgerton, Kansas supplies water to the residents of the City and a few customers outside the City limits along transmission mains from metering and booster pump station sites located east of Baldwin and east of Edgerton.

The City purchases potable water from Baldwin City, Kansas (herein "Baldwin") and raw water from Hillsdale Lake from the Kansas Water Office. The Baldwin metered connection point and booster pump is located at 1897 N. 200 Road in Douglas County east of Baldwin City. The Baldwin contract provides for 74,000,000 gallons per year (250,000 gallons per day maximum) and expires in 2017.

The City entered into a ~~forty-year~~forty-year contract with the Kansas Water Authority for 200,000,000 gallons of raw water per year from Hillsdale Lake. Contracts also provide for the treatment of the Hillsdale supply by Miami County Rural Water No. 2 (herein "RWD 2"). This supply is transported by Johnson County ~~Rural~~-Water District No. 7 (herein "~~RWD-107~~") to the City's Spoon Creek Booster Pump Station located at 20690 Spoon Creek Road located east of Edgerton in Johnson County. Both of the City's booster pump stations are checked daily.

The City owns several elevated storage facilities:

- 50,000--gallon tank located at 408 First Street;
- ~~150,000-gallon~~150,000-gallon tank located at 818 West Eighth Street and;
- ~~200,000-gallon~~200,000-gallon tank located at 20325 County Line Road.

The City maintains two non-metered emergency connections with ~~RWD-7-107~~. The primary emergency connection with ~~RWD-7-107~~ is located on Edgerton Road and the secondary connection is located at US-56 and 199<sup>th</sup> Street. The City has an agreement with ~~RWD-7-107~~ dated August 28, 2008 that provides the terms for the primary emergency connection.

### PURPOSE

The primary objective of the Water Conservation Plan for the City of Edgerton ~~are-is~~ to develop long-term water conservation plans (Long-Term Water Use Efficiency Section) and short-term water emergency plans (Drought Response Section) to assure the City customers of an adequate water supply to meet their needs. The efficient use of water also has the beneficial effect of limiting or postponing water distribution system expansion and thus limiting or postponing the resultant increases in costs, in addition to conserving the limited water resources of the State of Kansas.

# LONG-TERM WATER USE EFFICIENCY

## Water Use Conservation Goals

The City of Edgerton used ~~fifty-eight~~Sixty-one gallons per person per day (GPCD) in ~~2011-2014~~. This GPCD figure included:

Commented [tr1]: I have updated the goals using the 2014 publication.

- a) water sold to residential/commercial customers;
- b) water distributed for free public services (parks, cemeteries, swimming pools etc.); and
- c) water lost by leaks in the water distribution system.

However, the GPCD figure does include municipally supplied water for industries that use over 200,000 gallons per year. According to Figure 1, shown in the ~~2011-2014~~ Kansas Municipal Water Use Publication, ~~our City~~the City of Edgerton is located in Region 8. From this publication it was determined that ~~our the~~ City GPCD water use was ~~68.58~~61, which was ~~36.830 percent~~ below the regional average of ~~93.57~~ GPCD among cities in Region 8 during ~~2011-2014~~. The City desires to set a water use conservation goal for usage not to exceed ~~95.01~~ GPCD based on the regional average of the last five years (~~2006-2010~~2016-2021~~2010-2014~~). Our City anticipates not exceeding this goal by carrying out the specific actions that are outlined in our plan.

## Water Conservation Practices

This subsection of the Plan summarizes the current education, management and regulation efforts that relate to the long-term conservation of water in the City. Specific practices that will be undertaken to conserve water are listed and a target date to begin each practice is also shown.

### 1. -Education

The City water bills show the total number of gallons of water used during the billing period and the amount of the bill. Water conservation tips are periodically provided with the water bills.

The City has provided water conservation information to residents via the City’s website and monthly newsletter.

The City has chosen the following conservation practices and target dates for the Education Component of the Long-Term Water Use Efficiency Section of our Water Conservation Plan.

Education Conservation Practices	Target Date
• Water conservation tips to be provided periodically, annually at a minimum, either with water statements or included with City newsletters.	On-going
• Informational brochures on the City’s water supply will be available for distribution to customers at City Hall.	Implemented

Formatted Table

- Water bills will show the amount of water used in gallons and the cost of the water.

Implemented

## 2. -Management

The City of Edgerton has a meter installed at the delivery point and connection to the Baldwin and RWD 7. -The meters are annually calibrated. Meters registering within 3% above or below test results are deemed to be accurate. -Meters are monitored and read daily by the City and at least monthly by Baldwin and ~~RWD-7JO7~~. Meters are repaired or replaced as soon as possible if determined to be inaccurate. -A master meter may be obtained if needed for immediate replacement. -These metering requirements also apply to the additional water supply from Hillsdale Lake. -RWD 2 provides treatment and ~~RWD-7-107~~ provides transportation of this supply to the City's Spoon Creek Booster Pump Station.

Water meters are installed for all customers as well as all government buildings and grounds even if the amount of water provided is free of charge. In 2016, the Edgerton City Council approved a capital improvement project to replace each customer meter with Automated Metering Infrastructure. The project includes the installation of a new meter for each customer system-wide and with the installation projected to be complete by the end of 2017. -Customer meters are scheduled for an accuracy check and possible repair or replacement upon receiving a request to do so from the customer.

The City reads each customer's water meter and mails a water bill to each customer on a monthly basis. Customer water meters are generally read on the 20<sup>th</sup> of each month or as close thereto as is practical. Water usage is calculated after each reading. Total usage is compared to total purchases on a monthly basis. -Water leaks from the City public water distribution system are repaired when discovered. Water pressure is also checked periodically at various locations throughout the system. Once installed and operationally, the automated metering infrastructure system will greatly improve the City's ability to identify leaks within the system.

Individual usage changes of less than 50% and above 150% are investigated by the Public Works Department if warranted after an initial review by the Administrative staff. If a water leak is suspected, the City attempts to notify the customer for further information and to have the customer check for easily found leaks. These include checking for running toilets, running hoses or faucets, and water pooling or running away from structures. As mentioned previously, the automated metering infrastructure scheduled to be installed will provide staff additional tools to identify possible leaks and contact customers more quickly regarding possible leaks.

Water sales are based on the amount of water used. The City reviews its water rates and rate structure annually during the budget process. The City of Edgerton performed a comprehensive rate structure and fee analysis. Both the rate structure and fees were updated to encourage water conservation. Current rates and structures are available in the City Fee Resolution on the city's website at [www.edgertonks.org](http://www.edgertonks.org). The last water rate increase for the City was passed on December 9, 2010. The minimum monthly water bill is \$26.54 for customers inside the city limits and \$39.27 for customers outside City

**Commented [tr2]:** Please include the URL; DWR will likely want to view it.

~~limits, which allows each customer to use up to 2,000 gallons of water each month. Water use over 2,000 gallons is charged at \$9.47 per 1,000 gallons for customers inside City limits and at \$14.01 per 1,000 gallons for customers outside City limits.~~

~~The sewer rate is a base rate of \$2.60 plus \$4.23 per each 1,000 gallons of water averaged during the months of January, February and March.~~

The City ~~realizes-recognizes~~ that once the AMI infrastructure is installed it is equally important to emphasize the maintenance of those meters for much greater emphasis must be placed on obtaining accurate measurement of water use at our raw water intake and at customer meters. The new AMI system and the corresponding document system will assist staff~~A water use records system must be developed that can be used to more-in~~ effectively and efficiently manageing the City public water distribution system. Hence, the City has chosen the following conservation practices and target dates for the management component of the Long-Term Water Use Efficiency section of the Water Conservation Plan:

Management Conservation Practices	Target Date
<ul style="list-style-type: none"> <li>All <del>raw-source</del> water intakes will have meters installed and the meters will be repaired or replaced within two weeks when malfunction occurs.</li> </ul>	On-going
<ul style="list-style-type: none"> <li>Meters at <del>raw-source</del> water intakes will be tested for accuracy at least once every year. Each meter will be repaired or replaced if its test measurements are not within 3% of the actual volume of water passing through the meter.</li> </ul>	On-going
<ul style="list-style-type: none"> <li>Meters will be installed at all service connections, including separate meters for municipally-operated irrigation systems.</li> </ul>	On-going
<ul style="list-style-type: none"> <li>All meters at <del>raw-source</del> water intakes will be read daily and meters at individual service connections will be read at least once every month.</li> </ul>	On-going
<ul style="list-style-type: none"> <li>A reading will be taken at each raw water intake meter during the monthly billing cycle.</li> </ul>	On-going
<ul style="list-style-type: none"> <li>The City will implement a review, which will result in a specified change in water management practices or implementation of a leak detection and repair program or plan, whenever the amount of unsold water (amount of water provided free for public service, used for treatment</li> </ul>	On-going

**Commented [tr3]:** "Source" water is a better term for your system's treated water intakes.

purposes, water loss, etc.) exceeds 20% of the total <del>raw-source</del> water intake for a <del>four-month</del> <u>four-month</u> time period.	
<ul style="list-style-type: none"> <li>Water sales will be based on the amount of water used.</li> </ul>	Implemented
<ul style="list-style-type: none"> <li>Customer meters will be scheduled for replacement with a radio-read metering system, which will improve reading efficiencies and provide better detection of possible leaks.</li> </ul>	<del>2014</del> <u>Implemented</u>

### 3. Regulation

The City has an adopted plumbing code, but has not ~~felt yet the need to~~ incorporated mandatory water conservation units in the plumbing code. The City encourages builders and homeowners to install plumbing innovations, such as low flow toilets, that reduce water consumption. Most new homes and/or remodeling projects do include the use of water conservation toilets and faucets to reduce homeowners' overall utility costs.

Regulatory Actions	Target Date
<ul style="list-style-type: none"> <li>Develop plumbing guidelines that encourage water conservation for new residential construction.</li> </ul>	Implemented

### DROUGHT RESPONSE

The City addresses its short-term water shortage problems through a series of stages based on conditions of supply and demand with accompanying triggers, goals and actions. -Each stage is more stringent in water use than the previous stage since water supply conditions are more deteriorated. -The City Administrator or designee is authorized by ordinance to implement the appropriate conservation measures.

#### Stage 1: Water Watch

##### Goals

The goals of this stage are to heighten awareness of the public on water conditions and to maintain the integrity of the water supply system.

##### Triggers

This stage is triggered by any one of the following conditions:

- The City's storage has fallen below 85% capacity; and will not recover.
- Providers of purchased water have issued a Stage 1 Water Watch, or Baldwin City has notified Edgerton that the Clinton Water Treatment Plant or the RWD #2 Plant at Hillsdale Lake has indicated that lake or plant conditions are such that a reduction in available potable water is imminent.
- Demand for one day is in excess of 170,000 gallons per day for five consecutive days. ~~(typically 15% above normal seasonal peak day, which may be calculated using the normal seasonal highest month, divided by thirty).~~

**Commented [tr4]:** The equation is not needed; however, be sure to maintain historical records of peak demand. (I'm sure you do but many do not.)



4. The Kansas Water Office has issued a water watch based on the remaining storage in the water marketing in Hillsdale Lake and/or Clinton Reservoir.

**Commented [tr5]:** You might want to trigger if one or the other lake is declared. If you are sure you will only need to declare if both are affected you can delete the "or".

#### **Education Actions**

1. The City will make occasional news releases to the local media describing present conditions and indicating the water supply outlook for the upcoming season.
2. Previous month summaries of precipitation, temperature, water levels and storage will be made public at the beginning of each month.
3. Water-saving tips will be included in billings to water utility customers.

#### **Management Actions**

1. Leaks will be repaired within forty-eight hours of detection.
2. The City will monitor its use of water and will curtail activities such as hydrant flushing and street cleaning.

#### **Regulation Actions**

1. The public will be asked to curtail some outdoor water use and to make efficient use of indoor water (i.e., wash full loads, take short showers, don't let faucets run, etc.)

### **STAGE 2: WATER WARNING**

#### **Goals**

The goals of this stage are to reduce peak demands by 20% and to reduce overall weekly consumption by 10%.

#### **Triggers**

This stage is triggered by any one of the following conditions:

1. The City's storage has fallen below 70% capacity and will not recover.
2. Providers of purchased water have issued a Stage 2 Water Warning, or the City has been notified that the Clinton Water Treatment Plant or the RWD 2 plant at Hillsdale Lake has indicated that lake or plant conditions are such that a reduction in available potable water is imminent.
3. Demand for one day is in excess of 210,000 gallons per day for five consecutive days, (typically 25% above normal seasonal peak day, which may be calculated using the normal seasonal highest month, divided by thirty).
4. The Kansas Water Office has issued a water warning based on the remaining storage in the water marketing in Hillsdale Lake and/or Clinton Reservoir.

#### **Education Actions**

1. The City Administrator or designee will make weekly news releases to the local media describing present conditions and indicating the water supply outlook for the upcoming week.
2. Previous month summaries of precipitation, temperature, water levels and storage will be made public at the beginning of each month.
3. The City will place inserts in each customer's water bill outlining tips on conserving water indoors and outdoors.

4. Water conservation articles will be provided to the local newspaper.

#### **Management Actions**

1. The City water supplies will be monitored daily.
2. Leaks will be repaired within twenty-four hours of detection.
3. City staff will stop all unnecessary water consumption, including operation of fountains, watering of City grounds, and washing of vehicles.

#### **Regulation Actions**

1. An odd/even lawn watering system will be imposed on City residents. Residents with odd-numbered addresses will water on odd days; even addresses will water on even days.
2. Outdoor water use, including lawn watering and car washing, will be restricted to before 10:00 a.m. and after 9:00 p.m.
3. Refilling of swimming pools will be allowed one day a week after sunset.
4. Waste of water will be prohibited.

### **STAGE 3: WATER EMERGENCY**

#### **Goals**

The goals of this stage are to reduce peak demands by 50% and to reduce overall weekly consumption by 25%.

#### **Triggers**

This state is triggered by any one of the following conditions:

1. The City's storage has fallen below 50% capacity;
2. Providers of purchased water has issued a Stage 3 Water Emergency, or the City has been notified that the Clinton Water Treatment Plant or the RWD 2 plant at Hillsdale Lake has indicated that lake or plant conditions are such that a reduction in available potable water is imminent;
3. Demand for one day is in excess of 250,000 gallons per ~~day (typically 25% above normal seasonal peak day for three consecutive days or 35%, which may be calculated using the normal seasonal month, divided by 30.);~~
4. Emergency conditions related to repairs or water quality; or
5. The Kansas Water Office has issued a water emergency based on the remaining storage in the water marketing in Hillsdale Lake and or Clinton Reservoir.

#### **Education Actions**

1. The City Administrator or designee will make daily news releases to the local media describing present conditions and indicating the water supply outlook for the next day.
2. Previous day summaries of precipitation, temperature, water levels and storage will be made public each day.
3. The City will hold public meetings to discuss the emergency, the status of the City's supply and further action that needs to be taken.

#### **Management Actions**

1. The City water supplies will be monitored daily.
2. Leaks will be repaired within twenty-four hours of detection.
3. The City will seek additional emergency supplies from other agencies, the state or the federal government.

#### **Regulation Actions**

1. All Outdoor water use will be banned.
2. Waste of water will be prohibited.

#### **PLAN REVISION, MONITORING, AND EVALUATION**

The City of Edgerton has ~~establish~~established a monthly management practice of reviewing monthly totals for water purchased, residential/commercial sales, water provided free-of-charge, and "unaccounted for water". Problems noted during the monthly review will be resolved as soon as possible.

The City Municipal Water Conservation Plan will be reviewed during the month of April each year and on a more frequent basis during drought or other water shortage conditions. If the water conservation GPCD goals for the previous year are not met, then the City will review the data collected from the previous year in relationship to the status and effectiveness of the conservation practices that are outlined in our plan and will provide a status report to the Kansas Water Office which will also include any additional water conservation practices that may need to be taken in order for the City to achieve and maintain its water use conservation GPCD goals.

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Discussion regarding Beekeeping within the City Limits

**Department:** Community Development

**Background/Description of Item:** At the June 23, 2016 City Council meeting, Council moved to table the discussion regarding beekeeping within the city limits to the July 14, 2016 City Council meeting to allow council members further time to review materials provided.

At the June meeting, staff arranged to have members of the Northeastern Kansas Beekeepers Association (NEKBA) present to serve as experts with regard to beekeeping and answer questions from City Council. At that meeting, the representatives from NEKBA distributed the regulations regarding bees from the City of Lawrence and the City of Overland Park. Those regulations are included in this packet. For more information about NEKBA, please see their website at <http://www.nekba.org/>.

Please find enclosed with this packet information previously included in June 23<sup>rd</sup> City Council packet including a recent article from the League of Kansas Municipalities magazine and a model ordinance from the state of Louisiana.

Enclosure: Regulations from City of Lawrence and City of Overland Park  
League of Kansas Municipalities article regarding Municipal Regulations on beekeeping  
Model Beekeeping Ordinance from Louisiana

**Related Ordinance(s) or Statute(s):**

**Recommendation:**

**Funding Source:** N/A

Prepared by: Beth Linn, City Administrator  
Date: July 14, 2016

**Bees**

- (i) Africanized honey bees are not permitted.
- (ii) (ii) Up to 2 colonies may be located on a lot of  $\frac{1}{4}$  acre or less; 4 colonies on lots between  $\frac{1}{4}$  and  $\frac{1}{2}$  acre; 6 colonies on lots of  $\frac{1}{2}$  to full acre. 8 colonies are permitted on any property larger than an acre (except that additional colonies are permitted when they are set back at least 200 ft from all property lines.)
  - a. For every 2 colonies permitted on a tract there may be maintained upon the same tract one nucleus colony in a hive structure not exceeding one standard 9 5/8 inch depth 10-frame hive body with no supers, the part of the beehive that is used to collect honey, attached as required from time to time for swarm management.
  - b. Each such nucleus colony shall be moved to another tract or combined with another colony on the subject tract within 30 days after the date made or acquired.
- (iii) Every person owning a hive, stand, box or apiary on property other than their residence shall identify such hive, stand box or apiary by a sign or other prominent marking stating in letters at least one inch high on a contrasting background the name and phone number of the owner of such equipment
- (iv) (iv) The following locational requirements apply to all hives:
  - a. No hive shall exceed 20 cubic feet in volume.
  - b. Hives are permitted only in the side and rear yards, unless roofmounted.
  - c. No hive shall be located closer than 3 ft from any property line.
  - d. No hive shall be located closer than 10 ft from a public sidewalk or 25 ft from a principal building on an abutting lot. (Hives must be relocated as needed as abutting lot develops.)
  - e. If a hive is within 10 ft of a property line and is located less than 10 ft off the ground, a flyway barrier is required.
- (v) (v) A flyway barrier, when required, shall be at least 6 ft tall and extend 10 feet beyond the colony location on each side. It can be solid, vegetative, or any Attachment C Draft Language Pg 5 combination of the two that forces the bees to cross the property line at a height of at least 6 ft.
- (vi) (vi) The beekeeper shall promptly requeen the colony if the colony exhibits unusual defensive behavior without due provocation.

- (vii) (vii) A constant supply of water shall be provided for all hives within 25 ft of each hive between March 1 and October 31 of each year.
- (viii) (viii) Bee hotels are not subject to these regulations.

# Overland Park Municipal Code Chapter 6.14

Overland  
Park

## BEEKEEPING

### Sections:

- 6.14.010 Legislative Findings.
- 6.14.020 Keeping of Bees.
- 6.14.030 Keeping of a Hive, Stand, Box or Apiary.
- 6.14.040 Multiple Number of Beehives.
- 6.14.050 Subsequent Development of Adjacent Properties.
- 6.14.060 Owner's Hives on Other Properties.
- 6.14.070 Water Facilities.
- 6.14.080 Exemptions.
- 6.14.085 Severability.
- 6.14.090 Violations and Penalty.

### **6.14.010 Legislative Findings.**

The Governing Body of the City of Overland Park, Kansas, finds that there is a need to regulate and set minimum standards for the keeping of bees within the corporate limits of the City to protect the public health, safety, and welfare of the residents of Overland Park. (History: Ord. BK-1198 '1, 83)

### **6.14.020 Keeping of Bees.**

It shall be unlawful for any person to place, establish, or maintain any hive, stand, box, or apiary or keep any bees in or upon any premises within the corporate limits of the City unless the bees are kept in accordance with the provisions of this chapter. (History: Ord. BK-1198 '2, 83)

### **6.14.030 Keeping of a Hive, Stand, Box, or Apiary.**

No hive, stand, or apiary shall be placed or kept:

- A. Closer than 25 feet to the property line of adjoining residential property if a house or other building used for residential purposes is located on such property;
  - B. Or closer than 75 feet to any house or other building used for residential purposes other than the residence of the keeper of such bees without first obtaining written permission of such land, which permission may be revoked at any time;
  - C. Or closer than 100 feet to the exterior line of the traveled portion of a public street;
  - D. Or upon land not owned or possessed by the keeper of such bees without first obtaining written permission to do so from the owner or person lawfully in possession of such land, which permission may be revoked at any time.
- (History: Ord. BK-1198 '3, 83)

### **6.14.040 Multiple Number of Beehives.**

No more than three beehives shall be placed or kept in a location which is between 75 feet and 600 feet from a house or other building used for residential purposes other than the residence of the keeper of such bees. (History: Ord. BK-1198 '4, 83)

Chapter 6.14 – continued.

**6.14.050 Subsequent Development of Adjacent Properties.**

Provided that should adjacent property be later developed, or residential structures located closer than the distances herein prescribed, the keeper shall move such hives, stands, boxes, or apiaries to comply with these regulations.  
(History: Ord. BK-1198 '5, 83)

**6.14.060 Owner's Hives on Other Properties.**

Every person owning a hive, stand, box, or apiary located on premises other than where he resides shall identify such hive, stand, box or apiary by a sign or other prominent marking stating in letters at least one inch high on a contrasting background the name, address, and phone number of the owner of such equipment.  
(History: Ord. BK-1198 '6, 83)

**6.14.070 Water Facilities.**

Fresh, clean, watering facilities for the bees shall be provided within 25 feet of each hive, stand, box or apiary.  
(History: Ord. BK-1198 '7, 83)

**6.14.080 Exemptions.**

Nothing in these regulations shall be deemed or construed to prohibit the keeping of bees within a school or university building for the purpose of study or observation, or within a physician's office or laboratory for the purpose of medical research, treatment, or other scientific purposes.  
(History: Ord. BK-1198 '8, 83)

**6.14.085 Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this chapter or any part thereof.  
(History: Ord. DAC-1311 '23, 85)

**6.14.090 Violations and Penalty.**

The violation of any provision of 6.14.030 through 6.14.080 is a public offense and any person convicted thereof shall be punished as provided in 1.12.010 of the Overland Park Municipal Code. Each day that any violation of these sections shall continue shall constitute a separate offense.

(History: Ord. BK-1198 '9, 83)

[http://www.opkansas.org/\\_Assets/law/opmc/opmc\\_by\\_chapter/06-14.pdf](http://www.opkansas.org/_Assets/law/opmc/opmc_by_chapter/06-14.pdf)



# The Buzz About Bees: Effective Municipal Beekeeping Regulations

by Helen Clemens



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**I**n early 2007, beekeepers and researchers alike began to notice a significant problem of widespread losses of honey bee colonies throughout the country.<sup>1</sup> This problem, termed “Colony Collapse Disorder” (CCD), entailed the failure of more than 30% of hives across the United States during the winter of 2006-2007,<sup>2</sup> without any evidence or symptoms of known causes of colony death.<sup>3</sup> Losses were observed at a slightly higher rate the following year,<sup>4</sup> and by 2009, CCD had become a widely recognized problem not only inside the beekeeping and agricultural research communities, but also in mainstream media coverage.<sup>5</sup> Because the honey bee pollinates 80% of all flowering crops, which equates to one-third of food consumed in the United States,<sup>6</sup> this CCD phenomenon produced much cause for alarm. Several different companies produced educational and fundraising campaigns in support of honey bees<sup>7</sup> and Congress required the USDA to research causes and solutions to CCD.<sup>8</sup> To date, there is no confirmed explanation for this disappearance of honey bees.

Interestingly, in the time since CCD became a known problem for honey bees, there has been an incredible rise in backyard apiculture.<sup>9</sup> In fact, the backyard beekeeper provides an important service in caring for and cultivating bees that allows them to thrive and pollinate throughout the local ecosystem. Not only do bees help to safeguard local food sources, some scientists believe that healthy, strong local bees may help to strengthen the species,<sup>10</sup> which is particularly important in this time of crisis.

In response to this rising interest in beekeeping, many cities have introduced new regulations to permit beekeeping in residential areas.<sup>11</sup> This paper will survey and analyze different models for municipal beekeeping regulations (looking to examples from Melbourne, Florida; Hillsboro, Oregon; Savannah, Georgia and Baton Rouge, Louisiana) and balance the competing interests of the beekeeper, neighbors, and the municipal government; and will propose a model policy for municipal governments to adopt in order to best protect each of these interests.

## Part I: Relevant Facts and Information about Honey Bees

As with any effort to regulate, the local government must first understand what it is regulating and how regulations may affect the activity being regulated. In terms of beekeeping, we need to understand the nature of bees and the art and science of beekeeping.

Beekeeping has been described as, “[an] art... to guide bees’ natural behavior into patterns of activity desired by the beekeeper.”<sup>12</sup> Beekeepers may induce bees to produce excess amounts of honey or provide them with food sources during nectar dearth, they may inspect hives to notice if the colony is threatened by an infection or parasite, and they may choose to introduce a new queen to ensure quality eggs are being laid.<sup>13</sup> However, bees are largely left on their own. A beekeeper can provide resources, but the beekeeper cannot control the activities of the 60,000 bees that may occupy the hive during the months when the colony is most productive.<sup>14</sup>

Wild, or feral honey bees exist naturally throughout the United States. Honey bees will commonly fly up to four miles away from their hive to forage for nectar and honey.<sup>15</sup> This is significant in terms of making decisions about beekeeping regulations, because bees will continue to move throughout any area in a municipality, whether or not they have keepers in residential areas.

An important component of apiology relevant to the regulation of hives, is that bees create flight patterns (“flyways” or “bee lines”) to and from the hive.<sup>16</sup> These patterns can be manipulated by the manner in which the hive is situated on a property and what structures or impediments are near the hive.<sup>17</sup> To an individual who observes a hive for any length of time during the busy nectar season, these patterns are almost immediately obvious, and can be likened to a runway at an airport where planes take off to and land from various locations.

It is a common misconception that bees are dangerous or threatening when they swarm, and will become aggressive and attack an unknowing passerby. Numerous depictions of bees include the image of a killer swarm attacking someone running away. When bees swarm however, they are generally docile,<sup>18</sup> as they have no hive or home to defend when they swarm. An additional concern in the popular conscience is the idea of “killer bees.” Killer bees are a name given to the Africanized honey bee, which is admittedly more aggressive than the European varieties, reacting to disturbances ten times faster than other varieties of bees.<sup>19</sup>

In addition to the biological and behavioral aspects of bees, nuisance issues have a tendency to percolate around the keeping of bees—in other words, neighbors with real or perceived reasons to complain require the local government to have some sort of regulatory function for beekeeping in residential areas. Neighbors may lodge various complaints about bees.<sup>20</sup> Of these, the most serious (and perhaps most obvious) are the considerations of those individuals who have an allergy to bee stings. The incidence of immediate systematic allergic reactions to insect stings is estimated to be between 1-7% of the population,<sup>21</sup> and a low estimate of annual

deaths caused by anaphylactic shock following a sting published by the World Allergy Organization postulates one per every ten million.<sup>22</sup> Once individuals are aware that they have an immediate reaction to bee stings, they should be certain to guard against future stings by having a plan to use an adrenaline auto-injector (epi pen) in the event that an insect does sting them in the future.<sup>23</sup>

(Local governments will be called upon to address issues of nuisance in terms of regulating beekeeping while the issues of importing and exporting different types of bees and tracking bee borne diseases will most likely be left to the state and federal governments putting the characteristics of bees relevant to that type of regulation outside the scope of this article).

The legal intersection between beekeeping and neighbors seeking to enjoy their respective property rights and local government regulation has a long history. Over one hundred years ago, Arkadelphia, a city in Arkansas, sought to address the issue by prohibiting beekeeping as a nuisance. After being challenged, the city lost when the court concluded that beekeeping cannot be regulated as a nuisance:

Neither the keeping, owning or raising of bees is, in itself, a nuisance. Bees may become a nuisance in a city, but whether they are so or not is a question to be judicially determined in each case. The ordinance under consideration undertakes to make each of the acts named a nuisance without regard to the fact whether it is so or not, or whether bees in general have become a nuisance in the city. It is, therefore, too broad, and is invalid.<sup>24</sup>

However, in 1938, a California court concluded that the City of Los Angeles’ regulation of beekeeping, including a prohibition in some areas of the city but not others, survived constitutional challenge:

The Hadacheck decisions, above cited, sufficiently demonstrate that the facts appearing herein justify the ordinance prohibiting beekeeping within the city except in the designated areas, and that the ordinance is not unconstitutional for any reason. (See, also, *Brown v. City of Los Angeles*, 183 Cal. 783 [192 Pac. 716]; *Reiman v. Little Rock*, 237 U.S. 171, 176 [35 Sup. Ct. 511, 59 L. Ed. 900].)<sup>25</sup>

In the same year that the Arkansas court decided the Arkadelphia case concluding that beekeeping cannot be legislatively defined as a nuisance, a New York court confirmed an injunction issued against a beekeeper in a case where a jury found beekeeping to be a nuisance.<sup>26</sup> Close to 70 years later, a Pennsylvania court concluded

that beekeeping is not a nuisance *per se* and denied an injunction that the township sought:

The keeping of bees in a residential neighborhood is not a nuisance *per se* and the strong arm of the chancellor should not be exerted to eliminate a legitimate business or occupation unless compelling reasons require it, that is, that the injury caused is real and substantial: [cited cases omitted.]<sup>27</sup>

These cases illustrate the varying approaches to regulation, geographical and temporal development of judicial philosophy and the continuing likelihood for neighborly (or not) interaction between beekeepers and adjacent property owners. As time has passed, the development of zoning laws and a greater tendency to support governmental police powers no doubt have allowed many communities to regulate beekeeping in various ways that may be at odds with these cases from the distant past. What follows are some examples of different regulatory approaches to beekeeping.

## **Part II: Municipal Approaches to Beekeeping**

Cities and counties have adopted a variety of different approaches to the question of how to manage the presence of beekeepers and their hives within their communities. While this article cannot begin to encompass the entirety of approaches within the approximately 20,000 municipal governments in the country,<sup>28</sup> the following examples provide illustrations of the different general approaches that municipalities may elect to take in the regulation of beekeeping.<sup>29</sup> These include a prohibition on beekeeping, requiring permission of neighbors to be able to keep bees, state preemption of municipal regulation of bees, and a robust regulatory scheme at the city and county government level.

### **Outright Ban on Beekeeping: Melbourne, Florida**

The city of Melbourne, Florida is located on the eastern central coast of the Florida peninsula stretching across to a barrier island. About an hour away from the Kennedy Space Center,<sup>30</sup> Melbourne has a population of 76,354.<sup>31</sup> Melbourne also has an outright ban on beekeeping. The city code states, "It shall be unlawful for any person to operate an apiary or otherwise maintain bees within the city limits, except in an agricultural estate use (AEU) zoning district, or as may otherwise be provided in this article."<sup>32</sup> The exceptions, however, must be related to medical or educational purposes, rendering backyard beekeeping essentially illegal:

#### **Sec. 10-53-Exceptions to section 10-52**

(a) Nothing contained in section 10-52 shall prohibit the maintenance of one hive of bees under the following conditions:

(1) Upon the premises of any public or private educational institution for use by students for educational purposes.

(2) Upon such premises as may be required for medical research or scientific purposes.

(3) Upon the premises of a building or residence, provided that the person seeking to maintain the hive upon the premises shall first make application for permit to maintain such hive. No application for permission to maintain such hive shall be granted unless the use for educational purposes is clearly established.

(b) The use of bees for educational, medical or scientific purposes, as provided for herein, shall be permitted so long as no hazard or nuisance, public or private, is created.<sup>33</sup>

Thus, the backyard beekeeper, or a resident who is interested in helping the environment by maintaining a beehive has no options in Melbourne.

This means the concerns of any individuals with allergies to bees, or neighbors who would prefer not to live near a beehive are almost fully met; should any individual try to keep bees without a scientific or educational permit, the neighbor need only report the instance to the city government, who will rule it illegal. But a prohibition on beekeeping does not necessarily equate to a lack of bees in a city, because feral honey bees require no license or permit to exist anywhere.

Melbourne's approach does nothing to address the CCD problem. As backyard beekeepers can play an important role in helping the local ecosystem, a complete prohibition on the practice during this period of expansive colony collapse could be harmful. Obviously, each community must measure its regulatory mission by its residents' wishes and in Melbourne, at least so far, instead of balancing the interests of property owners the community has concluded it is best served by a complete ban.

### **Neighborhood Permission: Hillsboro, Oregon**

The city of Hillsboro, Oregon, population 93,340<sup>34</sup> and located about a thirty minute drive east<sup>35</sup> of the state's largest city, Portland, has adopted a more nuanced approach to the regulation of beekeeping within the municipal limits. The city code includes regulations for the maintenance of beekeeping equipment, total number of hives, and instructions as to where the beehive may be located on an individuals' property. Most significantly, before a hive can be registered, any neighbors who live within 300 feet

**"As backyard beekeepers can play an important role in helping the local ecosystem, a complete prohibition on the practice during this period of expansive colony collapse could be harmful"**

of the residence must be notified of the plan to have a colony near their homes.<sup>36</sup> With adequate medical certification of a bee sting allergy, at-risk individuals may request that hives be removed from a neighbor's property.<sup>37</sup>

The clarity and cohesiveness of this particular portion of the code merits a review of the language itself:

#### **6.20.080 Bees**

A. Keeping Bees. Bees may be kept in the city consistent with the following standards:

1. The keeper is in compliance with HMC 6.20.080(B);
2. Bee hives/colonies may only be kept on single family residential property;
3. No more than three bee hives / colonies may be kept;
4. Bee hives/colonies may not be kept when a person who has a medically certified allergy to the sting of bees resides within 300 feet of the hives/colonies and has submitted to the city medical documentation and a written request that the hives/colonies be removed;
5. Products generated, such as honey, may not be sold from a residential property;

6. Bees must be contained consistent with the following standards:

- a. All portions of the hives/colonies enclosure must be located behind the front building plane of the dwelling; and
- b. All portions of the hives/colonies must either be located a minimum of 10 feet from any property line unless there is no barrier, such as a fence or hedge, that is at least six feet in height on all relevant property lines, in which case a minimum of 15 feet applies.

7. Beekeeping equipment must be kept consistent with the following standards:

- a. All portions of the hives/colonies enclosure must be kept and maintained in a clean and sanitary condition at all times to prevent any condition which may be dangerous or detrimental to the health of the public or animals or constitute a nuisance; and
- b. Unused equipment may not be in the open or otherwise accessible to bees.

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- GIS development and implementation
- Traffic analysis

## **BARTLETT & WEST**

B. Notification Process. Prior to keeping bees, a person must:

1. Prepare a notice stating intent to keep bees and the type of bee kept and mailing list, utilizing city approved templates;
2. Mail notice to adjacent property owners within 300 feet of the site two weeks prior to commencing bee keeping; and
3. Submit a written declaration to the city of compliance with the notification requirements in HMC 6.20.080(B)(1) and (2).<sup>38</sup>

These regulations have several important implications. First, because a neighbor with a bee allergy can seek relief from the government to avoid living in proximity to beehives, the concerns of those with allergies are entirely met.<sup>39</sup> The notice process is quite clearly stipulated on the city's website; a copy of a form letter that the prospective beekeeper must send out states specifically: "[I am] considering keeping bees on this property. This notice is to allow person(s) with a medically certified allergy the opportunity to submit a written request that hives not be located on this site."<sup>40</sup> This letter, sent with an attachment listing the full text of Hillsboro's code regulating bees leaves no ambiguity. In order to have a beehive on one's property, the individual must alert neighbors to their right to have that action stopped or prevented. Additionally, the beekeeper does not have full flexibility to use any portion of a property to keep bees: hives must be situated 10-15 feet away from any property lines. This limits a beekeeper's ability make best use of the landscape or situate the bees in the best manner possible. Furthermore, this will do little to contain the bees to the beekeeper's property, as bees will fly as far as four miles away from their hives in the search for nectar.<sup>41</sup>

Examining these regulations from the perspective of the benefits that bees bring to the environment, Hillsboro beekeepers may legally keep bees and help to promote their presence in Oregon, but these interests may be trumped by those of an individual with a bee sting allergy. Furthermore, the restrictions on where a beehive may be placed within a yard may make beekeeping impossible based on the size of the yard and its relation to the home on the property.

#### ***State Control: Savannah, Georgia***

Savannah, Georgia is a coastal city in the Deep South, with a population of 142,772.<sup>42</sup> A beekeeper in Savannah does not need to apply for registration or be subject to any regulation by the city's government. The State of Georgia preempted local control over beekeeping:

No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution prohibiting, impeding, or restricting the establishment or maintenance of honeybees in hives. This

Code section shall not be construed to restrict the zoning authority of county or municipal governments.<sup>43</sup>

Thus, local governments in Georgia cannot address the concerns of their residents about beekeeping.<sup>44</sup>

Although Georgia preempts local regulation, it allows local governments to impose zoning regulations that can help to alleviate nuisance and on one occasion proved problematic for beekeepers. Specifically, the code states, "This Code section shall not be construed to restrict the zoning authority of county or municipal governments (emphasis added)."<sup>45</sup> This proved problematic for Nicholas Weaver, a hobby beekeeper from the age of 13, residing in Forsyth County.<sup>46</sup> After a decade of backyard beekeeping, with a total of six hives on his own and neighbors' properties, Weaver received a notice from the Forsyth County government stating that he had to remove his bees.<sup>47</sup> Absent any zoning regulations for beekeeping, the county had determined that the bees were livestock,<sup>48</sup> and that Weaver's residence was not zoned for that use. Ultimately the problem was resolved when Weaver worked with the local authorities and was granted a reprieve;<sup>49</sup> yet this illustrates that even when the state law directly preempts local governments from prohibiting bees, a neighbor's complaint (which triggered Forsyth County's response),<sup>50</sup> can still cause some problems for beekeepers.

#### ***Permission with Explicit and Nuanced Requirements: Baton Rouge, Louisiana***

Baton Rouge, Louisiana, has a population of 229,169.<sup>51</sup> The Baton Rouge Municipal Code includes a variety of incredibly nuanced requirements for backyard beekeepers, based on the state's Model Beekeeping Ordinance for Louisiana Local and Municipal Governments.<sup>52</sup> These provisions on beekeeping, (§§ 6:660- 6:671 of the Baton Rouge Municipal Code) are too lengthy to reproduce here, but include the following regulations: annual registration of all honeybee hives with the Louisiana Department of Agriculture and Forestry,<sup>53</sup> stipulations on what kind of hive beekeepers may use (Langstroth<sup>54</sup> hives),<sup>55</sup> requirements for where the colony may be located on the beekeeper's property (at least 25 feet from the property line),<sup>56</sup> requirements for the creation of a fence or barrier to deflect the bee line,<sup>57</sup> provision of water for the colony,<sup>58</sup> limits to the number of hives that may be on a property based on its size,<sup>59</sup> requirements for signage near the apiary<sup>60</sup> and procedures for non-compliance with the section.<sup>61</sup> Notably, the Baton Rouge Municipal Code does not require notification of neighbors nor does it provide protections for nearby residents with bee sting allergies. Baton Rouge may not include each regulation that other cities have employed, but it demonstrates how a city can provide instruction for beekeepers on how they must conduct their activities.

Other local governments include regulations that address the species of bees that a beekeeper may keep within a municipality<sup>62</sup> and the requirement of a firebreak<sup>63</sup> to address the beekeepers' use of smokers to calm the bees prior to working the hives.<sup>64</sup> While

other regulatory features may exist, those discussed in this article highlight regulatory trends and patterns that different municipalities around the country take regarding bees.

### **Part III: Best Practices for Municipal Regulation of Beekeeping.**

After reviewing the practice of bee keeping and how local governments have addressed the issue, this article proposes that in order to best capture the needs of the beekeeper and the community, the following measures should be incorporated into municipal regulations for beekeeping. As the individual needs of each community may require specific tailoring, these are presented as principles for best practices. As an initial point, all should adopt measures addressing beekeeping rather than prohibiting it, especially as the popularity of this activity rises; this will help to avoid any gray areas and unnecessary, costly litigation surrounding beekeeping.<sup>65</sup>

#### **1. Legalize Beekeeping.**

Little rationality exists in a complete prohibition on beekeeping. Wild honey bees will exist, roam and pollinate in communities despite regulations to prohibit either commercial or hobby bee keeping. Although legalizing beekeeping may make bees more commonplace, the option of prohibition provides only a false sense of security since there is no safe way to completely eradicate the presence of bees. Beekeeping provides many benefits for the environment and local community; if it is not encouraged, it should at least be permitted. Beekeeping can be conducted safely even in the densest of municipalities, such as New York City, and laws that prohibit beekeeping ought to be changed to provide a reasonable regulatory environment for the activity.

#### **2. Municipalities should require the registration of beehives with the local government, and make this list available to citizens upon request (in addition to any state registration requirements).**

Although bees exist in the wild and cannot be eradicated, both the government and public benefit from knowing where bees are kept. This serves several purposes. First, any individual who suffers from a bee allergy, or has a child who does, clearly benefits from information as to where a bee colony or small apiary exists. This improves the goals inherent in the system enacted by Hillsboro, Oregon, because it looks not only at the immediate area surrounding the residence of someone with a bee sting allergy, but instead at a neighborhood or city as a whole. Children especially are known to play outside well beyond an arbitrary setback such as the 300 foot radius of their home. Parents can better focus on the areas in which they may instruct their young children to avoid, and may be certain to have epi pens available at locations at which their kids regularly play

that are near beehives (for instance, at a friend's home). For those adults that are affected with an allergy, by noting which properties contain beehives, they can conduct their activities to avoid these locations. Ideally, if the resident is concerned about new hives, the municipality could set up a notification list, such that individuals may request to be informed of any new colony registrations and installations. If a municipality keeps this kind of registry, individuals bear the burden of responsibility for informing themselves about where bee colonies exist, instead of placing an unreasonable burden or prohibition on the beekeeper.

Not only does this system better serve the needs of those with bee sting allergies, it protects the rights of individuals who would like to keep bees on their property. The Hillsboro code provisions that

*A Kansas Bee Keeper checking on his bees. Photo by Andrey Ukrazhenko.*





allow individuals with a bee allergy to prevent their neighbors from keeping bees poses a high burden without a clear indication that the measure provides sufficient protection to the allergic individuals. Notably, a feral bee colony may occupy a tree, stump or log—all without the property owners' or the neighbors' knowledge. Those with allergies to bee stings must be alert regardless of whether they live close to a bee keeper's hive or a feral hive, but only the bee keeper's hive will be regulated based on the neighbors' concerns.

Furthermore, though most inspection of beehives relating to disease occurs by a state agency, with the diseases and parasites that plague the American honey bee, it would be helpful to require beekeepers to notify other beekeepers nearby if their hives have been affected by any of these problems through a locally required notification system. A locally maintained register of all bee colonies would help with this goal, and generally to make the beekeeping community aware of all other beekeepers in their vicinity. As some states, like Georgia, do not require registration of bee colonies if they are not commercial entities, this also provides a localized list that is useful outside of traditional state purposes.

### **3. Avoid stipulations regarding setbacks; make them available to neighbors' as a right only on demonstration of need.**

A beekeeper should be able to situate a beehive on the bee keeper's property in the area that is best suited for the colony; the mandate that there be a setback rests on a presumption that the beehive is an inherent nuisance to neighbors and that separation from the property line provides some protection. In fact, a prudent beekeeper will not want to keep a hive near a property line that borders a nosy dog, or that allows people to easily interfere with the hive and the bees' activities. And, depending on the set up of a yard a location close to the property line may be the safest place for the bees to

be maintained. However, if a neighbor is able to demonstrate a compelling reason to move or relocate a hive, the local government should be able to impose a setback requirement based on the specific facts including the lot size, location within the neighborhood, bee line and other localized concerns.

While neighbors ideally should be able to work together without municipal intervention, if that cooperation fails, neighbors ought to be able to request a setback based on individualized concerns and specific facts. By requiring individualized and specific facts to govern the decision, the law will not create an unintended prohibition on beekeeping by making it impossible to locate a hive on a small property without much yard space.

### **4. Enact a Flyway Requirement.**

As mentioned above, a particular feature of bees is their "bee line" to and from the hive. This phenomenon is something around which municipalities should provide some regulatory framework, as it poses the most likely reason that regular human-bee interaction can be negative. If the bee line from the entrance of the hive to the flowering plants nearby is situated so that the public or neighbors may regularly interrupt this flight path, the location is not ideal (both for the beekeeper and the people walking between these spaces).

By requiring the beekeeper to have a flyway barrier, this will help to eliminate routine contact that would be out of the ordinary in a feral hive of bees. This can be flexible: a fence, shrubbery or other arrangement can prevent bees from establishing a flight pattern that causes this unnecessary contact. By putting the height requirement at about six feet, this will eliminate most possibilities for a bee to encounter (and perhaps sting) a human. If the beekeeper can demonstrate that the flight pattern of the bees will cause insignificant public contact based on where the hive sits on their property, this

*A look inside the beehive. Photo by Andrey Ukrazhenko.*




should serve in place of satisfying the flyway requirement. Should a beekeeper violate this flexibility, substantial penalties and abatement orders can apply.

## 5. Regulations Regarding the Species of Bees.

A municipality should ban Africanized honey bees (especially if the state has not done so). These bees are more aggressive and their prohibition will help to alleviate the neighbors' concerns and provide an added protection against Africanized honey bees mating with the European varieties that occupy most of the United States.

## Conclusion

Honey bees add much value to communities and municipalities should adopt an inclusive series of regulations to clarify the rights of beekeepers and their neighbors, following the principles described above. This is particularly important in light of the increased popularity of backyard beekeeping, urban agriculture and in response to Colony Collapse Disorder.

 *Helen Clemens is a recent graduate of the George Washington University Law School, where she served as SBA President and was an Associate of the George Washington University Law Review. She has gained legal experience serving as a law clerk for the National District Attorneys Association, the Senate Judiciary Committee, and the Office of the Attorney General of the Commonwealth of Virginia. Prior to attending law school, she received her M.Phil in International Peace Studies from Trinity College, Dublin and her B.A. in Political Science and Romance Languages from the University of Georgia.*

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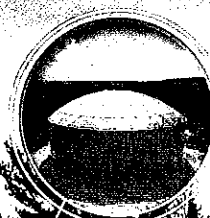
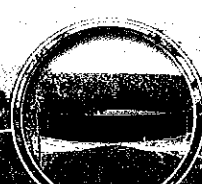
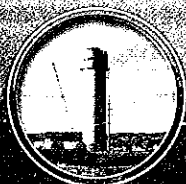
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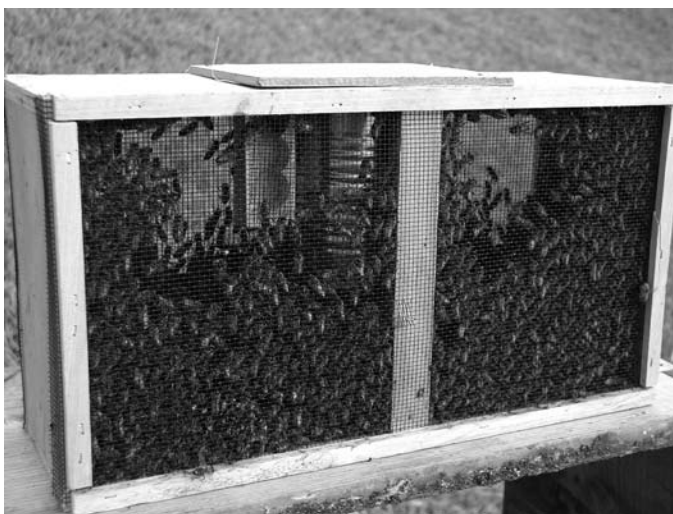
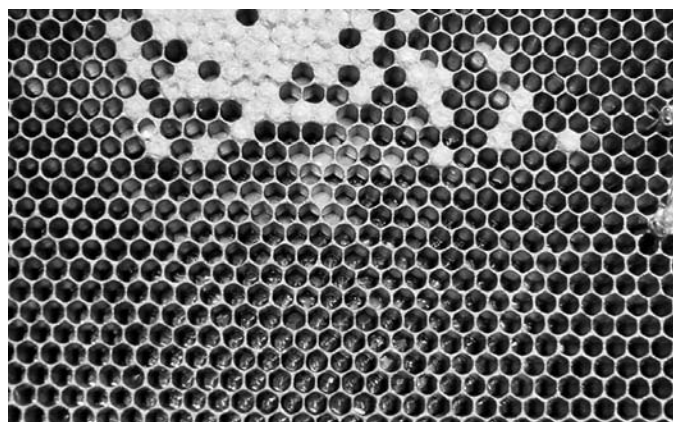


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# Model Beekeeping Ordinance

*for Louisiana Local and  
Municipal Governments*



This publication is intended to help local and municipal governments address potential concerns or problems between the public and beekeepers. It was adopted from the Texas beekeeping ordinance and modified by the Louisiana Beekeepers Association, the Louisiana Department of Agriculture and Forestry (LDAF), the USDA/ARS Honey Bee Breeding Genetic and Physiology Lab and the Louisiana Cooperative Extension Service. Because the honeybee industry is vital to Louisiana agriculture, the four organizations are willing to assist any local, municipal state government in the use or implementation of this program.

# Proposed Model Beekeeping Ordinance for Louisiana Local and Municipal Governments

**Whereas**, honeybees are of benefit to mankind, and to Louisiana in particular, by providing agriculture, fruit and garden pollination services and by furnishing honey, wax and other useful products; and

**Whereas**, Louisiana is among the leading states in honey production and agricultural byproducts associated with beekeeping throughout the United States; and

**Whereas**, domestic strains of honeybees have been selectively bred for desirable traits, including gentleness, honey production, tendency not to swarm and nonaggressive behavior, characteristics that are desirable to foster and maintain; and

**Whereas**, gentle strains of honeybees can be maintained within populated areas in reasonable densities without causing a nuisance if the bees are properly located and carefully managed and maintained;

***Now, Therefore, Be It Ordained and Enacted By***

---

(Insert name of governmental entity)

**Section 1.** That the findings contained in the preamble of this ordinance are hereby adopted as a part of this ordinance.

**Section 2.** That Chapter No. \_\_\_\_\_ (Health) of the Code of Ordinances,  
\_\_\_\_\_, (city), \_\_\_\_\_ (state), is hereby  
amended by adding a new article No., which reads as follows:

## Definitions

As used in this article, the following words and terms shall have the meanings ascribed in this section unless the context of their usage clearly indicates another meaning:

1. "Apiary" means the assembly of one or more colonies of bees at a single location.
2. "Beekeeper" means a person who owns or has charge of one or more colonies of bees.
3. "Beekeeping equipment" means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.
4. "Colony" or "hive" means an aggregate of bees consisting principally of workers, but having, when perfect, one queen and at times many drones, including brood, combs, honey and the receptacle inhabited by the bees.
5. "Honeybee" means all life stages of the common domestic honey bee, *Apis mellifera* species.
6. "Tract" means a contiguous parcel of land under common ownership.
7. "Undeveloped property" means any idle land that is not improved or actually in the process of being improved with residential, commercial, industrial,

church, park, school or governmental facilities or other structures or improvements intended for human use occupancy and the grounds maintained in association therewith. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.

## Certain Conduct Declared Unlawful

- (a) The purpose of this article is to establish certain requirements of sound beekeeping practice that are intended to avoid problems that may otherwise be associated with the keeping of bees in populated areas.
- (b) Notwithstanding compliance with the various requirements of this article, it shall be unlawful for any beekeeper to keep any colony or colonies in such a manner or of such disposition as to cause any unhealthy condition, interfere with the normal use and enjoyment of human or animal life of others or interfere with the normal use and enjoyment of any public property or property of others.

## Hive Registration

All honey bee colonies shall be registered annually with the Louisiana Department of Agriculture and Forestry. IT IS THE LAW!

## Hive Type

All honey bee colonies shall be kept in Langstroth-type hives with removable frames, which shall be kept in sound and usable condition.

## Fencing of Flyways

In each instance in which any colony is situated within 25 feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least 6 feet in height consisting of a solid wall, fence, dense vegetation or combination thereof that is parallel to the property line and extends 10 feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least 6 feet above ground level over the property lines in the vicinity of the apiary. It is a defense against prosecution under this section that the property adjoining the apiary tract in the vicinity of the apiary is undeveloped property for a distance of at least 25 feet from the property line of the apiary tract.

## Water

Each beekeeper shall ensure that a convenient source of water is available to the bees at all times during the year so that the bees will not congregate at swimming pools, bibcocks, pet watering bowls, bird baths or other water sources where they may cause human, bird or domestic pet contact.

## General Maintenance

Each beekeeper shall ensure that no bee comb or other materials that might encourage robbing are left upon the grounds of the apiary site. Upon their removal from the hive, all such materials shall promptly be disposed of in a sealed container or placed within a building or other bee-proof enclosure.

## Queens

All colonies shall be maintained with marked queens. In any instance in which a colony exhibits unusual aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition toward swarming, it shall be the duty of the beekeeper to promptly re-queen the colony with

another marked queen. Queens shall be selected from European stock bred for gentleness and nonswarming characteristics.

## Colony Densities

- (a) It shall be unlawful to keep more than the following number of colonies on any tract within the city, based upon the size or configuration of the tract on which the apiary is situated:
  1. One-quarter acre or less tract size – two colonies.
  2. More than one-quarter acre but less than one-half acre tract size – four colonies.
  3. More than one-half acre but less than 1 acre tract size – six colonies.
  4. One acre or larger tract size – eight colonies.
  5. Regardless of tract size, where all hives are situated at least 200 feet in any direction from all property lines of the tract on which the apiary is situated, there shall be no limit to the number of colonies.
  6. Regardless of tract size, so long as all property other than the tract upon which the hives are situated – that is, within a radius of at least 200 feet from any hive – remains undeveloped property, there shall be no limit to the number of colonies.
- (b) For each two colonies authorized under Colony Densities [subsection (a)] there may be maintained upon the same tract one nucleus colony in a hive structure not exceeding one standard 9 5/8 inch depth 10-frame hive body with no supers attached as required from time to time for management of swarms. Each such nucleus colony shall be disposed of or combined with an authorized colony within 30 days after the date is acquired.

## Marking Hives, Presumption of Beekeeping

- (a) In apiaries the beekeeper shall conspicuously post a sign setting forth his name and telephone number. In addition, the beekeeper's registration yard marker, provided by the LDAF, shall be posted on a sign within the apiary. It is a defense against prosecution under this subsection that a colony is kept upon the same tract upon which the owner resides.
- (b) Unless marked in accordance with subsection (a) it shall be presumed for purposes of this article that the beekeeper is the person or persons who own or otherwise have the present right of possession and control of the tract upon which a hive or hives are situated. The presumption may be rebutted by a written agreement authorizing another person to maintain the colony or colonies upon the tract setting forth the name, address and telephone number of the other person who is acting as the beekeeper.



# Inspection

The health officer shall have the right to inspect any apiary between 8 a.m. and 5 p.m. Where practicable, prior notice shall be given to the beekeeper if he resides at the apiary or if his name is marked on the hives.

# Compliance

- (a) Upon receipt of information that any colony situated within the city is not being kept in compliance with this article, the director shall initiate an investigation. If he finds grounds to believe that one or more violations have occurred, he will have a written notice of a hearing issued to the beekeeper.
- (b) The notice of a hearing shall set forth:
1. The date, time and place at which the hearing will be conducted.
  2. The violation(s) alleged.
  3. That the beekeeper may appear in person or through counsel, present evidence, cross-examine witnesses and request a court reporter as provided by Rule No. \_\_\_\_\_ of the city council's rules of procedure.
  4. That the bees may be ordered destroyed or removed from the city if the hearing officer finds that they have been kept in violation of this article. Notices shall be given by certified U. S. mail or personal delivery. If the health officer is unable to locate the beekeeper, however, the notice may be given by publication one time in a newspaper of general circulation at least five days before the date of the hearing.
- (c) The hearing shall be conducted by the director or a designated health officer. The burden shall be on the city to demonstrate by a preponderance of credible evidence that the colony or colonies have in fact been kept in violation of this article. If the hearing officer finds that the colony or colonies have been kept in violation of this article, he may order that the bees be destroyed or removed from the city, not to exceed 20 days and that bees not thereafter be kept upon the tract for a period of two years.
- In instances where the hearing officer finds that the violations were not intentional and that the beekeeper has taken corrective actions to cure the alleged violations, he may issue a warning in lieu of ordering the bees destroyed or removed. Upon failure of the beekeeper to comply with the order, the health officer may cause the bees to be destroyed and the hive structures to be removed. In each instance in which a bee colony is destroyed, all usable components of the hive structure that are not damaged or rendered unhealthy by the destruction of the bees shall upon the beekeeper's request be returned to the beekeeper, provided that the beekeeper agrees to bear all transportation expenses for their return.

- (d) The decision of the hearing officer may be appealed in accordance with the provision of Rule No. of the city council's rules and procedures by filing a notice of appeal with the city secretary within 10 days following the date that the hearing officer announces his decision, or if the decision is not announced at the conclusion of the hearing, within 15 days following at the date the hearing officer places written notice of his decision in the mail to the beekeeper. An appeal shall not stay in the hearing officer's decision, and it shall not be the responsibility of the beekeeper to remove the bees from the city pending the determination of the appeal.
- (e) The provisions of this section shall not be construed to require the conduct of a hearing for the destruction of (1) any bee colony not residing in a hive structure intended for beekeeping or (2) any swarm of bees or (3) any colony residing in a standard or man-made hive, which by virtue of its condition, has obviously been abandoned by the beekeeper.

**Section 3.** If any provisions, section, subsection, sentence, clause or phrase of this ordinance or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the city council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be servable for the purpose.

**Section 4.** This ordinance shall become effective at \_\_\_\_\_ (hour) on \_\_\_\_\_ (date).

**Section 5.** There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the mayor; therefore, this ordinance shall be passed finally on such date and shall take effect as provided in Section 4, above.

Passed and approved this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
(Mayor)

Author: Dale K. Pollet, Specialist (Entomology)

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## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Resolution No. 07-14-16A Authorizing Improvements To The City's Sewerage System And Providing For The Payment Of The Costs Thereof

**Department:** Administration

**Background/Description of Item:**

Staff recommends the City Council adopt Resolution No. 07-14-16A authorizing the City's sewerage system improvements, including: decommissioning the existing Edgerton Wastewater Treatment Plant; establishing a new pump station at the location of the Edgerton Wastewater Treatment Plant; constructing a new lift station and force main to connect the new pump station at the location of the Edgerton Wastewater Treatment Plant to the new Big Bull Creek Wastewater Treatment Facility; installing a wastewater sludge disposal belt process, including feed pump and polymer system, construction of a sludge storage building, yard piping modifications and other related site improvements (the "Improvements").

To effect this recommendation, the governing body is asked to approve the resolution authorizing the Improvements, including the costs of the Improvements payable from proceeds of the general obligation bonds of the City.

The items in the council packet published on July 11, 2016, are preliminary pending the pricing of the bonds via competitive sale the morning of July 14, 2016. Representatives of bond counsel (Gilmore & Bell) and financial advisor (Columbia Capital) will be in attendance at the July 14 meeting to describe the results of the competitive bond sale and to address any questions on the resolution.

Enclosures: Draft Resolution 07-14-16A

**Related Ordinance(s) or Statute(s):** Charter Ordinance No. 22

**Recommendation:** Approve Resolution No. 07-14-16A Authorizing Improvements To The City's Sewerage System And Providing For The Payment Of The Costs Thereof.

**Funding Source:** General Obligation Bonds to be repaid from fees charged to the City's sewer customers backed by unlimited general obligation (property tax) pledge of repayment.

Prepared by: Karen Kindle, Accountant  
Date: July 11, 2016

## **RESOLUTION NO. 07-14-16A**

### **A RESOLUTION OF THE CITY OF EDGERTON, KANSAS, AUTHORIZING IMPROVEMENTS TO THE SEWERAGE SYSTEM OF THE CITY; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.**

**WHEREAS**, the City of Edgerton, Kansas (the “City”) and operates a combined public water supply system, sewerage plant and system, electric system and gas system (the “System”); and

**WHEREAS**, Charter Ordinance No. 22 of the City (the “Charter Ordinance”) authorizes the City to operate and maintain sewers and disposal works for the collection and purification of the sewage of the City and to issue general obligation bonds to pay all or part of any costs thereof; and

**WHEREAS**, the governing body of the City plans to improve or has previously improved the System as follows:

1. Decommissioning the existing Edgerton Wastewater Treatment Plant;
2. Establishing a new pump station at the location of the Edgerton Wastewater Treatment Plant;
3. Constructing a new lift station and force main to connect the new pump station at the location of the Edgerton Wastewater Treatment Plant to the new Big Bull Creek Wastewater Treatment Facility; and
4. Installation of a wastewater sludge disposal belt press, including feed pump and polymer system, construction of a sludge storage-building, yard piping modifications and related site improvements

(collectively, the “Project”), and hereby finds and determines that it is necessary and advisable to provide for the payment and refinancing of the costs thereof by the issuance of general obligation bonds, as authorized by the Charter Ordinance.

### **NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:**

**Section 1. Project Authorization.** It is hereby authorized, ordered and directed that the System be improved by constructing the Project.

**Section 2. Project Financing.** The costs of the Project, including construction, engineering fees, acquisition of right-of-way and easements, contingencies and administrative expenses is \$3,385,000.00. The costs of the Project, together with interest during the period of construction, costs of issuance and interest and fees related to any interim financing, shall be payable from the proceeds of general obligation bonds of the City issued under authority of the Act and the Charter Ordinance (the “Bonds”).

**Section 3. Reimbursement.** The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation §1.150-2.

**Section 4. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the governing body of the city.

**ADOPTED AND APPROVED** by the governing body of the City of Edgerton, Kansas, on July 14, 2016.

(Seal)

\_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Janice Rawles, Clerk

APPROVED TO FORM:

\_\_\_\_\_  
Bond Counsel



## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Ordinance No. 1018 Authorizing And Providing For The Issuance Of General Obligation Bonds, Series 2016, Of The City Of Edgerton, Kansas; Providing For The Levy And Collection Of An Annual Tax For The Purpose Of Paying The Principal Of And Interest On Said Bonds As They Become Due; Authorizing Certain Other Documents And Actions In Connection Therewith; And Making Certain Covenants With Respect Thereto.

**Department:** Administration

**Background/Description of Item:** Staff recommends the City Council authorize the issuance of the City's \$3.385 million (preliminary) General Obligation Bonds, Series 2016 (the "Bonds") to (1) fund improvements to the City's sewerage system, including: decommissioning the existing Edgerton Wastewater Treatment Plant; establishing a new pump station at the location of the Edgerton Wastewater Treatment Plant; constructing a new lift station and force main to connect the new pump station at the location of the Edgerton Wastewater Treatment Plant to the new Big Bull Creek Wastewater Treatment Facility; installing a wastewater sludge disposal belt process, including feed pump and polymer system, construction of a sludge storage building, yard piping modifications and other related site improvements (the "Improvements"); and (2) to retire existing loan No. KWPCRF C20- 1738-01 entered into with the Kansas Department of Health and Environment ("KDHE") for the purpose of funding previously authorized sewer system improvements (the "Refunded Loan").

To effect this recommendation, the governing body is asked to take two actions:

- 1) Approve Ordinance No. 1018 authorizing the sale of the bonds;
- 2) Adopt Resolution No. 07-14-16B specifying the terms and conditions of the bonds. [FOLLOWING AGENDA ITEM]

The items in the council packet published on July 11, 2016, are preliminary pending the pricing of the bonds via competitive sale the morning of July 14, 2016. Representatives of bond counsel (Gilmore & Bell) and financial advisor (Columbia Capital) will be in attendance at the July 14 meeting to describe the results of the competitive bond sale and to address any questions on the ordinance and resolution.

Enclosures: Draft Ordinance No. 1018

**Related Ordinance(s) or Statute(s):** Charter Ordinance No. 22

**Recommendation:** Approve Ordinance No. 1018 Authorizing And Providing For The Issuance Of General Obligation Bonds, Series 2016, Of The City Of Edgerton, Kansas; Providing For The Levy And Collection Of An Annual Tax For The Purpose Of Paying The Principal Of And Interest On Said Bonds As They Become Due; Authorizing Certain Other Documents And Actions In Connection Therewith; And Making Certain Covenants With Respect Thereto.

**Funding Source:** General Obligation Bonds to be repaid from fees charged to the City's sewer customers backed by unlimited general obligation (property tax) pledge of repayment.

Prepared by: Karen Kindle, Accountant  
Date: July 11, 2016

- A. Excerpt of Minutes of Meeting approving sale, approving Ordinance/Bond Resolution
  - B. Ordinance
  - C. Summary Ordinance for Publication
  - D. Bond Resolution
-

**EXCERPT OF MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF EDGERTON, KANSAS  
HELD ON JULY 14, 2016**

The governing body met in special regular at the usual meeting place in the City, at 7:00 p.m., the following members being present and participating, to-wit:

\_\_\_\_\_

Absent: \_\_\_\_\_

The Mayor declared that a quorum was present and called the meeting to order.

\* \* \* \* \*

(Other Proceedings)

The Clerk reported that pursuant to the Notice of Bond Sale heretofore duly given, bids for the purchase of General Obligation Bonds, Series 2016, dated July 28, 2016, of the City had been received. A tabulation of said bids is set forth as **EXHIBIT A** hereto.

Thereupon, the governing body reviewed and considered the bids and it was found and determined that the bid of [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_], was the best bid for the Bonds, a copy of which is attached hereto as **EXHIBIT B**.

Councilmember \_\_\_\_\_ moved that said bid be accepted and that the Mayor and Clerk be authorized and directed to execute the bid form selling the Bonds to the best bidder on the basis of said bid and the terms specified in the Notice of Bond Sale. The motion was seconded by Councilmember \_\_\_\_\_. Said motion was carried by a vote of the governing body with the vote being as follows:

Yea: \_\_\_\_\_.

Nay: \_\_\_\_\_.

Thereupon, there was presented an Ordinance entitled:

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2016, OF THE CITY OF EDGERTON, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.**

Thereupon, Councilmember \_\_\_\_\_ moved that said Ordinance be passed. The motion was seconded by Councilmember \_\_\_\_\_. Said Ordinance was duly read and considered, and

upon being put, the motion for the passage of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Yea: \_\_\_\_\_.

Nay: \_\_\_\_\_.

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No. \_\_\_\_\_, was signed and approved by the Mayor and attested by the Clerk and was directed to be published one time in the official newspaper of *The Gardner News*.

Thereupon, there was presented a Resolution entitled:

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF GENERAL OBLIGATION BONDS, SERIES 2016, OF THE CITY OF EDGERTON, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. [\_\_\_\_\_] OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

Thereupon, Councilmember \_\_\_\_\_ moved that said Resolution be adopted. The motion was seconded by Councilmember \_\_\_\_\_. Said Resolution was duly read and considered, and upon being put, the motion for the adoption of said Resolution was carried by the vote of the governing body, the vote being as follows:

Yea: \_\_\_\_\_.

Nay: \_\_\_\_\_.

Thereupon, the Mayor declared said Resolution duly adopted and the Resolution was then duly numbered Resolution No. \_\_\_\_\_ and was signed by the Mayor and attested by the Clerk.

\* \* \* \* \*

(Other Proceedings)

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

On motion duly made, seconded and carried, the meeting thereupon adjourned.

**CERTIFICATE**

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Edgerton, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

---

Clerk

**EXHIBIT A**

**TABULATION OF BIDS**

**EXHIBIT B**  
**BID OF PURCHASER**

---

**ORDINANCE NO. 1018**

**OF**

**THE CITY OF EDGERTON, KANSAS**

**PASSED**

**JULY 14, 2016**

---

**GENERAL OBLIGATION BONDS  
SERIES 2016**

---



(PUBLISHED IN *THE GARDNER NEWS* ON \_\_\_\_\_, 2016)

**ORDINANCE NO. 1018**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2016, OF THE CITY OF EDGERTON, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.**

---

**WHEREAS**, the City of Edgerton, Kansas (the “City” or “Issuer”) is a city of the third class, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the City has previously arranged for financing certain sewer system improvements by the execution of a certain loan agreement described as follows:

<u>Lender</u>	<u>Loan No.</u>	<u>Dated Date</u>	<u>Maturity Date</u>	<u>Original Amount</u>	<u>Outstanding Amount</u>	<u>Redemption Date*</u>
KDHE	KWPCRF C20 1738 01	05-03-2007	03-01-2018	\$197,615.16	\$39,086.86	07-29-2016

\* or as soon thereafter as possible

(the “Loan”); and

**WHEREAS**, the City desires to undertake certain other improvements to its sewer system, including but not limited to decommissioning the existing Edgerton Wastewater Treatment Plant, establishing a new pump station at the location of the Edgerton Wastewater Treatment Plant, and constructing a new lift station and force main to connect the new pump station at the location of the Edgerton Wastewater Treatment Plant to the new Big Bull Creek Wastewater Treatment Facility (the “Improvements”); and

**WHEREAS**, the City proposes to issue its general obligation bonds to retire the Loan and permanently finance the Improvements; and

**WHEREAS**, the governing body of the City is authorized by law to issue general obligation bonds of the City to pay the costs of the Improvements; and

**WHEREAS**, the governing body of the City has advertised the sale of the Bonds in accordance with the law and at a meeting held in the City on this date awarded the sale of such Bonds to the best bidder.

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

**Section 1. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, the following words and terms in this Ordinance shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**“Act”** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 *et seq.*, Charter Ordinance No. 22 of the Issuer and Article 12, Section 5 of the Constitution of the State of Kansas, all as amended and supplemented from time to time.

**“Bond and Interest Fund”** means the Bond and Interest Fund of the City for its general obligation bonds.

**“Bond Resolution”** means the resolution to be adopted by the governing body of the City prescribing the terms and details of the Bonds and making covenants with respect thereto.

**“Bonds”** means the City's General Obligation Bonds, Series 2016, dated July 28, 2016, authorized by this Ordinance.

**“City”** means the City of Edgerton, Kansas.

**“Clerk”** means the duly appointed and acting Clerk of the City or, in the Clerk's absence, the duly appointed Deputy, Assistant or Acting Clerk.

**“KDHE”** means the Kansas Department of Health and Environment.

**“Loan”** means KDHE Loan KWPCRF Project No. C20-1738-01 between the City and KDHE dated May 3, 2007, maturing March 1, 2018 in the aggregate outstanding principal amount of \$39,086.86.

**“Mayor”** means the duly elected and acting Mayor of the City or, in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

**“Ordinance”** means this Ordinance authorizing the issuance of the Bonds.

**“State”** means the State of Kansas.

**Section 2. Authorization of the Bonds.** There shall be issued and hereby are authorized and directed to be issued the General Obligation Bonds, Series 2016, of the City in the principal amount of \$[PRINCIPAL AMOUNT], for the purpose of providing funds to: (a) refund the Loan; (b) pay the costs of the Improvements; (c) pay a portion of the interest on the Bonds; and (d) pay costs of issuance of the Bonds.

**Section 3. Security for the Bonds.** The Bonds shall be general obligations of the City payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

**Section 4. Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and

subject to the provisions, covenants and agreements set forth in the Bond Resolution hereafter adopted by the governing body of the City.

**Section 5. Levy and Collection of Annual Tax.** The governing body of the City shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by levying and collecting the necessary taxes upon all of the taxable tangible property within the City in the manner provided by law.

The taxes above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the general ad valorem taxes of the City are levied and collected, shall be used solely for the payment of the principal of, redemption premium, if any, and interest on the Bonds as and when the same become due and the fees and expenses of the Paying Agent. The proceeds derived from said taxes shall be deposited in the Bond and Interest Fund.

If at any time said taxes are not collected in time to pay the principal of or interest on the Bonds when due, the Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the City and to reimburse said general funds for money so expended when said taxes are collected.

**Section 6. Further Authority.** The Mayor, Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 7. Governing Law.** This Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 8. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City, approval by the Mayor and publication of the Ordinance or a summary thereof in the official City newspaper.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**PASSED** by the governing body of the City on July 14, 2016 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)

\_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Janeice Rawles, Clerk

APPROVED TO FORM:

\_\_\_\_\_  
Bond Counsel

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(PUBLISHED IN THE *GARDNER NEWS* ON JULY \_\_, 2016)

**SUMMARY OF ORDINANCE NO. 1018**

On July 14, 2016, the governing body of the City of Edgerton, Kansas passed an ordinance entitled:

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2016, OF THE CITY OF EDGERTON, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.**

The Series 2016 Bonds approved by the Ordinance are being issued in the principal amount of \$[PRINCIPAL AMOUNT], to finance certain internal improvements in the City, and constitute general obligations of the City payable as to both principal and interest, to the extent necessary, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City, 404 E. Nelson Street. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at [www.edgertonks.org](http://www.edgertonks.org).

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: July 14, 2016.

---

City Attorney

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Resolution No. 07-14-16B Prescribing The Form And Details Of And Authorizing And Directing The Sale And Delivery Of General Obligation Bonds, Series 2016, Of The City Of Edgerton, Kansas, Previously Authorized By Ordinance No. 1018 Of The Issuer; Making Certain Covenants And Agreements To Provide For The Payment And Security Thereof; And Authorizing Certain Other Documents And Actions Connected Therewith.

**Department:** Administration

**Background/Description of Item:** Staff recommends the City Council authorize the issuance of the City's \$3.385 million (preliminary) General Obligation Bonds, Series 2016 (the "Bonds") to (1) fund improvements to the City's sewerage system, including: decommissioning the existing Edgerton Wastewater Treatment Plant; establishing a new pump station at the location of the Edgerton Wastewater Treatment Plant; constructing a new lift station and force main to connect the new pump station at the location of the Edgerton Wastewater Treatment Plant to the new Big Bull Creek Wastewater Treatment Facility; installing a wastewater sludge disposal belt process, including feed pump and polymer system, construction of a sludge storage building, yard piping modifications and other related site improvements (the "Improvements"); and (2) to retire existing loan No. KWPCRF C20- 1738-01 entered into with the Kansas Department of Health and Environment ("KDHE") for the purpose of funding previously authorized sewer system improvements (the "Refunded Loan").

To effect this recommendation, the governing body is asked to take two actions:

- 1) Approve Ordinance No. 1018 authorizing the sale of the bonds; [PREVIOUS ITEM]
- 2) Adopt Resolution No. 07-14-16B specifying the terms and conditions of the bonds.

The items in the council packet published on July 11, 2016, are preliminary pending the pricing of the bonds via competitive sale the morning of July 14, 2016. Representatives of bond counsel (Gilmore & Bell) and financial advisor (Columbia Capital) will be in attendance at the July 14 meeting to describe the results of the competitive bond sale and to address any questions on the ordinance and resolution.

Enclosures: Draft Resolution No. 07-14-16B

**Related Ordinance(s) or Statute(s):** Charter Ordinance No. 22

**Recommendation:** Approve Resolution No. 07-14-16B Prescribing The Form And Details Of And Authorizing And Directing The Sale And Delivery Of General Obligation Bonds, Series 2016, Of The City Of Edgerton, Kansas, Previously Authorized By Ordinance No. 1018 Of The Issuer; Making Certain Covenants And Agreements To Provide For The Payment And Security Thereof; And Authorizing Certain Other Documents And Actions Connected Therewith.

**Funding Source:** General Obligation Bonds to be repaid from fees charged to the City's sewer customers backed by unlimited general obligation (property tax) pledge of repayment.

Prepared by: Karen Kindle, Accountant  
Date: July 11, 2016

---

**RESOLUTION NO. 07-14-16B**

**OF**

**THE CITY OF EDGERTON, KANSAS**

**ADOPTED**

**JULY 14, 2016**

**GENERAL OBLIGATION BONDS  
SERIES 2016**

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## **RESOLUTION NO. 07-14-16B**

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF GENERAL OBLIGATION BONDS, SERIES 2016, OF THE CITY OF EDGERTON, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. [ ] OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

---

**WHEREAS**, the Issuer has passed the Ordinance authorizing the issuance of the Bonds; and

**WHEREAS**, the Ordinance authorized the governing body of the Issuer to adopt a resolution prescribing certain details and conditions and to make certain covenants with respect to the issuance of the Bonds; and

**WHEREAS**, the governing body of the Issuer has advertised the sale of the Bonds in accordance with the law and at a meeting held in the City on this date, awarded the sale of such Bonds to the lowest bidder; and

**WHEREAS**, the governing body of the Issuer hereby finds and determines that it is necessary for the Issuer to authorize the issuance and delivery of the Bonds in the principal amount of \$[PRINCIPAL AMOUNT] to refund the Loan and pay the costs of the Improvements.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, AS FOLLOWS:**

### **ARTICLE I**

#### **DEFINITIONS**

**Section 101. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, the following words and terms as used in this Bond Resolution shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**“Act”** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 *et seq.*, Charter Ordinance No. 22 of the Issuer and Article 12, Section 5 of the Constitution of the State of Kansas, all as amended and supplemented from time to time.

**“Authorized Denomination”** means \$5,000 or any integral multiples thereof.

**“Beneficial Owner”** of the Bonds includes any Owner of the Bonds and any other Person who, directly or indirectly has the investment power with respect to such Bonds.

**“Bond and Interest Fund”** means the Bond and Interest Fund of the Issuer for its general obligation bonds.

**“Bond Counsel”** means the firm of Gilmore & Bell, P.C., or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Issuer.

**“Bond Payment Date”** means any date on which principal of or interest on any Bond is payable.

**“Bond Register”** means the books for the registration, transfer and exchange of Bonds kept at the office of the Bond Registrar.

**“Bond Registrar”** means the State Treasurer, and any successors and assigns.

**“Bond Resolution”** means this resolution relating to the Bonds.

**“Bonds”** means the General Obligation Bonds, Series 2016, authorized and issued by the Issuer pursuant to the Ordinance and this Bond Resolution.

**“Business Day”** means a day other than a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the Legislature of the State and on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**“Cede & Co.”** means Cede & Co., as nominee of DTC and any successor nominee of DTC.

**“City”** means the City of Edgerton, Kansas.

**“Clerk”** means the duly appointed and/or elected Clerk or, in the Clerk's absence, the duly appointed Deputy Clerk or Acting Clerk of the Issuer.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder by the United States Department of the Treasury.

**“Costs of Issuance”** means all costs of issuing the Bonds, including but not limited to all publication, printing, signing and mailing expenses in connection therewith, registration fees, financial advisory fees, all legal fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with compliance with the Code, all expenses incurred in connection with receiving ratings on the Bonds, and any premiums or expenses incurred in obtaining municipal bond insurance on the Bonds.

**“Dated Date”** means July 28, 2016.

**“Debt Service Account”** means the Debt Service Account for General Obligation Bonds, Series 2016 created within the Bond and Interest Fund pursuant to **Section 501** hereof.

**“Debt Service Requirements”** means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on the Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

**“Defaulted Interest”** means interest on any Bond which is payable but not paid on any Interest Payment Date.

**“Defeasance Obligations”** means any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and United States Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) such obligations are rated in a rating category by Moody's or Standard & Poor's that is no lower than the rating category then assigned by that Rating Agency to United States Government Obligations.

**“Derivative”** means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

**“Disclosure Instructions”** means the Continuing Disclosure Instructions dated as of the Issue Date, attached to the Issuer's Closing Certificate, relating to certain obligations contained in the SEC Rule.

**“DTC”** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns, including any successor securities depository duly appointed.

**“DTC Representation Letter”** means the Blanket Letter of Representation from the Issuer and the Paying Agent to DTC which provides for a book-entry system, or any agreement between the Issuer and Paying Agent and a successor securities depository duly appointed.

**“Event of Default”** means each of the following occurrences or events:

(a) Payment of the principal and of the redemption premium, if any, of any of the Bonds shall not be made when the same shall become due and payable, either at Stated Maturity or by proceedings for redemption or otherwise;

(b) Payment of any installment of interest on any of the Bonds shall not be made when the same shall become due; or

(c) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Bond Resolution (other than the covenants relating to continuing disclosure requirements contained herein and in the Disclosure Instructions) on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Issuer by the Owner of any of the Bonds then Outstanding.

**“Federal Tax Certificate”** means the Issuer's Federal Tax Certificate dated as of the Issue Date, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Financeable Costs”** means the amount of expenditure for an Improvement which has been duly authorized by action of the governing body of the Issuer to be financed by general obligation bonds, less: (a) the amount of any temporary notes or general obligation bonds of the Issuer which are currently Outstanding and available to pay such Financeable Costs; and (b) any amount of Financeable Costs which has been previously paid by the Issuer or by any eligible source of funds unless such amounts are entitled to be reimbursed to the Issuer under State or federal law.

**“Fiscal Year”** means the twelve month period ending on December 31.

**“Funds and Accounts”** means funds and accounts created pursuant to or referred to in *Section 501* hereof.

**“Improvement Fund”** means the Improvement Fund for General Obligation Bonds, Series 2016 created pursuant to *Section 501* hereof.

**“Improvements”** means the improvements referred to in the preamble to the Ordinance.

**“Independent Accountant”** means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Independent Accountant by this Bond Resolution.

**“Interest Payment Date(s)”** means the Stated Maturity of an installment of interest on any Bond which shall be February 1 and August 1 of each year, commencing February 1, 2017.

**“Issue Date”** means the date when the Issuer delivers the Bonds to the Purchaser in exchange for the Purchase Price.

**“Issuer”** means the City of Edgerton, Kansas and any successors or assigns.

**“KDHE”** means the Kansas Department of Health and Environment.

**“Loan”** means KDHE Loan KWPCRF Project No. C20-1738-01 between the City and KDHE dated May 3, 2007, maturing March 1, 2018 in the aggregate outstanding principal amount of \$39,086.86.

**“Loan Redemption Date”** means on or about July 29, 2016.

**“Maturity”** when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

**“Mayor”** means the duly elected and acting Mayor, or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the Issuer.

**“Moody's”** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody's” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**“Notice Address”** means with respect to the following entities:

(a) To the Issuer at:

City of Edgerton, Kansas  
404 E. Nelson St.  
PO Box 225  
Edgerton, Kansas 66021  
Fax: (913) 893-6232

(b) To the Paying Agent at:

State Treasurer of the State of Kansas  
Landon Office Building  
900 Southwest Jackson, Suite 201  
Topeka, Kansas 66612-1235  
Fax: (785) 296-6976

(c) To the Purchaser:

[\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_]

[ (d) To the Rating Agency:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

or such other address as is furnished in writing to the other parties referenced herein.

**“Notice Representative”** means:

- (a) With respect to the Issuer, the Clerk.
- (b) With respect to the Bond Registrar and Paying Agent, the Director of Bond Services.
- (c) With respect to any Purchaser, the manager of its Municipal Bond Department.
- [ (d) With respect to any Rating Agency, any Vice President thereof.]

**“Official Statement”** means Issuer’s Official Statement relating to the Bonds.

**“Ordinance”** means Ordinance No. [\_\_\_\_] of the Issuer authorizing the issuance of the Bonds, as amended from time to time.

**“Outstanding”** means, when used with reference to the Bonds, as of a particular date of determination, all Bonds theretofore authenticated and delivered, except the following Bonds:

- (a) Bonds theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation;
- (b) Bonds deemed to be paid in accordance with the provisions of *Article VII* hereof; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered hereunder.

**“Owner”** when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register. Whenever consent of the Owners is required pursuant to the terms of this Bond Resolution, and the Owner of the Bonds, as set forth on the Bond Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Bonds.

**“Participants”** means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**“Paying Agent”** means the State Treasurer, and any successors and assigns.

**“Permitted Investments”** shall mean the investments hereinafter described, provided, however, no moneys or funds shall be invested in a Derivative: (a) investments authorized by K.S.A. 12-1675 and amendments thereto; (b) the municipal investment pool established pursuant to K.S.A. 12-1677a, and amendments thereto; (c) direct obligations of the United States Government or any agency thereof; (d) the Issuer's temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto; (e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Issuer is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c); (f) obligations of the federal national mortgage association, federal home loan banks, federal home loan mortgage corporation or government national mortgage association; (g) repurchase agreements for securities described in (c) or (f); (h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard & Poor's; (i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in (c) or (f); (j) receipts evidencing ownership interests in securities or portions thereof described in (c) or (f); (k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general obligations of the municipality issuing the same; or (l) bonds of any municipality

of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in (c) or (f), all as may be further restricted or modified by applicable state law.

**“Person”** means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**“Purchase Price”** means the principal amount of the Bonds[, plus a premium of \$\_\_\_\_\_, less an underwriting discount of \$\_\_\_\_\_].

**“Purchaser”** means [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_], the original purchaser of the Bonds, and any successor and assigns.

**“Rating Agency”** means any company, agency or entity that provides, pursuant to request of the Issuer, financial ratings for the Bonds.

**“Rebate Fund”** means the Rebate Fund for General Obligation Bonds, Series 2016 created pursuant to *Section 501* hereof.

**“Record Dates”** for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

**“Redemption Date”** means, when used with respect to any Bond to be redeemed, the date fixed for the redemption of such Bond pursuant to the terms of this Bond Resolution.

**“Redemption Fund”** means the Redemption Fund created pursuant to *Section 501* hereof.

**“Redemption Price”** means, when used with respect to any Bond to be redeemed, the price at which such Bond is to be redeemed pursuant to the terms of this Bond Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

**“Replacement Bonds”** means Bonds issued to the Beneficial Owners of the Bonds in accordance with *Article II* hereof.

**“SEC Rule”** means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time.

**“Securities Depository”** means, initially, DTC, and its successors and assigns.

**“Special Record Date”** means the date fixed by the Paying Agent pursuant to *Article II* hereof for the payment of Defaulted Interest.

**“Standard & Poor’s” or “S&P”** means S&P Global Ratings, a division of S&P Global Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, Standard & Poor’s shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.



**“State”** means the state of Kansas.

**“State Treasurer”** means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.

**“Stated Maturity”** when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond and this Bond Resolution as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

**“Substitute Improvements”** means the substitute or additional improvements of the Issuer described in *Article V* hereof.

[ **“Term Bonds”** means the Bonds scheduled to mature in the year 20\_\_ and 20\_\_.]

[ **“20\_\_ Term Bonds”** means the Bonds scheduled to mature in the year 20\_\_.]

[ **“20\_\_ Term Bonds”** means the Bonds scheduled to mature in the year 20\_\_.]

**“Treasurer”** means the duly appointed and/or elected Treasurer of the Issuer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the Issuer.

**“United States Government Obligations”** means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Issuer.

## ARTICLE II

### AUTHORIZATION AND DETAILS OF THE BONDS

**Section 201. Authorization of the Bonds.** The Bonds have been heretofore authorized and directed to be issued pursuant to the Ordinance in the principal amount of \$[Principal Amount], for the purpose of providing funds to: (a) refund the Loan; (b) pay the costs of the Improvements; (c) pay a portion of the interest on the Bonds; and (d) pay costs of issuance of the Bonds.

**Section 202. Description of the Bonds.** The Bonds shall consist of fully registered bonds in an Authorized Denomination, and shall be numbered in such manner as the Bond Registrar shall determine. All of the Bonds shall be dated as of the Dated Date, shall become due in the amounts, on the Stated Maturities, subject to redemption and payment prior to their Stated Maturities as provided in *Article III* hereof, and shall bear interest at the rates per annum as follows:

### SERIAL BONDS

<u>Stated Maturity</u> <u>August 1</u>	<u>Principal</u> <u>Amount</u>	<u>Annual Rate</u> <u>of Interest</u>	<u>Stated Maturity</u> <u>August 1</u>	<u>Principal</u> <u>Amount</u>	<u>Annual Rate</u> <u>of Interest</u>
2023	\$_____	_____%	2035	\$_____	_____%
2024	_____	_____%	2036	_____	_____%
2025	_____	_____%	2037	_____	_____%
2026	_____	_____%	2038	_____	_____%
2027	_____	_____%	2039	_____	_____%
2028	_____	_____%	2040	_____	_____%
2029	_____	_____%	2041	_____	_____%
2030	_____	_____%	2042	_____	_____%
2031	_____	_____%	2043	_____	_____%
2032	_____	_____%	2044	_____	_____%
2033	_____	_____%	2045	_____	_____%
2034	_____	_____%	2046	_____	_____%

### [TERM BONDS

<u>Stated Maturity</u> <u>August 1</u>	<u>Principal</u> <u>Amount</u>	<u>Annual Rate</u> <u>of Interest</u>
20__	\$_____	_____%
20__	_____	_____%]

The Bonds shall bear interest at the above specified rates (computed on the basis of a 360-day year of twelve 30-day months) from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid on the Interest Payment Dates in the manner set forth in **Section 204** hereof.

Each of the Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be printed in accordance with the format required by the Attorney General of the State and shall be substantially in the form attached hereto as **EXHIBIT A** or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 *et seq.*

**Section 203. Designation of Paying Agent and Bond Registrar.** The State Treasurer is hereby designated as the Paying Agent for the payment of principal of and interest on the Bonds and Bond Registrar with respect to the registration, transfer and exchange of Bonds. The Mayor of the Issuer is hereby authorized and empowered to execute on behalf of the Issuer an agreement with the Bond Registrar and Paying Agent for the Bonds.

The Issuer will at all times maintain a Paying Agent and Bond Registrar meeting the qualifications herein described for the performance of the duties hereunder. The Issuer reserves the right to appoint a successor Paying Agent or Bond Registrar by (a) filing with the Paying Agent or Bond Registrar then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent or Bond Registrar and appointing a successor, and (b) causing notice of appointment of the successor Paying Agent and Bond Registrar to be given by first class mail to each Owner. No resignation or removal of the Paying Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of Paying Agent or Bond Registrar.

Every Paying Agent or Bond Registrar appointed hereunder shall at all times meet the requirements of K.S.A. 10-501 *et seq.* and K.S.A. 10-620 *et seq.*, respectively.

**Section 204. Method and Place of Payment of the Bonds.** The principal of, or Redemption Price, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the principal office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Owner; or (b) in the case of an interest payment to Cede & Co. or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank ABA routing number and account number to which such Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The Issuer shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefore to be mailed, by first class mail, postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the Issuer.

**Section 205. Payments Due on Saturdays, Sundays and Holidays.** In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

**Section 206. Registration, Transfer and Exchange of Bonds.** The Issuer covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of

the Bond Registrar as herein provided. Each Bond when issued shall be registered in the name of the Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange such Bond for a new Bond or Bonds in any Authorized Denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange.

Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Bond Registrar, duly executed by the Owner thereof or by the Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Bond Resolution. The Issuer shall pay the fees and expenses of the Bond Registrar for the registration, transfer and exchange of Bonds provided for by this Bond Resolution and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, are the responsibility of the Owners of the Bonds. In the event any Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Code § 3406, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Owner hereunder or under the Bonds.

The Issuer and the Bond Registrar shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to **Article III** hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the Issuer of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to this **Article II**.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute Owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Owner or upon the Owner's order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register may be inspected and copied by the Owners (or a designated representative thereof) of 10% or more in principal amount of the Bonds then Outstanding or any designated representative of such Owners whose authority is evidenced to the satisfaction of the Bond Registrar.

**Section 207. Execution, Registration, Authentication and Delivery of Bonds.** Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be executed for and on behalf of the Issuer by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the Clerk, and the seal of the Issuer shall be affixed thereto or imprinted thereon. The Mayor and Clerk are hereby authorized and directed to prepare and execute the

Bonds in the manner herein specified, and to cause the Bonds to be registered in the office of the Clerk, which registration shall be evidenced by the manual or facsimile signature of the Clerk with the seal of the Issuer affixed thereto or imprinted thereon. The Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In case any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds as herein specified, and when duly executed, to deliver the Bonds to the Bond Registrar for authentication.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form attached hereto as **EXHIBIT A** hereof, which shall be manually executed by an authorized officer or employee of the Bond Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Bond shall be entitled to any security or benefit under this Bond Resolution or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Bond Registrar. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Bond Resolution. Upon authentication, the Bond Registrar shall deliver the Bonds to the Purchaser upon instructions of the Issuer or its representative.

**Section 208. Mutilated, Lost, Stolen or Destroyed Bonds.** If (a) any mutilated Bond is surrendered to the Bond Registrar or the Bond Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Issuer and the Bond Registrar such security or indemnity as may be required by each of them, then, in the absence of notice to the Issuer or the Bond Registrar that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer's request, the Bond Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Issuer, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this Section, the Issuer and the Paying Agent may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer, and shall be entitled to all the benefits of this Bond Resolution equally and ratably with all other Outstanding Bonds.

**Section 209. Cancellation and Destruction of Bonds Upon Payment.** All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

**Section 210. Book-Entry Bonds; Securities Depository.** The Issuer and Paying Agent have entered into a DTC Representation Letter with DTC. The Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Bonds, except in the event the Bond Registrar issues Replacement Bonds as provided in this Section. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Bond Registrar authenticates and delivers Replacement Bonds to the Beneficial Owners as described in the following paragraph.

The Issuer may decide, subject to the requirements of the Operational Arrangements of DTC (or a successor Securities Depository), and the following provisions of this section to discontinue use of the system of book-entry transfers through DTC (or a successor Securities Depository):

(a) If the Issuer determines (1) that the Securities Depository is unable to properly discharge its responsibilities, or (2) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (3) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds; or

(b) if the Bond Registrar receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Bond Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to Owners requesting the same, and the Bond Registrar shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (a)(1) or (a)(2) of this paragraph, the Issuer, with the consent of the Bond Registrar, may select a successor securities depository in accordance with the following paragraph to effect book-entry transfers.

In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Bond Registrar, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Issuer, the Bond Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with the following paragraph, then the Bond Registrar shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Bond Registrar may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing, registration, authentication, and delivery of Replacement Bonds shall be paid for by the Issuer.

In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Bond Registrar receives written evidence satisfactory to the Bond Registrar with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such

successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Bond Registrar upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in an Authorized Denominations and form as provided herein.

**Section 211. Nonpresentment of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Resolution or on, or with respect to, said Bond. If any Bond is not presented for payment within four (4) years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay, without liability for interest thereon, to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

**Section 212. Preliminary and Final Official Statement.** For the purpose of enabling the Purchaser to comply with the requirements of Section (b)(1) of the SEC Rule, the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be “final” as of its date, except for the omission of such information as is permitted by Section (b)(1) of the SEC Rule, and the appropriate officers of the Issuer are hereby authorized, if requested, to provide the Purchaser a letter or certification to such effect and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the SEC Rule.

The Official Statement is hereby authorized to be prepared by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor and Clerk of the Issuer are hereby authorized to execute the Official Statement as so supplemented, amended and completed, and the use and public distribution of the Official Statement by the Purchaser in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the Issue Date.

The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds sufficient copies of the Official Statement to enable the Purchaser to comply with the requirements of the SEC Rule and Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 213. Sale of the Bonds.** The sale of the Bonds to the Purchaser is hereby ratified and confirmed. The Mayor and Clerk are hereby authorized to execute the official bid form submitted by the Purchaser. Delivery of the Bonds shall be made to the Purchaser on the Issue Date (which shall be as soon as practicable after the adoption of this Bond Resolution), upon payment of the Purchase Price.

## ARTICLE III

### REDEMPTION OF BONDS

#### Section 301. Redemption by Issuer.

**Optional Redemption.** At the option of the Issuer, Bonds maturing on August 1 in the years 2025, and thereafter, will be subject to redemption and payment prior to their Stated Maturity on August 1, 2024, and thereafter, as a whole or in part (selection of maturities and the amount of Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the Redemption Date.

[ **Mandatory Redemption.** (a) 20\_\_ Term Bonds. The 20\_\_ Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements of this Section at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The taxes levied in **Article IV** hereof which are to be deposited into the Debt Service Account shall be sufficient to redeem, and the Issuer shall redeem on August 1 in each year, the following principal amounts of such 20\_\_ Term Bonds:

<b>Principal Amount</b>	<b>Year</b>
\$ _____	20__
_____	*20__

\_\_\_\_\_  
\*Final Maturity

(b) 20\_\_ Term Bonds. The 20\_\_ Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements of this Section at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The taxes levied in **Article IV** hereof which are to be deposited into the Debt Service Account shall be sufficient to redeem, and the Issuer shall redeem on August 1 in each year, the following principal amounts of such 20\_\_ Term Bonds:

<b>Principal Amount</b>	<b>Year</b>
\$ _____	20__
_____	*20__

\_\_\_\_\_  
\*Final Maturity

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Issuer may: (1) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the Issuer under this Section for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the



mandatory redemption requirements of this subsection) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this subsection. Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Issuer to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity as designated by the Issuer, and the principal amount of Term Bonds to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the Issuer intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the Issuer will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with, with respect to such mandatory redemption payment.]

**Section 302. Selection of Bonds to be Redeemed.** Bonds shall be redeemed only in an Authorized Denomination. When less than all of the Bonds are to be redeemed and paid prior to their Stated Maturity, such Bonds shall be redeemed in such manner as the Issuer shall determine. Bonds of less than a full Stated Maturity shall be selected by the Bond Registrar in a minimum Authorized Denomination of principal amount in such equitable manner as the Bond Registrar may determine.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption a minimum Authorized Denomination of face value shall be treated as though it were a separate Bond of the denomination of a minimum Authorized Denomination. If it is determined that one or more, but not all, of a minimum Authorized Denomination of face value represented by any Bond is selected for redemption, then upon notice of intention to redeem a minimum Authorized Denomination, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Bond to the Bond Registrar: (1) for payment of the Redemption Price and interest to the Redemption Date of a minimum Authorized Denomination of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of a minimum Authorized Denomination of face value called for redemption (and to that extent only).

**Section 303. Notice and Effect of Call for Redemption.** In the event the Issuer desires to call the Bonds for redemption prior to maturity, written notice of such intent shall be provided to the Bond Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the Redemption Date. The Bond Registrar shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Bond Registrar at least 45 days prior to the Redemption Date of written instructions of the Issuer specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. [The foregoing provisions of this paragraph shall not apply in the case of any mandatory redemption of Term Bonds hereunder, and Term Bonds shall be called by the Paying Agent for redemption pursuant to such mandatory redemption requirements without the necessity of any action by the Issuer and whether or not the Paying Agent holds moneys available and sufficient to effect the required redemption.]

Unless waived by any Owner of Bonds to be redeemed, if the Issuer shall call any Bonds for redemption and payment prior to the Stated Maturity thereof, the Issuer shall give written notice of its intention to call and pay said Bonds to the Bond Registrar and the State Treasurer. In addition, the Issuer shall cause the Bond Registrar to give written notice of redemption to the Owners of said Bonds. Each of said written notices shall be deposited in the United States first class mail not less than 30 days prior to the Redemption Date.

All official notices of redemption shall be dated and shall contain the following information:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;
- (d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and
- (e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the principal office of the Paying Agent.

The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on such Redemption Date.

For so long as the Securities Depository is effecting book-entry transfers of the Bonds, the Bond Registrar shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Bond Registrar, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

In addition to the foregoing notice, the Issuer shall provide such notices of redemption as are required by the Disclosure Instructions. Further notice may be given by the Issuer or the Bond Registrar on behalf of the Issuer as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if official notice thereof is given as above prescribed:

- (a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (1) the CUSIP numbers of all Bonds being redeemed; (2)

the date of issue of the Bonds as originally issued; (3) the rate of interest borne by each Bond being redeemed; (4) the maturity date of each Bond being redeemed; and (5) any other descriptive information needed to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least one day before the mailing of notice to Owners by first class, registered or certified mail or overnight delivery, as determined by the Bond Registrar, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Each check or other transfer of funds issued for the payment of the Redemption Price of Bonds being redeemed shall bear or have enclosed the CUSIP number of the Bonds being redeemed with the proceeds of such check or other transfer.

The Paying Agent is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the State or the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

## ARTICLE IV

### SECURITY FOR BONDS

**Section 401. Security for the Bonds.** The Bonds shall be general obligations of the Issuer payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

**Section 402. Levy and Collection of Annual Tax; Transfer to Debt Service Account.** The governing body of the Issuer shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by, to the extent necessary, levying and collecting the necessary taxes upon all of the taxable tangible property within the Issuer in the manner provided by law.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Issuer are levied and collected. The proceeds derived from said taxes shall be deposited in the Bond and Interest Fund, shall be kept separate and apart from all other funds of the Issuer shall thereafter be transferred to the Debt Service Account and shall be used solely for the payment of the principal of and interest on the Bonds as and when the same become due, taking into account any scheduled mandatory redemptions, and the fees and expenses of the Paying Agent.

If at any time said taxes are not collected in time to pay the principal of or interest on the Bonds when due, the Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the Issuer and to reimburse said general funds for money so expended when said taxes are collected.

## ARTICLE V

### ESTABLISHMENT OF FUNDS AND ACCOUNTS DEPOSIT AND APPLICATION OF BOND PROCEEDS AND OTHER MONEYS

**Section 501. Creation of Funds and Accounts.** Simultaneously with the issuance of the Bonds, there shall be created within the Treasury of the Issuer the following Funds and Accounts:

- (a) Redemption Fund;
- (b) Improvement Fund for General Obligation Bonds, Series 2016;
- (c) Debt Service Account for General Obligation Bonds, Series 2016 (within the Bond and Interest Fund);
- (d) Rebate Fund for General Obligation Bonds, Series 2016; and

The Funds and Accounts established herein shall be administered in accordance with the provisions of this Bond Resolution so long as the Bonds are Outstanding.

**Section 502. Deposit of Bond Proceeds and Other Moneys.** The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds as follows:

- (a) All accrued interest received from the sale of the Bonds and \$[\_\_\_\_\_], representing a portion of the interest on the Bonds during construction of the Improvements, shall be deposited in the Debt Service Account.
- (b) The sum of \$[\_\_\_\_\_] shall be deposited into the Redemption Fund.
- (c) The remaining balance of the proceeds derived from the sale of the Bonds in the amount of \$[\_\_\_\_\_] shall be deposited in the Improvement Fund.

**Section 503. Application of Moneys in the Improvement Fund.** Moneys in the Improvement Fund shall be used for the sole purpose of: (a) paying the costs of the Improvements, in accordance with the plans and specifications therefor approved by the Governing Body and on file in the office of the Clerk, including any alterations in or amendments to said plans and specifications deemed advisable and approved by the Governing Body; (b) paying interest on the Bonds during construction of the Improvements; (c) paying Costs of Issuance; and (d) transferring any amounts to the Rebate Fund required by this *Article V*.

Upon completion of the Improvements, any surplus remaining in the Improvement Fund shall be deposited in the Debt Service Account.

**Section 504. Substitution of Improvements; Reallocation of Proceeds.**

- (a) The Issuer may elect for any reason to substitute or add other public improvements to be financed with proceeds of the Bonds provided the following conditions are met: (1) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been duly authorized by the Governing Body in accordance with the laws of the State; (2) a resolution authorizing the use of the proceeds of the Bonds to pay the Financeable Costs of the Substitute

Improvement has been duly adopted by the Governing Body pursuant to this Section, (3) the Attorney General of the State has approved the amendment made by such resolution to the transcript of proceedings for the Bonds to include the Substitute Improvements; and (4) the use of the proceeds of the Bonds to pay the Financeable Cost of the Substitute Improvement will not adversely affect the tax-exempt status of the Bonds under State or federal law.

(b) The Issuer may reallocate expenditure of Bond proceeds among all Improvements financed by the Bonds; provided the following conditions are met: (1) the reallocation is approved by the Governing Body; (2) the reallocation shall not cause the proceeds of the Bonds allocated to any Improvement to exceed the Financeable Costs of the Improvement; and (3) the reallocation will not adversely affect the tax-exempt status of the Bonds under State or federal law.

**Section 505. Application of Moneys in the Redemption Fund.** Moneys in the Redemption Fund shall be used for the sole purpose of retiring the Loan. Any moneys remaining in the Redemption Fund not needed to retire the Loan shall be transferred to the Debt Service Account.

**Section 506. Application of Moneys in Debt Service Account.** All amounts paid and credited to the Debt Service Account shall be expended and used by the Issuer for the sole purpose of paying the principal or Redemption Price of and interest on the Bonds as and when the same become due and the usual and customary fees and expenses of the Bond Registrar and Paying Agent. The Treasurer is authorized and directed to withdraw from the Debt Service Account sums sufficient to pay both principal or Redemption Price of and interest on the Bonds and the fees and expenses of the Bond Registrar and Paying Agent as and when the same become due, and to forward such sums to the Paying Agent in a manner which ensures that the Paying Agent will receive immediately available funds in such amounts on or before the Business Day immediately preceding the dates when such principal, interest and fees of the Bond Registrar and Paying Agent will become due. If, through the lapse of time or otherwise, the Owners of Bonds are no longer entitled to enforce payment of the Bonds or the interest thereon, the Paying Agent shall return said funds to the Issuer. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Bond Resolution and shall be held in trust by the Paying Agent for the benefit of the Owners of the Bonds entitled to payment from such moneys.

Any moneys or investments remaining in the Debt Service Account after the retirement of the Bonds shall be transferred and paid into the Bond and Interest Fund.

**Section 507. Application of Moneys in the Rebate Fund.**

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Federal Tax Certificate. All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to satisfy the Rebate Amount (as defined in the Federal Tax Certificate), for payment to the United States of America, and neither the Issuer nor the Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and the Federal Tax Certificate.

(b) The Issuer shall periodically determine the arbitrage rebate, if any, under Code § 148(f) in accordance with the Federal Tax Certificate, and the Issuer shall make payments to the United States of America at the times and in the amounts determined under the Federal Tax Certificate. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be deposited into the Bond and Interest Fund.

(c) Notwithstanding any other provision of this Bond Resolution, including in particular *Article VII* hereof, the obligation to pay arbitrage rebate to the United States of America and to comply with all other requirements of this Section and the Federal Tax Certificate shall survive the defeasance or payment in full of the Bonds.

**Section 508. Deposits and Investment of Moneys.** Moneys in each of the Funds and Accounts shall be deposited in accordance with laws of the State, in a bank, savings and loan association or savings bank organized under the laws of the State, any other state or the United States: (a) which has a main or branch office located in the Issuer; or (b) if no such entity has a main or branch office located in the Issuer, with such an entity that has a main or branch office located in the county or counties in which the Issuer is located. All such depositories shall be members of the Federal Deposit Insurance Corporation, or otherwise as permitted by State law. All such deposits shall be invested in Permitted Investments as set forth in this Article or shall be adequately secured as provided by the laws of the State. All moneys held in the Funds and Accounts shall be kept separate and apart from all other funds of the Issuer so that there shall be no commingling with any other funds of the Issuer.

Moneys held in any Fund or Account other than the Redemption Fund may be invested in accordance with this Bond Resolution and the Federal Tax Certificate in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such fund was created. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account; provided that, during the period of construction of the Improvements, earnings on the investment of such funds may, at the discretion of the Issuer, be credited to the Debt Service Account.

## ARTICLE VI

### DEFAULT AND REMEDIES

**Section 601. Remedies.** The provisions of the Bond Resolution, including the covenants and agreements herein contained, shall constitute a contract between the Issuer and the Owners of the Bonds. If an Event of Default occurs and shall be continuing, the Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Owner or Owners against the Issuer and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of the Bond Resolution or by the Constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the Issuer, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Bonds.

**Section 602. Limitation on Rights of Owners.** The covenants and agreements of the Issuer contained herein and in the Bonds shall be for the equal benefit, protection, and security of the Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the

principal of and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Bond Resolution. No one or more Owners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Outstanding Bonds.

**Section 603. Remedies Cumulative.** No remedy conferred herein upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Owners of the Bonds by this Bond Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. If action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or shall have been determined adversely to such Owner, then, and in every such case, the Issuer and the Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

## ARTICLE VII

### DEFEASANCE

**Section 701. Defeasance.** When any or all of the Bonds, redemption premium, if any, or scheduled interest payments thereon have been paid and discharged, then the requirements contained in this Bond Resolution and the pledge of the Issuer's faith and credit hereunder and all other rights granted hereby shall terminate with respect to the Bonds or scheduled interest payments thereon so paid and discharged. Bonds, redemption premium, if any, or scheduled interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Bond Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Bonds or the interest payments thereon, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal of or Redemption Price of said Bonds and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments. If the amount to be so deposited is based on the Redemption Price of any Bonds, no such satisfaction shall occur until (a) the Issuer has elected to redeem such Bonds, and (b) either notice of such redemption has been given, or the Issuer has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Bond Registrar to give such notice of redemption in compliance with *Article III* hereof. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Issuer, for the purpose of paying and discharging any of the Bonds, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent

or such bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of this Bond Resolution.

## ARTICLE VIII

### TAX COVENANTS

**Section 801. General Covenants.** The Issuer covenants and agrees that it will comply with: (a) all applicable provisions of the Code necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor and Clerk are hereby authorized and directed to execute the Federal Tax Certificate in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the Issuer. The Issuer will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

**Section 802. Survival of Covenants.** The covenants contained in this Article and in the Federal Tax Certificate shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to *Article VII* hereof or any other provision of this Bond Resolution until such time as is set forth in the Federal Tax Certificate.

## ARTICLE IX

### CONTINUING DISCLOSURE REQUIREMENTS

**Section 901. Disclosure Requirements.** The Mayor and Clerk are hereby authorized and directed to execute the Disclosure Instructions in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the Issuer. The Issuer hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Disclosure Instructions, which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

**Section 902. Failure to Comply with Continuing Disclosure Requirements.** In the event the Issuer fails to comply in a timely manner with its covenants contained in the preceding section, the Purchaser and/or any Beneficial Owner may make demand for such compliance by written notice to the Issuer. In the event the Issuer does not remedy such noncompliance within 10 days of receipt of such written notice, the Purchaser or any Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy, as the Purchaser and/or any Beneficial Owner shall deem effectual to protect and enforce any of the duties of the Issuer under such preceding section. Notwithstanding any other provision of this Bond Resolution, failure of the Issuer to comply with its covenants contained in the preceding section shall not be considered an Event of Default under this Bond Resolution.



## ARTICLE X

### MISCELLANEOUS PROVISIONS

**Section 1001. Annual Audit.** Annually, promptly after the end of the Fiscal Year, the Issuer will cause an audit to be made of the financial statements of the Issuer for the preceding Fiscal Year by an Independent Accountant. Such audit shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, any Owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer or Owner. Upon payment of the reasonable cost of preparing and mailing the same, a copy of any annual audit will, upon request, be sent to any Owner or prospective Owner. As soon as possible after the completion of the annual audit, the governing body of the Issuer shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Bond Resolution, the Issuer shall promptly cure such deficiency.

**Section 1002. Amendments.** The rights and duties of the Issuer and the Owners, and the terms and provisions of the Bonds or of this Bond Resolution, may be amended or modified at any time in any respect by resolution of the Issuer with the written consent of the Owners of not less than a majority in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the Issuer is required to pay as principal or interest on any Bond;
- (c) permit preference or priority of any Bond over any other Bond; or
- (d) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Bond Resolution.

Any provision of the Bonds or of this Bond Resolution may, however, be amended or modified by resolution duly adopted by the governing body of the Issuer at any time in any legal respect with the written consent of the Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Owners, the Issuer may amend or supplement this Bond Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity herein, to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners, to more precisely identify the Improvements, to reallocate proceeds of the Bonds among Improvements, to provide for Substitute Improvements, to conform this Bond Resolution to the Code or future applicable federal law concerning tax-exempt obligations, or in connection with any other change therein which is not materially adverse to the interests of the Owners.

Every amendment or modification of the provisions of the Bonds or of this Bond Resolution, to which the written consent of the Owners is given, as above provided, shall be expressed in a resolution adopted by the governing body of the Issuer amending or supplementing the provisions of this Bond Resolution and shall be deemed to be a part of this Bond Resolution. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Bond Resolution shall always be kept on file in the office of the Clerk, and shall be made available for inspection by the Owner of any

Bond or a prospective purchaser or owner of any Bond authorized by this Bond Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Bond Resolution will be sent by the Clerk to any such Owner or prospective Owner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the resolution of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The Issuer shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Bond Resolution which affects the duties or obligations of the Paying Agent under this Bond Resolution.

**Section 1003. Notices, Consents and Other Instruments by Owners.** Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Bond Resolution, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Bond Resolution, Bonds owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Bond Resolution, except that, in determining whether the Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Owners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer.

**Section 1004. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Bond Resolution shall be in writing, given to the Notice Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. Copies of such notices shall also be given to the Paying Agent. The Issuer, the Paying Agent and the Purchaser may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Paying Agent shall constitute a sufficient notice.

**Section 1005. Electronic Transactions.** The issuance of the Bonds and the transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

**Section 1006. Further Authority.** The officers and officials of the Issuer, including the Mayor and Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Bond Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 1007. Severability.** If any section or other part of this Bond Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Bond Resolution.

**Section 1008. Governing Law.** This Bond Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1009. Effective Date.** This Bond Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

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**ADOPTED** by the governing body of the Issuer on July 14, 2016.

(SEAL)

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Donald Roberts, Mayor

ATTEST:

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Janeice Rawles, Clerk

APPROVED TO FORM:

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Bond Counsel

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**EXHIBIT A**  
**(FORM OF BONDS)**

**REGISTERED**  
**NUMBER** \_\_

**REGISTERED**  
**\$**

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation ("DTC"), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**  
**STATE OF KANSAS**  
**CITY OF EDGERTON**  
**GENERAL OBLIGATION BOND**  
**SERIES 2016**

<b>Interest</b>	<b>Maturity</b>	<b>Dated</b>	<b>CUSIP:</b>
<b>Rate:</b> _____%	<b>Date:</b> August 1, _____	<b>Date:</b> July 28, 2016	

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**KNOW ALL PERSONS BY THESE PRESENTS:** That the City of Edgerton, State of Kansas (the "Issuer"), for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner shown above, or registered assigns, but solely from the source and in the manner herein specified, the Principal Amount shown above on the Maturity Date shown above, unless called for redemption prior to said Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months), from the Dated Date shown above, or from the most recent date to which interest has been paid or duly provided for, payable semiannually on February 1 and August 1 of each year, commencing February 1, 2017 (the "Interest Payment Dates"), until the Principal Amount has been paid.

**Method and Place of Payment.** The principal or redemption price of this Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Bond at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the "Paying Agent" and "Bond Registrar"). The interest payable on this Bond on any Interest Payment Date shall be paid to the person in whose name this Bond is registered on the registration books maintained by the Bond Registrar at the close of business on the Record Date(s) for such interest, which shall be the 15th day (whether or not a business day) of the

calendar month next preceding the Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner; or (b) in the case of an interest payment to Cede & Co. or any Owner of \$500,000 or more in aggregate principal amount of Bonds by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Bonds shall be payable in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Interest not punctually paid will be paid in the manner established in the within defined Bond Resolution.

**Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Bond Resolution.

**Authorization of Bonds.** This Bond is one of an authorized series of Bonds of the Issuer designated “General Obligation Bonds, Series 2016,” aggregating the principal amount of \$[PRINCIPAL AMOUNT] (the “Bonds”) issued for the purposes set forth in the Ordinance of the Issuer authorizing the issuance of the Bonds and the Resolution of the Issuer prescribing the form and details of the Bonds (collectively, the “Bond Resolution”). The Bonds are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 *et seq.*, Charter Ordinance No. 22 of the Issuer and Article 12, Section 5 of the Constitution of the State of Kansas, all as amended and supplemented from time to time, and all other provisions of the laws of the State of Kansas applicable thereto.

**General Obligations.** The Bonds constitute general obligations of the Issuer payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

**Redemption Prior to Maturity.** The Bonds are subject to redemption prior to maturity as set forth in the Bond Resolution.

**Book-Entry System.** The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Bond Resolution. One Bond certificate with respect to each date on which the Bonds are stated to mature or with respect to each form of Bonds, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository's participants, beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Issuer and the Bond Registrar will recognize the Securities Depository nominee, while the Registered Owner of this Bond, as the owner of this Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Bond, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities Depository, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial

owners. The Issuer and the Bond Registrar will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the owner of this Bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Bond shall be made in accordance with existing arrangements among the Issuer, the Bond Registrar and the Securities Depository.

**Transfer and Exchange.** EXCEPT AS OTHERWISE PROVIDED IN THE BOND RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY. This Bond may be transferred or exchanged, as provided in the Bond Resolution, only on the Bond Register kept for that purpose at the principal office of the Bond Registrar, upon surrender of this Bond, together with a written instrument of transfer or authorization for exchange satisfactory to the Bond Registrar duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Bond or Bonds in any Authorized Denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Bond Resolution and upon payment of the charges therein prescribed. The Issuer shall pay all costs incurred in connection with the issuance, payment and initial registration of the Bonds and the cost of a reasonable supply of bond blanks. The Issuer and the Paying Agent may deem and treat the person in whose name this Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. The Bonds are issued in fully registered form in Authorized Denominations.

**Authentication.** This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the hereinafter defined Bond Resolution until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, and that the total indebtedness of the Issuer, including this series of bonds, does not exceed any constitutional or statutory limitation.

**IN WITNESS WHEREOF**, the Issuer has caused this Bond to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk, and its seal to be affixed hereto or imprinted hereon.

**CITY OF EDGERTON, KANSAS**

[(Facsimile Seal)]

By: \_\_\_\_\_ (facsimile)  
Mayor

ATTEST:

By: \_\_\_\_\_ (facsimile)  
Clerk

This Bond is one of a series of General Obligation Bonds, Series 2016, of the City of Edgerton, Kansas, described in the within-mentioned Bond Resolution.

Office of the State Treasurer,  
Topeka, Kansas,  
as Bond Registrar and Paying Agent

Registration Number \_\_\_\_\_

STATE OF KANSAS )  
 ) SS.  
COUNTY OF LEAVENWORTH )

WITNESS my hand and official seal.

By: (facsimile)  
Clerk

RON ESTES, Treasurer of the State of Kansas, does hereby certify that a transcript of the proceedings leading up to the issuance of this Bond has been filed in the office of the State Treasurer, and that this Bond was registered in such office according to law on \_\_\_\_\_.

By: \_\_\_\_\_  
Treasurer of the State of Kansas



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## BOND ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer to

\_\_\_\_\_  
(Name and Address)

\_\_\_\_\_  
(Social Security or Taxpayer Identification No.)

the Bond to which this assignment is affixed in the outstanding principal amount of \$\_\_\_\_\_, standing in the name of the undersigned on the books of the Bond Registrar. The undersigned do(es) hereby irrevocably constitute and appoint \_\_\_\_\_ as agent to transfer said Bond on the books of said Bond Registrar with full power of substitution in the premises.

Dated \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Social Security or  
Taxpayer Identification No.

\_\_\_\_\_  
Signature (Sign here exactly as name(s)  
appear on the face of Certificate)

Signature guarantee:

By \_\_\_\_\_

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**LEGAL OPINION**

The following is a true and correct copy of the approving legal opinion of Gilmore & Bell, P.C., Bond Counsel, which was dated and issued as of the date of original issuance and delivery of such Bonds:

**GILMORE & BELL, P.C.**

Attorneys at Law  
2405 Grand Boulevard  
Suite 1100  
Kansas City, Missouri 64108

(PRINTED LEGAL OPINION)

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## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Ordinance No. 1019 Adopting a Recommendation By the City Planning Commission to Approve Rezoning of Approximately 61.996 acres of Land [Located on the South side of Burlington Northern Railroad Line, West of Waverly Road] In Edgerton, Kansas From City of Edgerton B-P to Edgerton Logistics Park District (L-P).

**Department:** Community Development

**Background/Description of Item:** The City of Edgerton received an application ZA2016-01 (Inland Port XL) for rezoning from John Thomas, Edgerton Land Holding Company, requesting to rezone approximately 61.996 acres located on the south side of Burlington Northern Railroad (BNSF) line, west of Waverly Road from City of Edgerton A-G to Edgerton Logistics Park District (L-P) zoning. The subject property was rezoned to B-P district in July, 2010 on the same day the Council adopted the L-P District designation. The original project for this site was constructed at another location within the Logistics Park. The City is currently finishing the Waverly Road Design Build Project, which will provide improved access to the Rail Served property located between the intermodal lead tracks and the transcontinental tracks. Edgerton Land Holding Company is ready to proceed with development of this tract which is the purpose for this request. This request will create a new area of the L-P District as the adjoining BNSF Intermodal Facility, located to the south, and additional rail served tracts to the west remain zoned A-G, Agricultural District. Property to the north, across the transcontinental tracks, remains under Johnson County's jurisdiction and is zoned RUR, Rural District; property to the east of the subject property is located within City of Gardner's A, Agricultural District. This property is not adjacent to other L-P zoned tracts, however the property is part of the original 1,500-acre master planned Logistics Park and Intermodal Facility. The applicants' requested rezoning matches the City's Future Land Use Map as Business Park/Industrial. The Southwest Area Plan's Preferred Land Use Plan shows the property as Warehousing and Distribution.

This rezoning application was reviewed 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 June 14, 2016 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.

Enclosure: Draft Ordinance No. 1019  
Staff Report from June 14, 2016 Planning Commission  
Application ZA2016-01

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve Ordinance No. 1019 Adopting a Recommendation by the City Planning Commission to Approve Rezoning of Approximately 61.996 acres of land [Located on the South side of Burlington Northern Railroad Line, West of Waverly Road] In Edgerton, Kansas From City of Edgerton B-P to Edgerton Logistics Park District (L-P)

**Funding Source:** N/A

Prepared by: Kenneth Cook, Community Development Director  
Date: July 6, 2016

## **ORDINANCE NO. 1019**

### **AN ORDINANCE ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 62 ACRES OF LAND [LOCATED WEST OF WAVERLY ROAD AND NORTH OF BURLINGTON NORTHERN SANTA FE RAILROAD] IN EDGERTON, KANSAS FROM CITY OF EDGERTON "A-G" AGRICULTURE ZONING DISTRICT TO CITY OF EDGERTON "L-P" LOGISTICS PARK ZONING DISTRICT**

**WHEREAS**, the Planning Commission has recommended that a rezoning request -- from City of Edgerton "A-G" Agriculture District to City of Edgerton "L-P" Logistics Park District -- be approved (with certain conditions) for approximately 62 acres of land, located west of Waverly Road and north of Burlington Northern Santa Fe Railroad (Rail Serve-Inland Port XL); 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 west of Waverly Road and north of Burlington Northern Santa Fe Railroad (Rail Serve-Inland Port XL)] is hereby rezoned from City of Edgerton "A-G" Agriculture District 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:

A tract of land in the Southeast Quarter of Section 27, Township 14 South, Range 22 East, Johnson County, Kansas being more particularly described as follows:

Commencing at the Southeast corner of said Southeast Quarter; thence N 02°08'36" W, along the East line of the Southeast Quarter of said Section 27, a distance of 915.04 feet to the Point of Beginning; thence S 87°51'30" W, departing said Section line, a distance of 40.00 feet to the West right-of-way line of Waverly Road, as now established, also being the Northeast property corner of Unplatted tract of land owned by BNSF Railway Company; thence S 55°23'51" W, departing said West right-of-way line, along said North property line, a distance of 911.59 feet; thence S 75°14'39" W, continuing along said North line, a distance of 567.91 feet; thence Southwesterly, along a curve to the left, said curve having a radius of 800.00 feet, for a distance of 277.95 feet; thence S 55°20'16" W, continuing along said North line, a distance of 646.44 feet; thence N 48°58'40" E, departing said North line, a distance of 82.85 feet; thence Northeasterly, along a curve to the left, said curve having a radius of 578.80 feet, for a distance of 203.63; thence N 28°49'10" E, a distance of 172.50 feet; thence N 26°50'41" W, a distance of 1,019.23 feet to a point on the South right-of-line of BNSF

Mainline; thence N 63°09'19" E, along said South right-of-way line, a distance of 2,535.52 feet, to said East line of the Southeast Quarter of Section 27; thence S 02°08'36" E, along said East line, a distance of 1,271.36 feet to the Point of Beginning, containing 2,700,547 square feet, or 61.996 acres, more or less.

**Section 2.** The above rezoning is expressly conditioned on the following:

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

**Section 3.** 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 4.** 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 14th DAY OF JULY, 2016.

**CITY OF EDGERTON, KANSAS**

By: \_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

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JANEICE RAWLES, City Clerk

APPROVED AS TO FORM:

---

Patrick G. Reavey, City Attorney



**EDGERTON**  
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Edgerton, KS 66021  
P: 913.893.6231  
EDGERTONKS.ORG

## STAFF REPORT

June 6, 2016

To: Edgerton Planning Commission  
Fr: Kenneth Cook, AICP, CFM, Community Development Director/Zoning Administrator  
Re: Application ZA2016-01 for rezoning of approximately 62 acres located West of Waverly Rd, North of the Intermodal lead track & South of the Transcontinental Tracks

### APPLICATION INFORMATION

**Applicant/Property Owner:** John Thomas, Edgerton Land Holding Company

**Requested Action:** Rezoning from B-P, Business Park Zoning District, to L-P, Logistics Park Zoning District

**Legal Description:** Part of Section 27, Township 14 South, Range 22 East

**Site Address/Location:** West side of Waverly Road North of Intermodal Lead Tracks

**Existing Land Use:** Agriculture

**Existing Zoning and Uses:** B-P, Business Park District zoning

**Existing Improvements:** None

**Site Size:** Approximately 62 acres

**Reason for Rezoning Request:** The City Council originally approved the rezoning of this property to the B-P District in July of 2010. This original rezoning occurred on the same day that the L-P District was adopted by the City Council. The project that was originally being considered at this location was constructed on a different portion of the Logistics Park. The City of Edgerton is currently finishing the Waverly Road Design Build Project, which provides improved access to the Rail Served property located between the intermodal lead tracks and the transcontinental tracks. This project includes the construction of a three-lane road along Waverly Road and a grade separation at the intermodal lead tracks. NorthPoint is now ready to proceed forward with the development of this tract and is requesting the property to be rezoned to L-P, Logistics Park District. The L-P District is described as:

*The purpose of the Logistics Park, L-P District is to create a limited multimodal industrial zone that provides for a modern type of industrial uses or industrial park created to support activities related to trade and rail and other transport service. Limitations are placed on the uses in this district to significantly restrict the outside activities and outside storage of materials, noise, vibration, smoke, pollution, fire and explosive hazard, glare and other potentially adverse influences.*



*This zone is intended for industrial parks and larger, cleaner types of industries. The manufacturing uses should be conducted within a totally enclosed building. Any activities conducted outside should be screened and buffered, and external effects such as excessive noise or odor should not extend beyond the property lines. Residential uses should be discouraged from locating near the L-P District to protect the industries from residential complaints.*

*Areas should not be zoned to the L-P District unless they are located adjacent or near to arterial thoroughfares capable of carrying commercial and truck traffic, as well as being located close to major truck routes. It is the general intent of this District to provide for a mutually beneficial, economically viable, well-planned development poised for long-term success including:*

- 1. To provide for the distribution of and appropriate relationships between various land uses and to minimize conflict between land uses;*
- 2. To describe desired future physical conditions within the L-P District;*
- 3. To manage growth in an orderly manner; and*
- 4. To serve as a basis for future development recommendations within the L-P District and set the precedent for sound planning and sustainable development practices throughout the L-P District area of influence.*

The applicant has submitted additional applications which involve the subject property and include: (1) Preliminary Plat (PP2016-01); and, (2) Preliminary Site Plan (FP2016-01).

The requested rezoning to the L-P District actually creates a new area of the L-P District as the adjoining BNSF Intermodal Facility, located to the South, and the additionally proposed rail served tracts to the West remain zoned A-G, Agricultural District. Property located to the East of the subject property is located within the City of Gardner's A, Agricultural District. The property located to the North, across the transcontinental tracks, remains under Johnson County's Jurisdiction and is zoned RUR, Rural District. While not adjacent to any other tracts of land currently zoned L-P, the subject property is a part of the original 1,500 acre master planned logistics park and intermodal facility. The Future Land Use Map for the City of Edgerton shows the use of this property as Business Park/Industrial. The Preferred Land Use Plan of the Southwest Area Plan shows the subject property being as Warehousing and Distribution.

### **Background Information**

The applicant for this project is Edgerton Land Holding Company (NorthPoint Development), BNSF's partner for developing warehousing. The property is located directly North of the BNSF Intermodal Facility. The subject property is located on the West side of Waverly Road directly to the North of the intermodal lead tracks and about 1,700 feet to the south of Highway 56. The property is entirely within the City of Edgerton and was previously Zoned B-P, Business Park District. The site has been used for agricultural purposes. Plans submitted as part of the other requests associated with this property show one large structure (625,000 square feet) being built on the area proposed to be rezoned. In discussions with the applicant, the subject structure is currently planned to be built in phases starting at the Eastern portion of the property and moving west.

The uses listed for the L-P, Logistics Park District (Section 5.2) in the City of Edgerton's Unified Development Code are as follows:

#### **L-P District – Permitted Uses.**

1. Building and construction contractor offices, including display areas.
2. Business and trade schools.
3. Commercial pick-up and delivery services.
4. Display or catalog showrooms.
5. Laboratories and research facilities.
6. Manufacturing, processing, fabrication or assembly of commodity - limited.
7. Motion picture production studios and stations.
8. Photographic processing facilities.
9. Printing and publishing.
10. Radio and television broadcasting stations.
11. Research establishments of industrial, medical or scientific nature.
12. Restaurants, including drive-up or drive-thru services.
13. Warehousing/Distribution centers, including trucking and courier services; public warehousing and storage; and motor freight transportation terminals and maintenance facilities.
14. Mailing, packaging, parcel service and storage.
15. Printing, communications, mail orders.
16. Sales outlets and wholesale trade.
17. Retail sales in conjunction with a manufacturing or fabrication use.
18. Health and hospital supplies; office supplies.
19. Copy, printing and duplication services.
20. Internet service providers.
21. Sale, servicing, and repair of electrical and other electronic devices.
22. Government facilities.
23. Retail and wholesale of furniture and home furnishings, carpet, paint and wallpaper, and plumbing and lighting fixtures.
24. Sales and installation of cellular phones, stereos, radios and similar electronic equipment for vehicles.
25. Veterinary hospitals and clinics.
26. Accessory uses.
27. Agricultural.
28. Auto and truck motor fuel facilities and repair.
29. Auto and truck washing.
30. Recreational vehicle sales and service.
31. Towing and impound yard.
32. Trailer or truck sales and rental.
33. Building materials yard and lumber yard.
34. Mini-Warehouse and self storage.
35. Recycling collection center.
36. Similar uses.

#### **L-P Districted – Conditional Uses.**

1. Communication transmission towers over sixty (60) feet, subject to the provisions in Article 7.
2. Truck stops with fuel and accessory services;
3. Private or public owned playgrounds, playfields, and recreational facilities (e.g. public or private golf courses, tennis or other courts, and swimming pools) open for public or commercial use;
4. Auditoriums, convention centers, and conference facilities
5. Colleges and universities.
6. Transportation storage and trucking yards.
7. Cargo container storage, repair or maintenance.

#### **Infrastructure and Services:**

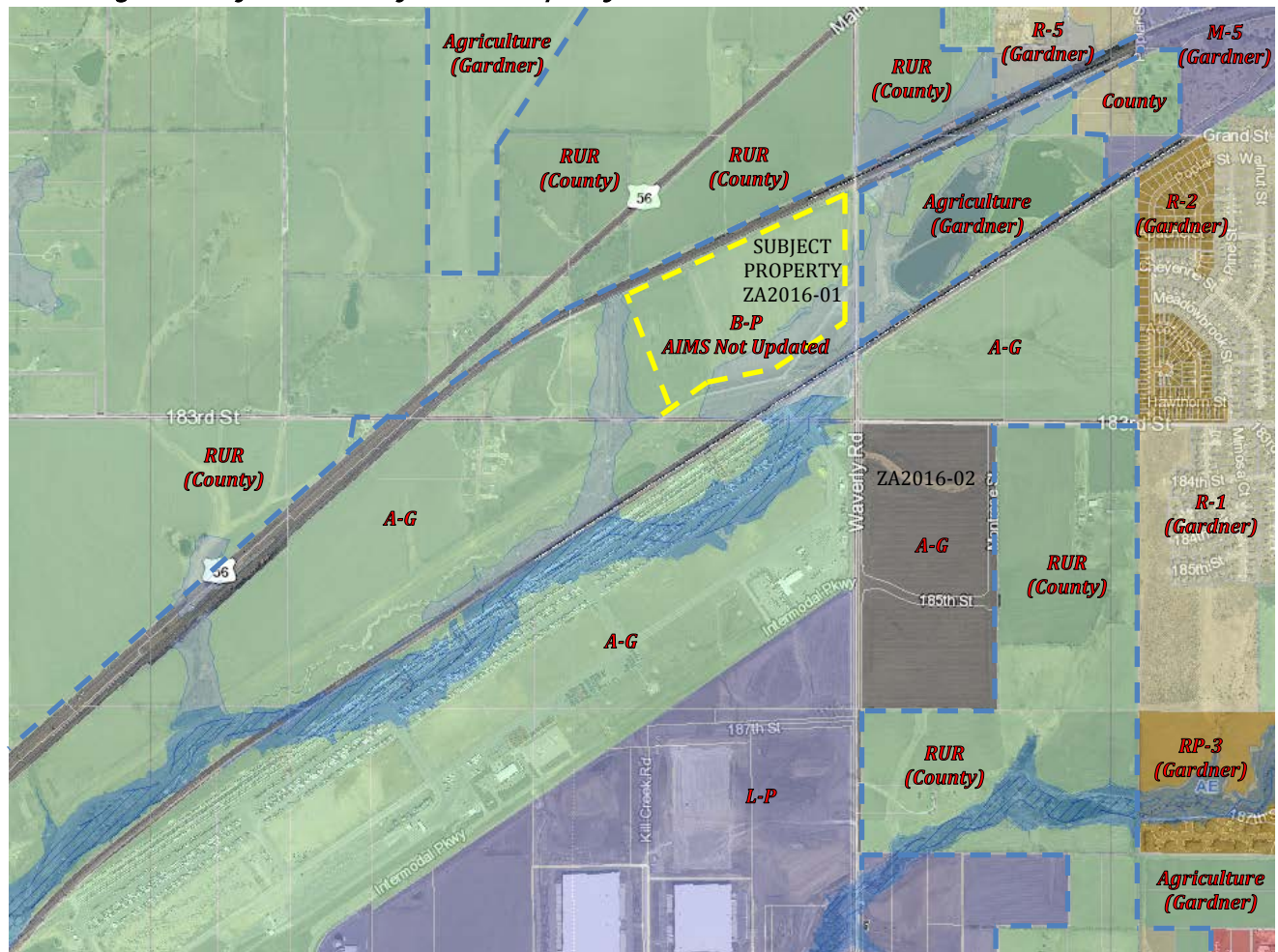
1. Waverly Road has recently been upgraded to be a three-lane concrete road. This project has also included a grade separated crossing of the intermodal lead tracks that go into the BNSF facility. The new road is expected to open over the coming weeks.
2. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane. A stormwater plan should be submitted to the City Engineer prior to development of the property.
3. While the subject property is not currently located within a Special Flood Hazard Area the current FIRM Panel does show portions of the property as located within Zone X, 1% Future Conditions.
4. The property does not currently have sanitary sewer service. The City is currently working with NorthPoint on the Development of a Sewer Master Plan for the development of the sewer system for the Logistics Park and surrounding area.

5. The property is located within the service area of Rural Water District No. 7. A 12-inch water main appears to currently extend to near 183<sup>rd</sup> Street along Waverly Road.
6. 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 4.5 miles to the west with another fire station being located with the City of Gardner approximately 1.5 miles to the East.

### Property Zoning History

The subject property was annexed into the City of Edgerton as part of the original BNSF/LPKC project. Prior to annexation, the property was zoned RUR, Rural District. The property was rezoned to B-P District in July of 2010. The following map shows the Zoning of the surrounding area. Please note that not all of the Zoning District boundaries have been updated by Johnson County and staff has highlighted areas that don't currently match the AIMS data. Some properties that are located within the City of Gardner are also located in the Eastern portion of the map.

### Zoning on Subject and Adjacent Property



## 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 B-P, Business Park Zoning, which allows for a mix of office, research, wholesaling, light industrial and limited ancillary retail and service uses. The anticipated use of the property is industrial. The L-P Zoning District is compatible with these uses.
2. Magnitude of the Change. The existing zoning allows for very similar types of uses as compared to the L-P District. The property is currently being used for agricultural purposes. The magnitude of change is considered to be a very small change.
3. Whether or not the change will bring harm to established property rights. It is not anticipated that any harm will occur to any established property rights as the property is located adjacent to the BNSF intermodal facility and between the transcontinental and intermodal lead tracks. Separate Site Plan review and approval will be required before building permits can be issued. Part of a Site Plan review will include attention to buffering and setbacks, stormwater management and possibly transition of uses between adjoining uses and any proposed commercial use. This Site Plan review will help mitigate impact that might occur to adjacent properties.
4. Effective use of Land. Industrial development at this location is an effective and efficient use of the property. The City recently constructed a grade separation for Waverly Road in order to provide better access to this site and to allow for this type of development to occur. The proposal for this property includes the construction of a rail spur to provide better rail access to the building and the properties location adjacent to the intermodal lead tracks and the BNSF intermodal facility make this property a prime location for this type of development.
5. The extent to which there is a need in the community for the uses allowed in the proposed zoning. The L-P District will provide additional area for the development of warehouse or other types of uses allowed in this district that desire to be located in the vicinity of the BNSF Intermodal Facility.
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 immediate area is in transition from rural to industrial, with the property being located between the intermodal lead tracks and the transcontinental tracks. While the property located to the South is officially zoned Agricultural, the use of the property is for BNSF's intermodal facility. The property located to the East are the KCP&L wetlands and are located within the City of Gardner. Properties located to the North are currently located in the unincorporated county and are in the Rural District. The remainder of the property located between the tracks to the West of the subject property is currently being used for agricultural purposes but is anticipated to also be developed for industrial use.
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 zoning and use of nearby

properties as they are currently zoned for some type of agricultural use but are anticipated to be developed for industrial or commercial purposes. Prior to the issuance of any building permit the property will be required to go through the Site Plan review process. This process will allow the Planning Commission to take into consideration possible impacts to adjacent properties and ways that these can be mitigated.

8. Suitability of the uses to which the property has been restricted under its existing zoning. The existing zoning is also considered to be an Industrial Use by the Unified Development Code and would not be considered a substantial change from what is currently permitted. The comprehensive plan also shows that this property is anticipated for industrial use. The best use of this property is for business park or other industrial uses.
9. Length of time the subject property has remained vacant under the current zoning designation. The property has only been used for agricultural purposes and has never been developed for other uses.
10. The extent to which the zoning amendment may detrimentally affect nearby property. While it is anticipated that the development of this site for industrial purposes will cause additional traffic and noise, it is not anticipated that there will be any significant detrimental effects to nearby properties as this area will continue to transition to industrial uses. The Site Plan review process will allow the Planning Commission to look at any possible impacts and place requirements (such as buffering, setbacks and stormwater management) on how the site may be developed in order to mitigate any detrimental effects.
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. Work is currently finishing on the design-build project for the improvement of Waverly Road. This project will provide access to this site with a three lane (continuous center turn lane) paved road. Utilities will be provided by the developer in conjunction with development of the property. Among other improvements, this will require the extension of sewer to the site. The city is currently working on a plan to extend sewer service. The property will be required to connect to city sewer when the service becomes available.
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. The City is currently finishing work on the Waverly Road project. This project was designed to bring the road up to a standard that can accommodate the industrial traffic anticipated as part of this development. A portion of the road proposed to serve the rail served properties will need to be constructed as part of this project and is part of the current plan of finance for the park. 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 water, 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. Uses allowed in L-P district, if built, have the potential to benefit City residents and the community in a positive way by providing needed services, jobs, and tax revenues. The Waverly Road project allowed the City to leverage KDOT funds to extend the road to serve this site and helps to reduce the costs to the City or the developer that could be anticipated as part of the development of the site.
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 if the zoning is denied and the change only has minimal impacts on the types of uses that would be permitted to occur on the property with the property's current B-P Zoning designation. The property's location between two railroad tracks and adjacent to the BNSF facility also does not provide many other uses that would be considered as more acceptable alternatives to the current request. The City would also be adversely impacted due to lost opportunity for jobs and tax revenue.
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) from the Comprehensive Plan for the City of Edgerton shows the subject property primarily as Business Park/Industrial. The plan does show areas which are located to the North of the site as being anticipated as 'Commercial (Retail/Office)' and the property to the East as being Parks. The Preferred Land Use Plan in the Southwest Johnson County Area Plan also shows this area as being Warehousing and Distribution with the area to the North being shown as Light Industrial. The request appears to be consistent with 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 B-P, Business Park District to L-P, Logistics Park District based upon the attached Zoning Exhibit, 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.

### **Attachments**

City of Edgerton Future Land Use Map  
Southwest Area Plan – The Preferred Land Use Plan  
Application for Rezoning No. ZA2016-01

LOCATION OR ADDRESS OF SUBJECT PROPERTY: Waverly Road (W) & TBD Public Street (N of BNSF)

PURPOSE FOR REZONING: Proposed Warehouse Development (IPXL) (Rail Serve)

REQUESTED REZONING CHANGE: FROM AA TO LP  
(Current Zoning) (Proposed Zoning)

LEGAL DESCRIPTION: ATTACHED

CURRENT LAND USE: Temp Batch Plants and Ag

PROPERTY OWNER'S NAME(S): ELHC, LLC PHONE: 816.888.7380

COMPANY: ELHC, LLC

FAX:

MAILING ADDRESS: 5015 NW Canal St #200 Riverside MO 64150  
Street City State Zip

APPLICANT/AGENTS NAME(S): John Thomas PHONE: 816.888.7380

COMPANY: ELHC, LLC

FAX:

MAILING ADDRESS: 5015 NW Canal St #200 Riverside MO 64150  
Street City State Zip

ENGINEER/ARCHITECT'S NAME(S): RIC PHONE: 816.800.0950

COMPANY: RIC

FAX:

MAILING ADDRESS: 5015 NW Canal St #100 Riverside MO 64150  
Street City State Zip

SIGNATURE OF OWNER OR AGENT: [Signature]

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

FOR OFFICE USE ONLY

Case No.: 2016-01 Amount of Fee Paid: \$ 250<sup>00</sup> Date Fee Paid: 5/11/16 # 41258

Received By: Debra Stragg Date of Hearing: 6/14/16

**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



LOCATION OR ADDRESS OF SUBJECT PROPERTY: Waverly Road (W) & TBD Public Street (N of BNSF)  
PURPOSE FOR REZONING: Proposed Warehouse Development (IPXL) (Rail Serve)

REQUESTED REZONING CHANGE: FROM AA TO LP  
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Street City State Zip

APPLICANT/AGENTS NAME(S): John Thomas PHONE: 816.888.7380

COMPANY: ELHC, LLC FAX: \_\_\_\_\_

MAILING ADDRESS: 5015 NW Canal St #200 Riverside MO 64150  
Street City State Zip

ENGINEER/ARCHITECT'S NAME(S): RIC PHONE: 816.800.0950

COMPANY: RIC FAX: \_\_\_\_\_

MAILING ADDRESS: 5015 NW Canal St #100 Riverside MO 64150  
Street City State Zip

SIGNATURE OF OWNER OR AGENT: [Signature]  
If not signed by owner, authorization of agent must accompany this application.

#### FOR OFFICE USE ONLY

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## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Ordinance No. 1020 Adopting a Recommendation By the City Planning Commission to Approve Rezoning of Approximately 71 acres of Land [East side of Waverly Road and South of 183<sup>rd</sup> Street and South of 185<sup>th</sup> Street] In Edgerton, Kansas From Johnson County AG, to the L-P, Logistics Park District

**Department:** Community Development

**Background/Description of Item:** The City of Edgerton received an application ZA2015-02 (Inland Port VII and VIII) for rezoning from John Thomas, Edgerton Land Holding Company, requesting to rezone approximately 71 acres located on the East side of Waverly Road and South of 183<sup>rd</sup> and South of 185<sup>th</sup> Street from Johnson County AG to City of Edgerton Logistics Park (L-P) zoning. This property was annexed by the City on April 23, 2015 and currently maintains the County's AG, Agricultural District designation. The subject property is considered to be an expansion of the existing L-P District which is located to the West and Southwest of the subject property and which would be a part of the 1,500 acre master planned Logistics Park and Intermodal Facility. The applicant's request to rezone the parcel to the L-P District matches the Future Land Use Map as Business Park/Industrial. The Preferred Land Use Plan of the Southwest Area Plan shows the subject property as Warehousing and Distribution.

This rezoning application was reviewed 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 June 14, 2016 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.

Enclosure: Draft Ordinance No. 1020  
Staff Report from June 14, 2016 Planning Commission  
Application ZA2016-02

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve Ordinance No. 1020 Adopting a Recommendation by the City Planning Commission to Approve Rezoning of Approximately 71 acres of land [East side of Waverly Road and South of 183<sup>rd</sup> Street and South of 185<sup>th</sup> Street] In Edgerton, Kansas From Johnson County AG, to the L-P, Logistics Park District

**Funding Source:** N/A

Prepared by: Kenneth Cook, Community Development Director  
Date: July 6, 2016

## **ORDINANCE NO. 1020**

### **AN ORDINANCE ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 71 ACRES OF LAND [LOCATED AT THE SOUTHEAST CORNER OF WAVERLY ROAD AND 185<sup>TH</sup> STREET] IN EDGERTON, KANSAS FROM CITY OF EDGERTON "A-G" AGRICULTURE ZONING DISTRICT TO CITY OF EDGERTON "L-P" LOGISTICS PARK ZONING DISTRICT**

**WHEREAS**, the Planning Commission has recommended that a rezoning request -- from City of Edgerton "A-G" Agriculture District to City of Edgerton "L-P" Logistics Park District -- be approved (with certain conditions) for approximately 71 acres of land located at the southeast corner of Waverly Road and 185<sup>th</sup> Street; 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 at the southeast corner of Waverly Road and 185<sup>th</sup> Street] is hereby rezoned from City of Edgerton "A-G" Agriculture District 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:

The West Half of the Northwest Quarter of Section 35, Township 14, Range 22 in the City of Edgerton, Johnson County, Kansas, EXCEPT the following tract of land.  
Commencing at the northwest corner of said Northwest Quarter; thence coincident with the north line of said Northwest Quarter, North 88°33'52" East, 1,218.49 feet to the Point of Beginning; thence continuing along said north line, North 88°33'52" East, 80.01 feet; thence coincident with the east line of the west half of said Northwest Quarter, South 02°10'33" East, 1,729.45 feet; thence South 42°44'00" West, 2.40 feet; thence South 89°03'28" West, 76.72 feet; thence North 54°37'38" West, 61.57 feet; thence North 88°33'21" West, 104.25 feet; thence South 88°06'12" West, 411.38 feet; thence northwesterly, along a curve to the right, said curve having a radius of 540.00 feet and a total angle of 26°25'31", for a distance of 249.05 feet; thence North 65°28'18" West, 139.11 feet; thence northwesterly, along a curve to the left, said curve having a radius of 460.00 feet and a total angle of 14°11'55", for a distance of 113.99 feet; thence South 79°38'24" West, 122.00 feet; thence South 07°31'20" West, 121.66 feet; thence coincident with a line 50 feet east of and parallel with the west line of said Northwest Quarter, South 01°56'24" East, 973.45 feet; thence coincident with the south line of said Northwest Quarter, South 88°27'34" West, 30.00 feet; thence coincident with a line 20 feet east of and parallel with the west line of said Northwest Quarter, North

01°56'24" West, 2,630.06 feet; thence coincident with a line 22 feet south of and parallel with the north line of said Northwest Quarter, North 88°33'52" East, 30.00 feet; thence coincident with a line 50 feet east of and parallel with the west line of said Northwest Quarter, South 01°56'24" East, 1,281.56 feet; thence South 12°14'42" East, 111.80 feet; thence South 72°21'48" East, 146.13 feet; thence southeasterly, along a non curve to the right, said curve having a radius of 540.00 feet, a chord bearing of South 72°34'15" East, and a chord distance of 133.48 feet, for a distance of 133.82 feet; thence South 65°28'18" East, 139.11 feet; thence southeasterly, along a curve to the left, said curve having a radius of 460.00 feet and a total angle of 26°25'31", for a distance of 212.15 feet; thence North 88°06'12" East, 411.38 feet; thence North 84°44'02" East, 103.39 feet; thence North 42°57'49" East, 58.61 feet; thence North 01°15'50" East, 101.28 feet; thence North 02°10'33" West, 1458.41 feet to the Point of Beginning, less that part in existing road right-of-way.

**Section 2.** The above rezoning is expressly conditioned on the following:

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

**Section 3.** 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 4.** 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 14th DAY OF JULY, 2016.

**CITY OF EDGERTON, KANSAS**

By: \_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
JANEICE RAWLES, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Patrick G. Reavey, City Attorney

## STAFF REPORT

June 6, 2016

To: Edgerton Planning Commission  
Fr: Kenneth Cook, AICP, CFM, Community Development Director/Zoning Administrator  
Re: Application ZA2016-02 for rezoning of approximately 71 acres located East of Waverly Rd and South of 183<sup>rd</sup> Street and South of 185<sup>th</sup> Street

### APPLICATION INFORMATION

**Applicant/Property Owner:** John Thomas, Edgerton Land Holding Company

**Requested Action:** Rezoning from County AG, Agricultural Zoning District, to L-P, Logistics Park Zoning District

**Legal Description:** Part of Section 35, Township 14 South, Range 22 East

**Site Address/Location:** East side of Waverly Road and South of 183<sup>rd</sup> Street and South of 185<sup>th</sup> Street

**Existing Land Use:** Agriculture, Temporary Concrete Batch Plant

**Existing Zoning and Uses:** AG, County Agricultural District

**Existing Improvements:** Temporary Concrete Batch Plant

**Site Size:** Approximately 71 acres

**Reason for Rezoning Request:** The City of Edgerton has received an application requesting that the property be rezoned to the L-P, Logistics Park District. The subject property was originally approved for annexation by the City Council at their April 23, 2015 meeting and currently maintains the County's AG, Agricultural District. The L-P District is described as:

*The purpose of the Logistics Park, L-P District is to create a limited multimodal industrial zone that provides for a modern type of industrial uses or industrial park created to support activities related to trade and rail and other transport service. Limitations are placed on the uses in this district to significantly restrict the outside activities and outside storage of materials, noise, vibration, smoke, pollution, fire and explosive hazard, glare and other potentially adverse influences.*

*This zone is intended for industrial parks and larger, cleaner types of industries. The manufacturing uses should be conducted within a totally enclosed building. Any activities conducted outside should be screened and buffered, and external effects such as excessive noise or odor should not extend beyond the property lines. Residential uses should be*

*discouraged from locating near the L-P District to protect the industries from residential complaints.*

*Areas should not be zoned to the L-P District unless they are located adjacent or near to arterial thoroughfares capable of carrying commercial and truck traffic, as well as being located close to major truck routes. It is the general intent of this District to provide for a mutually beneficial, economically viable, well-planned development poised for long-term success including:*

- 1. To provide for the distribution of and appropriate relationships between various land uses and to minimize conflict between land uses;*
- 2. To describe desired future physical conditions within the L-P District;*
- 3. To manage growth in an orderly manner; and*
- 4. To serve as a basis for future development recommendations within the L-P District and set the precedent for sound planning and sustainable development practices throughout the L-P District area of influence.*

The applicant has submitted additional applications which involve the subject property and include: (1) Preliminary Plat (PP2016-02); and, (2) Preliminary Site Plan (FP2016-02).

The requested rezoning to the L-P District can be considered as an expansion of the existing L-P District which is located to the West and Southwest of the subject property and which would be part of the 1,500 acre master planned logistics park and intermodal facility. The Future Land Use Map for the City of Edgerton shows the use of the properties on the East side of Waverly Road and South of 183<sup>rd</sup> Street as Business Park/Industrial. The Preferred Land Use Plan of the Southwest Area Plan shows the subject property being as Warehousing and Distribution.

### **Background Information**

The applicant for this project is Edgerton Land Holding Company (NorthPoint Development), BNSF's partner for developing warehousing. The property is located to the East of the BNSF Intermodal Facility. The subject property is located on the East side of Waverly Road and South of the existing 183<sup>rd</sup> Street right-of-way. The new roadways for Montrose and 185<sup>th</sup> Street that were developed as part of the Waverly Road project are located to the East of Inland Port VIII and between the propose structures, respectively. The site has primarily been used for agricultural purposes although temporary construction activities have been allowed on the Southern portion of the property for two temporary concrete batch plants. Plans submitted as part of the other requests associated with this property show two large structures (IP VII - 535,000 square feet; and, IP VIII – 783,000 square feet) being built on the area proposed to be rezoned.

The uses listed for the L-P, Logistics Park District (Section 5.2) in the City of Edgerton's Unified Development Code are as follows:

#### **L-P District – Permitted Uses.**

1. Building and construction contractor offices, including display areas.
2. Business and trade schools.
3. Commercial pick-up and delivery services.
4. Display or catalog showrooms.
5. Laboratories and research facilities.
6. Manufacturing, processing, fabrication or assembly of commodity - limited.
7. Motion picture production studios and stations.
8. Photographic processing facilities.
9. Printing and publishing.
10. Radio and television broadcasting stations.
11. Research establishments of industrial, medical or scientific nature.
12. Restaurants, including drive-up or drive-thru services.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>13. Warehousing/Distribution centers, including trucking and courier services; public warehousing and storage; and motor freight transportation terminals and maintenance facilities.</li> <li>14. Mailing, packaging, parcel service and storage.</li> <li>15. Printing, communications, mail orders.</li> <li>16. Sales outlets and wholesale trade.</li> <li>17. Retail sales in conjunction with a manufacturing or fabrication use.</li> <li>18. Health and hospital supplies; office supplies.</li> <li>19. Copy, printing and duplication services.</li> <li>20. Internet service providers.</li> <li>21. Sale, servicing, and repair of electrical and other electronic devices.</li> <li>22. Government facilities.</li> </ul> | <ul style="list-style-type: none"> <li>23. Retail and wholesale of furniture and home furnishings, carpet, paint and wallpaper, and plumbing and lighting fixtures.</li> <li>24. Sales and installation of cellular phones, stereos, radios and similar electronic equipment for vehicles.</li> <li>25. Veterinary hospitals and clinics.</li> <li>26. Accessory uses.</li> <li>27. Agricultural.</li> <li>28. Auto and truck motor fuel facilities and repair.</li> <li>29. Auto and truck washing.</li> <li>30. Recreational vehicle sales and service.</li> <li>31. Towing and impound yard.</li> <li>32. Trailer or truck sales and rental.</li> <li>33. Building materials yard and lumber yard.</li> <li>34. Mini-Warehouse and self storage.</li> <li>35. Recycling collection center.</li> <li>36. Similar uses.</li> </ul> |
|--|---|

**L-P Districted – Conditional Uses.**

- 1. Communication transmission towers over sixty (60) feet, subject to the provisions in Article 7.
- 2. Truck stops with fuel and accessory services;
- 3. Private or public owned playgrounds, playfields, and recreational facilities (e.g. public or private golf courses, tennis or other courts, and swimming pools) open for public or commercial use;
- 4. Auditoriums, convention centers, and conference facilities
- 5. Colleges and universities.
- 6. Transportation storage and trucking yards.
- 7. Cargo container storage, repair or maintenance.

**Infrastructure and Services:**

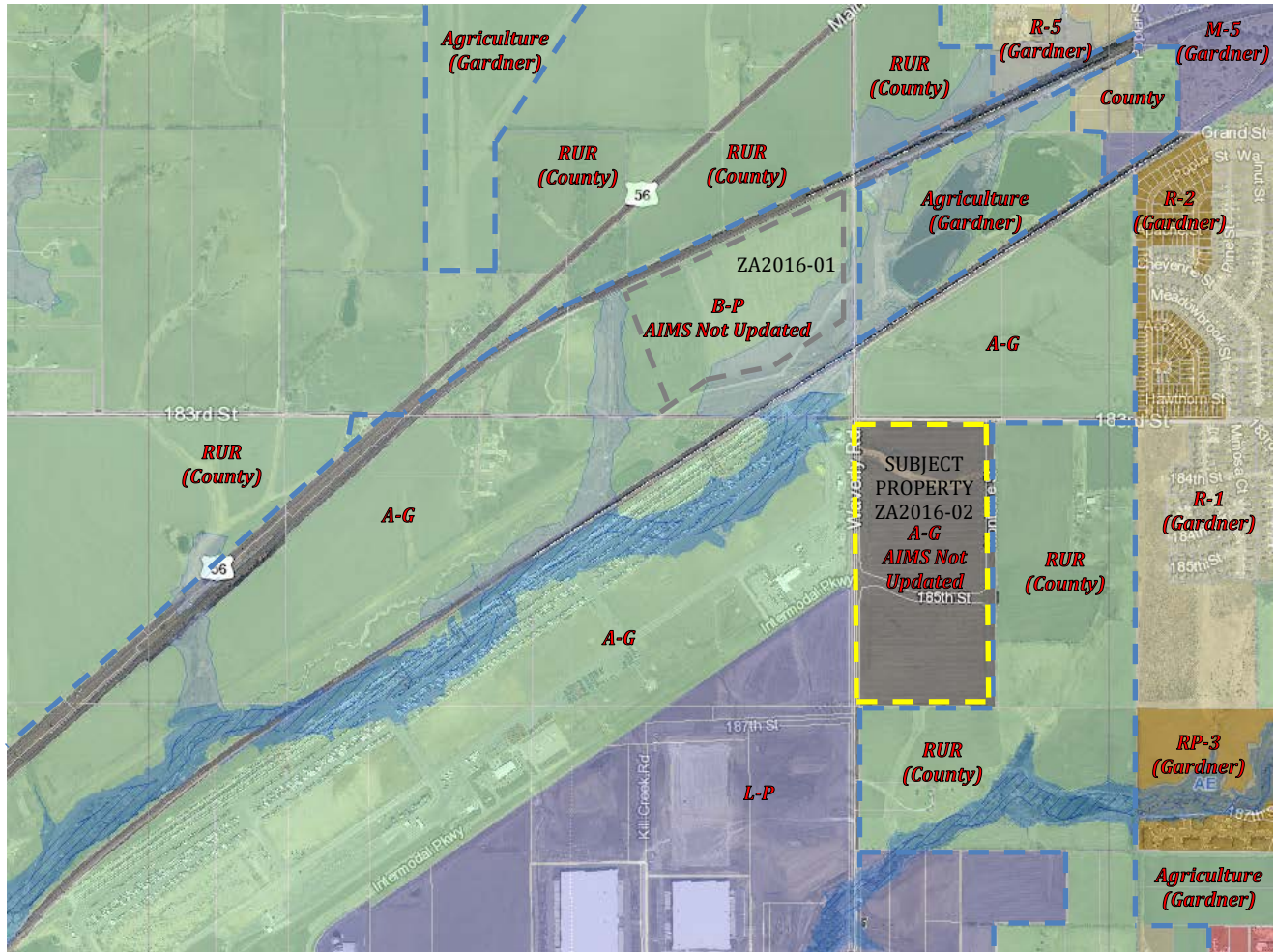
- 1. Waverly Road has recently been upgraded to be a three-lane concrete road with a grade separated crossing of the intermodal lead tracks. New roadways for 185<sup>th</sup> Street and Montrose Street have also been developed as part of the Waverly Road project. 185<sup>th</sup> Street and Montrose Street are both currently open and Waverly Road is expected to open over the coming weeks.
- 2. The property is located within the Big Bull Creek watershed, which flows south from 167<sup>th</sup> Street to the southern edge of the county at Homestead Lane. A stormwater plan should be submitted to the City Engineer prior to development of the property.
- 3. The subject property is currently shown as being located in Zone X, Areas determined to be outside the 0.2% annual chance floodplain.
- 4. The property does not currently have sanitary sewer service. The City is currently working with NorthPoint on the Development of a Sewer Master Plan for the development of the sewer system for the Logistics Park and surrounding area.
- 5. The property is located within the service area of Rural Water District No. 7. A 12-inch water main appears to currently extend from the South to near 183<sup>rd</sup> Street along Waverly Road. The City of Gardner also has a waterline that is located on the North side of 183<sup>rd</sup> Street.
- 6. 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 4.5 miles to the west with another fire station being located with the City of Gardner approximately 1 miles to the East.



### Property Zoning History

The subject property was annexed into the City of Edgerton at the City Council's April 2015 meeting. Prior to annexation, the property was zoned in the County's AG, Agricultural District. The following map shows the Zoning of the surrounding area. Please note that not all of the Zoning District boundaries have been updated by Johnson County and staff has highlighted areas that don't currently match the AIMS data. Some properties that are located within the City of Gardner are also located in the Eastern portion of the map.

### Zoning on Subject and Adjacent Property



### 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 currently maintains the County AG, Agricultural Zoning as the UDC specifies that a property keeps its County Zoning designation

until the property is rezoned. The anticipated use of the property is industrial. The L-P Zoning District is compatible with these uses.

2. Magnitude of the Change. The existing County zoning is considered a holding designation until such time as the property is rezoned. The property is currently being used for agricultural purposes although new roads have been developed through and adjacent to the property as part of the Waverly Road project. The magnitude of change is not considered extreme or rare when property is being developed for its planned end use.
3. Whether or not the change will bring harm to established property rights. The properties most likely to be affected by this proposed zoning are located to the East & South. Both of these properties are primarily used for agricultural purposes but also include dwellings which are located approximately 750 feet from the subject property. The City of Gardner is also located approximately a quarter mile to the East. This section of Gardner currently consists of Single-family Residential properties. BNSF's Intermodal Facility is located to the West of the subject property. The City of Edgerton's Comprehensive Plan anticipates the property to the East as Commercial (Retail/Office) with the property located to the South shown as Business Park/Industrial. Separate Site Plan review and approval will be required before building permits can be issued. Part of a Site Plan review will include attention to buffering and setbacks, stormwater management and possibly transition of uses between adjoining uses and any proposed commercial/industrial use. This Site Plan review will help mitigate impact that might occur to adjacent properties.
4. Effective use of Land. Industrial development at this location is an effective and efficient use of the property. The City recently improved Waverly Road, including a grade separated crossing in order to provide better access to this site and to allow for this type of development to occur. This project also included the construction of 185<sup>th</sup> Street and Montrose Street adjacent to the site. The property's location adjacent to the BNSF intermodal facility makes this property a prime location for this type of development.
5. The extent to which there is a need in the community for the uses allowed in the proposed zoning. The L-P District will provide additional area for the development of warehouse or other types of uses allowed in this district that desire to be located in the vicinity of the BNSF Intermodal Facility.
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 immediate area is in transition from rural to industrial, with the property being located adjacent to BNSF's intermodal facility and near the City of Gardner. While the property located to the West is officially zoned Agricultural, the property is used for BNSF's intermodal facility. The property to the North is also zoned Agricultural but is part of the original property purchased by BNSF for LPKC. The properties located to the East and South are both zoned County RUR, Rural District and primarily used for agricultural purposes, although both do have dwellings currently located on them. A quarter mile east of the subject property is the current city limits of the City of Gardner and is primarily developed as single-family residential use.

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 zoning and use of nearby properties as they are currently zoned for some type of agricultural use but are anticipated to be developed for industrial or commercial purposes. While not directly adjacent to the proposed site, properties that are located approximately a quarter mile to the East are currently developed for residential purposes. The distance between the subject property and the residential use provides a buffer between these uses and it can be anticipated that additional consideration will need to be made when the property located to the East is developed to determine how this transition between uses will occur. Prior to the issuance of any building permit the property will be required to go through the Site Plan review process. This process will allow the Planning Commission to take into consideration possible impacts to adjacent properties and ways that these can be mitigated.
8. Suitability of the uses to which the property has been restricted under its existing zoning. While the property is suitable for the uses allowed under its existing zoning, the comprehensive plan shows that this property is anticipated for industrial uses. With the construction of BNSF's intermodal facility, the Waverly Road Project and other logistics park uses in the area, the existing County zoning is no longer appropriate for this property. The best use of this property is for business park or industrial uses.
9. Length of time the subject property has remained vacant under the current zoning designation. The property has primarily been used for agricultural purposes while it has recently allowed to be used for the temporary construction activities for concrete batch plants.
10. The extent to which the zoning amendment may detrimentally affect nearby property. While it is anticipated that the development of this site for industrial purposes will cause additional traffic and noise, it is not anticipated that there will be any significant detrimental effects to nearby properties as this area will continue to transition to industrial uses. The Site Plan review process will allow the Planning Commission to look at any possible impacts and place requirements (such as buffering, setbacks and stormwater management) on how the site may be developed in order to mitigate any detrimental effects.
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. Work is currently finishing on the design-build project for the improvement of Waverly Road. This project will improve access to this site with a three lane (continuous center turn lane) paved road and also included the development of 185<sup>th</sup> Street and Montrose Street. Utilities will be provided by the developer in conjunction with development of the property. Among other improvements, this will require the extension of sewer to the site. The city is currently working on a plan to extend sewer service. The property will be required to connect to city

sewer when the service becomes available. A 12-inch water main is currently located to the West of the property along Waverly Road.

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. The City is currently finishing work on the Waverly Road project. This project was designed to bring the road up to a standard that can accommodate the industrial traffic anticipated as part of this development. 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 water, 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. Uses allowed in L-P district, if built, have the potential to benefit City residents and the community in a positive way by providing needed services, jobs, and tax revenues. The Waverly Road project allowed the City to leverage KDOT funds to extend the road to serve this site and helps to reduce the costs to the City or the developer that could be anticipated as part of the development of the site.
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 if the zoning is denied. The property's location adjacent to the BNSF facility does not provide may other uses that would be considered as more acceptable alternatives to the current request and the property that is currently located to the East of the subject property works as a buffer and can be used to create the transition from the industrial uses to the residential uses located in the City of Gardner. The City would also be adversely impacted due to lost opportunity for jobs and tax revenue.
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) from the Comprehensive Plan for the City of Edgerton shows the subject property as Business Park/Industrial. The plan does show areas which are located to the East of the site as being anticipated as 'mixed use retail, office and medium density residential'. The Preferred Land Use Plan in the Southwest Johnson County Area Plan also shows this area as being Warehousing and Distribution with the area to the East being shown as Medium Density Urban Residential. The request appears to be consistent with 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 A-G, Agricultural District to L-P, Logistics Park District based upon the attached Zoning Exhibit, 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.

**Attachments**

City of Edgerton Future Land Use Map  
Southwest Area Plan – The Preferred Land Use Plan  
Application for Rezoning No. ZA2016-02



LOCATION OR ADDRESS OF SUBJECT PROPERTY: SEC Waverly Road & 185th St.PURPOSE FOR REZONING: Proposed Warehouse Development (IP.VII)REQUESTED REZONING CHANGE: FROM Ag TO LP  
(Current Zoning) (Proposed Zoning)LEGAL DESCRIPTION: ATTACHEDCURRENT LAND USE: Temp Batch Plants and AgPROPERTY OWNER'S NAME(S): ELHC, LLC PHONE: 816.888.7380COMPANY: ELHC, LLC

FAX: \_\_\_\_\_

MAILING ADDRESS: 5015 NW Canal St #200 Riverside MO 64150  
Street City State ZipAPPLICANT/AGENTS NAME(S): John Thomas PHONE: 816.888.7380COMPANY: ELHC, LLC

FAX: \_\_\_\_\_

MAILING ADDRESS: 5015 NW Canal St #200 Riverside MO 64150  
Street City State ZipENGINEER/ARCHITECT'S NAME(S): RIC PHONE: 816.800.0950COMPANY: RIC

FAX: \_\_\_\_\_

MAILING ADDRESS: 5015 NW Canal St. #100 Riverside MO 64150  
Street City State ZipSIGNATURE OF OWNER OR AGENT: [Signature]

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

## FOR OFFICE USE ONLY

Case No.: 2016-02 Amount of Fee Paid: \$ 250.00 Date Fee Paid: 5/11/16 # 41257Received By: Debra Stragg Date of Hearing: 6/14/16

**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

Description ELHC Big Industrial:

The West Half of the Northwest Quarter of Section 35, Township 14, Range 22 in the City of Edgerton, Johnson County, Kansas, EXCEPT the following tract of land.

Commencing at the northwest corner of said Northwest Quarter; thence coincident with the north line of said Northwest Quarter, North 88°33'52" East, 1,218.49 feet to the Point of Beginning; thence continuing along said north line, North 88°33'52" East, 80.01 feet; thence coincident with the east line of the west half of said Northwest Quarter, South 02°10'33" East, 1,729.45 feet; thence South 42°44'00" West, 2.40 feet; thence South 89°03'28" West, 76.72 feet; thence North 54°37'38" West, 61.57 feet; thence North 88°33'21" West, 104.25 feet; thence South 88°06'12" West, 411.38 feet; thence northwesterly, along a curve to the right, said curve having a radius of 540.00 feet and a total angle of 26°25'31", for a distance of 249.05 feet; thence North 65°28'18" West, 139.11 feet; thence northwesterly, along a curve to the left, said curve having a radius of 460.00 feet and a total angle of 14°11'55", for a distance of 113.99 feet; thence South 79°38'24" West, 122.00 feet; thence South 07°31'20" West, 121.66 feet; thence coincident with a line 50 feet east of and parallel with the west line of said Northwest Quarter, South 01°56'24" East, 973.45 feet; thence coincident with the south line of said Northwest Quarter, South 88°27'34" West, 30.00 feet; thence coincident with a line 20 feet east of and parallel with the west line of said Northwest Quarter, North 01°56'24" West, 2,630.06 feet; thence coincident with a line 22 feet south of and parallel with the north line of said Northwest Quarter, North 88°33'52" East, 30.00 feet; thence coincident with a line 50 feet east of and parallel with the west line of said Northwest Quarter, South 01°56'24" East, 1,281.56 feet; thence South 12°14'42" East, 111.80 feet; thence South 72°21'48" East, 146.13 feet; thence southeasterly, along a non curve to the right, said curve having a radius of 540.00 feet, a chord bearing of South 72°34'15" East, and a chord distance of 133.48 feet, for a distance of 133.82 feet; thence South 65°28'18" East, 139.11 feet; thence southeasterly, along a curve to the left, said curve having a radius of 460.00 feet and a total angle of 26°25'31", for a distance of 212.15 feet; thence North 88°06'12" East, 411.38 feet; thence North 84°44'02" East, 103.39 feet; thence North 42°57'49" East, 58.61 feet; thence North 01°15'50" East, 101.28 feet; thence North 02°10'33" West, 1458.41 feet to the Point of Beginning, less that part in existing road right-of-way.

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Ordinance No. 1021 Providing for the Range of Salaries and Compensation of Various City Officers and Employees of the City of Edgerton, Kansas

**Department:** Administration

**Background/Description of Item:** In accordance with the City's Personnel Rules and Regulations, Edgerton has adopted an ordinance providing for the range of salaries and compensation of various city officers and employees. To reflect the changes in personnel as drafted in the 2017 budget and comparison of salary data for similar positions in the Mid America Regional Council's metropolitan salary data, staff has prepared an updated pay grade ordinance. Please find enclosed with packet a draft ordinance with changes tracked in red plus a clean copy of the draft ordinance. Below is a summary of the changes made.

Addition of the following positions as directed during the 2017 Budget process:

- Summer Youth Activities Coordinator – Grade 1
- Foreman – Grade 5
- CIP Project Manager – Grade 7
- Finance Director – Grade 8

Removes the following positions no longer needed:

- Laborer – Grade 2
- Assistant Superintendent – Grade 5
- Administrative Services Director – Grade 7

Reclassifies the following positions:

- Administrative Assistant position from Grade 2 to Grade 3
- Parks and Recreation Coordinator position from Grade 4 to Grade 5.

The salary range for most grades were updated based on a comparison of city salary data available through the Mid America Regional Council.

City Attorney has approved draft Ordinance No. 1021.

Enclosure:     Draft Ordinance No. 1021 (changes tracked in red)  
                     Draft Ordinance No. 1021 (clean copy)

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve Ordinance No. 1021 Providing for the Range of Salaries and Compensation of Various City Officers and Employees of the City of Edgerton, Kansas, Effective Upon Publication and Repealing All Ordinances In Conflict Therewith

**Funding Source:** N/A

Prepared by: Karen Kindle, Accountant  
Date: July 11, 2016



ORDINANCE NO. ~~994~~1021

AN ORDINANCE PROVIDING FOR THE RANGE OF SALARIES AND COMPENSATION OF VARIOUS CITY OFFICERS AND EMPLOYEES OF THE CITY OF EDGERTON, KANSAS, EFFECTIVE UPON PUBLICATION AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH

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

**SECTION ONE:** In accordance with the provisions of the Personnel Rules and Regulations of the City of Edgerton, Kansas, and Section 1-319 of Article 3 of Chapter I of the Code of the City of Edgerton, Kansas, the following appointed officers and employees of the City of Edgerton, Kansas shall have the following annual pay ranges:

**City of Edgerton, Kansas  
Base Salary Structure**

<u>Range</u>	<u>Job Title</u>	<u>Minimum</u>	<u>Maximum</u>
1	Seasonal Laborer School Crossing Guard <u>Summer Youth Activity Coordinator</u>	\$15,080	<del>\$29,120</del> <u>26,208</u>
2	<del>Laborer</del> <u>No Longer Used</u> <del>Administrative Assistant</del>	\$26,301	\$31,561
3	Maintenance Technician I Account Clerk Municipal Court Clerk <u>Administrative Assistant</u>	<del>\$29,120</del> <u>28,931</u>	<del>\$42,634</del> <u>34,717</u>
4	Maintenance Technician II Code Enforcement Officer <del>Recreation Coordinator</del>	<del>\$39,000</del> <u>35,006</u>	<del>\$49,890</del> <u>42,007</u>
5	<del>Assistant Superintendent</del> <u>Foreman</u> City Clerk <u>Parks and Recreation Coordinator</u>	\$46,593	<del>\$60,171</del> <u>55,912</u>
6	Public Works Superintendent Utility Superintendent Building Inspector	\$51,252	<del>\$70,000</del> <u>63,503</u>
7	<del>Administrative Services Director</del> <u>CIP Project</u> <u>Manager</u>	\$56,377	<del>\$75,000</del> <u>67,653</u>
8	Community Development Director <u>Finance Director</u>	\$79,896	<del>\$93,986</del> <u>90,192</u>

The normal work week for all full-time employees will be a forty-hour work week. The City of Edgerton will pay compensation at one and one-half times the normal hourly rate for all hours actually worked in excess of forty hours per week for all employees who are non-exempt from the provisions of the Fair Labor Standards Act.

**SECTION TWO:** The following officers and employees of the City of Edgerton, Kansas shall receive the compensation as hereinafter provided:

Position	Compensation
City Treasurer	\$180.25 per calendar month
City Attorney	\$800.00 per calendar month. Duties include: attendance at City Council meetings, preparation of ordinary ordinances, advise, conference and phone calls, and all other services on contract basis of \$150 per hour.
Municipal Judge	\$500 per docket attended
Prosecuting Attorney	\$110 per hour
Court Appointed Attorney	\$75.00 per hour for in-court time and out-of-court preparation time

**SECTION THREE:** The City Administrator shall set the individual employee’s salary and compensation which shall fall within the salary and compensation ranges established by this Ordinance.

**SECTION FOUR:** All other ordinances in conflict are hereby repealed upon the adoption of this Ordinance.

**SECTION FIVE:** This Ordinance shall take effect after it is published once in the City’s official newspaper and be in force from and after its passage, approval and publication as provided by law.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF EDGERTON, KANSAS ON THE 26<sup>TH</sup>-14<sup>TH</sup> DAY OF ~~FEBRUARY~~JULY, 2015~~6~~.

\_\_\_\_\_  
DONALD ROBERTS, Mayor

ATTEST:

\_\_\_\_\_  
JANEICE RAWLES, City Clerk

APPROVED AS TO FORM:

Formatted: Superscript

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PATRICK G. REAVEY, City Attorney

**ORDINANCE NO. 1021**

**AN ORDINANCE PROVIDING FOR THE RANGE OF SALARIES AND COMPENSATION OF VARIOUS CITY OFFICERS AND EMPLOYEES OF THE CITY OF EDGERTON, KANSAS, EFFECTIVE UPON PUBLICATION AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH**

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

**SECTION ONE:** In accordance with the provisions of the Personnel Rules and Regulations of the City of Edgerton, Kansas, and Section 1-319 of Article 3 of Chapter I of the Code of the City of Edgerton, Kansas, the following appointed officers and employees of the City of Edgerton, Kansas shall have the following annual pay ranges:

**City of Edgerton, Kansas  
Base Salary Structure**

<b><u>Range</u></b>	<b><u>Job Title</u></b>	<b><u>Minimum</u></b>	<b><u>Maximum</u></b>
1	Seasonal Laborer School Crossing Guard Summer Youth Activity Coordinator	\$15,080	\$29,120
2	No Longer Used	\$26,301	\$31,561
3	Maintenance Technician I Account Clerk Municipal Court Clerk Administrative Assistant	\$29,120	\$42,634
4	Maintenance Technician II Code Enforcement Officer	\$39,000	\$49,890
5	Foreman City Clerk Parks and Recreation Coordinator	\$46,593	\$60,171
6	Public Works Superintendent Utility Superintendent Building Inspector	\$51,252	\$70,000
7	CIP Project Manager	\$56,377	\$75,000
8	Community Development Director Finance Director	\$79,896	\$93,986

The normal work week for all full-time employees will be a forty-hour work week. The City of Edgerton will pay compensation at one and one-half times the normal hourly rate for all hours actually worked in excess of forty hours per week for all employees who are non-exempt from the provisions of the Fair Labor Standards Act.

**SECTION TWO:** The following officers and employees of the City of Edgerton, Kansas shall receive the compensation as hereinafter provided:

<b>Position</b>	<b>Compensation</b>
City Treasurer	\$180.25 per calendar month
City Attorney	\$800.00 per calendar month. Duties include: attendance at City Council meetings, preparation of ordinary ordinances, advise, conference and phone calls, and all other services on contract basis of \$150 per hour.
Municipal Judge	\$500 per docket attended
Prosecuting Attorney	\$110 per hour
Court Appointed Attorney	\$75.00 per hour for in-court time and out-of-court preparation time

**SECTION THREE:** The City Administrator shall set the individual employee's salary and compensation which shall fall within the salary and compensation ranges established by this Ordinance.

**SECTION FOUR:** All other ordinances in conflict are hereby repealed upon the adoption of this Ordinance.

**SECTION FIVE:** This Ordinance shall take effect after it is published once in the City's official newspaper and be in force from and after its passage, approval and publication as provided by law.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF EDGERTON, KANSAS ON THE 14<sup>th</sup> DAY OF JULY, 2016.

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DONALD ROBERTS, Mayor

ATTEST:

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JANEICE RAWLES, City Clerk

APPROVED AS TO FORM:

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PATRICK G. REAVEY, City Attorney

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Ordinance No. \_\_\_\_\_ Amending Article 4 Of Chapter V Of The Edgerton, Kansas Municipal Code To Create Provisions Pertaining To Licensing Mobile Food Venders Within The City

**Department:** Community Development

**Background/Description of Item:**

The City of Edgerton has recently received a significant increase in the number of people expressing interest in operating Food Trucks out at the Logistics Park. Some of the businesses that are located at the Logistics Park have also expressed interest to having Food Trucks as no restaurants currently exist in the area and most of the individuals working only receive 30 minutes for lunch. Current City regulations do not specifically permit for this type of activity to occur and staff has been performing research on different options that might be available. Under current city regulations staff has suggested that Food Truck operators could apply for a Special Event Permit in order to operate. This would not be considered the preferred way in which to allow this type of activity as this section is more specifically addressing events that are serving alcoholic liquor. The second option under the City Code in which staff has specified that a Food Truck would be allowed to operate is in the case of a business hiring a food truck to cater an event for their employees. It is staff's opinion that this would not be considered any different as compared to a caterer bringing food into one of the business. The main item that has been specified for this is that the caterer is hired by the business and that individual sales are not permitted.

Staff has worked with SKW to look at other neighboring community's regulations to consider options for the adoption of regulations that would allow Mobile Food Venders and protect the interests of the City. Staff has also reviewed these possible regulations with John Thomas, NorthPoint and Jason Camis, Gardner Edgerton Chamber, to see if any comments or concerns need to be considered. Staff has made changes to the proposed regulations based upon these meetings and the most recent copy is attached. Following are some additional comments that the City Council may want to discuss.

1. Does a requirement need to be placed in the code specifying where food trucks are permitted to park
2. Should stronger language be used regarding blocking the roadway?
3. Should operations in the public ROW require approval of a special use permit?

A copy of the proposed wording is attached to this Agenda Item Information Form and the City Attorney is reviewing this document. The Ordinance will be prepared and provided at the City Council Meeting.

Enclosure: Ordinance No. \_\_\_\_\_

**Related Ordinance(s) or Statute(s):** Edgerton City Code Chapter V, Article 4

**Recommendation:** Approve Ordinance No. \_\_\_\_\_ Amending Article 4 Of Chapter V Of The Edgerton, Kansas Municipal Code To Create Provisions Pertaining To Licensing Mobile Food Venders Within The City

**Funding Source:** N/A

Prepared by: Kenneth Cook, Community Development Director  
Date: July 11, 2016



## CHAPTER V. BUSINESS REGULATIONS

### ARTICLE 4. MOBILE FOOD VENDER

#### 5-401. DEFINITIONS.

- (a) Mobile Food Vender means any temporary or transient business offering the sale of food and/or beverage items in a vehicle, trailer, or pushcart, but does not include ice cream trucks, produce stands, or special or seasonal sales.
- (b) Person means any individual, association, or entity, including but not limited to, a firm, partnership, sole proprietorship, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, political subdivision, public or private agency of any kind, utility, or a successor or assign of any of the foregoing, and shall also mean the manager, lessee, agent, servant, officer or employee of any of foregoing.
- (c) Special Event means a temporary, short term use of land or structures, not otherwise included as a permitted or accessory use by the Unified Development Code.

#### 5-402. LICENSE – REQUIRED. It shall be unlawful for any Person to operate a Mobile Food Vender within the corporate limits of the City without first obtaining a license from the City. A separate license shall be required for each Mobile Food Vender. No license issued under this Article shall be transferable to another Person.

#### 5-403. APPLICATION FOR LICENSE – NEW OR RENEWAL. All applications for new or renewal licenses pursuant to this Chapter shall be made upon a form prescribed by the City and submitted and filed with the City Clerk. Each applicant for a Mobile Food Vender license in the City must at the time the application for a license is submitted and each time the license is renewed, submit a copy of a valid Food Establishment License from the Kansas Department of Agriculture. Upon presentation of a state license, payment of the City license fee, and completion of the City application, the City Clerk shall issue a City license.

#### 5-404. LICENSE – TERM – FEE.

- (a) All licenses required by this Article shall be annual licenses valid from January 1<sup>st</sup>, or the date of issuance, through December 31<sup>st</sup>.
- (b) An annual license fee on each Mobile Food Vender doing business in the City, in an amount as established and approved by the Governing Body as part of the annual fee resolution.

#### 5-405. DISPLAY OF LICENSE. Every licensee shall cause the City Mobile Food Vender License to be placed in plain view, next to or below the Food Establishment License issued by the Kansas Department of Agriculture in a conspicuous place on the Mobile Food Vender.

#### 5-406. PERMISSIBLE OPERATION. Mobile Restaurants are permitted to operate within the corporate limits of the City when:

- (a) Participating in a City-authorized event;
- (b) Operating on private property; or

- (c) Vending in the street public right-of-way in a way that does not impede traffic flow.

5-407. LOCATION RESTRICTIONS. No Mobile Food Vender shall:

- (a) Operate within 100 feet of a permanent brick and mortar restaurant during posted hours of operation, without easily producible written permission from the restaurant owner upon request by a City official;
- (b) Operate within residential zoning districts, unless at an approved block party event with an authorized temporary street closure;
- (c) Mobile Food Vender shall comply with all City noise ordinances.
- (d) No street or alley shall be blocked.
- (e) Be operated in a manner that causes congestion, interferes with traffic flow, or obstructs traffic signage or signals;
- (f) Locate on private property without express written consent from the property owner. The responsibility for obtaining property owner permission shall fall on the Mobile Food Vender. The Mobile Food Vender must have a copy of written consent while operating;
- (g) Fail to operate within the public right-of-way when utilizing on-street parking spaces. Items may only be sold curbside from an on-street parking space;
- (h) Operate or locate on public facilities or parks, unless located in an on-street parking stall or approved as part of a City-authorized event; or
- (i) Operate in public right-of-way along parade routes on the day of the parade.
- (j) Be parked on unpaved areas. All parking must occur on paved (concrete or asphalt) surfaces.

5-408. ADDITIONAL REGULATIONS.

- (a) A 3-foot passageway for pedestrians must remain intact at all times. No accessible route providing access to persons with disabilities may be blocked or reduced to less than 5 feet in width. If any such hindrance occurs, the vendor must either
  - a. Instruct customers to move to a safe location outside of the flow of traffic and pedestrians;
  - b. Temporarily stop vending from its unit; or
  - c. Move its unit to a different location.
- (b) Merchandise must be securely and adequately placed so that it does not fall or endanger passersby or protrude into a Public right-of-way.
- (c) Vendors are prohibited from offering for sale any food and/or beverage from a single property for more than 4 hours out of every day, or outside the hours of 7:30 a.m. to 30 minutes after sunset except as part of a City approved event. Mobile Food Vender are prohibited at all times from selling or offering for sale alcoholic beverages.
- (d) No tables, chairs, or other accessory structures may be erected by a Mobile Food Vender outside its unit.
- (e) One portable fire extinguisher (size 2 A 10 BC) shall be required for all mobile food units that utilize a cooking process or heating stove.
- (f) The use of artificial lighting is permitted, provided that it is mounted to the unit at a height no taller than the vehicle, trailer, or pushcart itself. Area lighting shall only be installed with

down-light fixtures and only be located on the service side of the tent, vehicle, or trailer. Flashing lights and other attention attracting devices are prohibited.

- (g) Immediately upon cessation of vending, the Mobile Food Vender shall return the site to its previous condition including the removal of all litter, repair of any damage, or other evidence of the vending. If the site is not returned to its previous condition, the City will restore the site at the expense of the vendor.
- (h) The City Administrator or designee or other public official charged by the City Administrator with enforcement of this Article may at any time cause any Mobile Food Vender to be inspected to determine that said unit is suitable from the standpoint of safety for the conduct of a Mobile Food Vender business and that all provisions of this Article and any other City ordinances relating to safety are being complied with.

5-409. SIGNAGE.

- (a) Signage may be permanently painted, affixed to or wrapped around the vehicle or trailer.
- (b) Signage mounted on a unit shall not extend more than 1 foot in any direction.
- (c) No sign on a unit may be illuminated.
- (d) One A-frame sign per Mobile Restaurant is allowed within 15 feet of the vehicle, trailer, or pushcart. A-frame signs may not exceed 8 square feet in size. Separate sign permits shall not be required. All other types of detached signs are prohibited.

5-410. LICENSE – SUSPENSION – REVOCATION.

- (a) Any license issued for a Mobile Food Vender may be revoked or suspended by the Governing Body after a public hearing before the Governing Body where it is found to be in violation of any of the provisions of this Article.
- (b) The Governing Body, before revoking or suspending any license, shall give the licensee at least 10 days' written notice of the charges against him or her and the opportunity for a public hearing before the Governing Body, at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

5-411. EXEMPTIONS. With the exception of City and state licensing requirements, the provisions of this Article shall not apply to the following activities:

- (a) Caterers, operating for a private event and not allowing individual sales;
- (b) Vendors selling as part of a City approved Special Event; or
- (c) Vendors selling on public or private school property with the permission of any such school;

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Ordinance No. 1022 Amending Section 15-401 Of Article 4 Of Chapter XV Of The City Code To Specifically Reference A "Water Emergency Plan" That Will Be Maintained And Kept Current By The Governing Body's Adoption Of Resolutions

**Department:** Utilities

**Background/Description of Item:** Staff recommends the City consider adopting a Water Emergency Plan to provide for the means of managing water resources in the event of an emergency or weather-related event. A Water Emergency Plan is also a best management practice for water utilities and is required for water utilities by the Kansas Water Office.

The Water Emergency Plan may need to be updated from time to time by the City and the most efficient and practical way to do so is to adopt a Resolution, rather than amending the City Code each time that a revision to the Plan is needed. However, existing provisions of the City Code address water emergencies, and processes to be followed when such an event occurs.

Therefore, City Attorney has prepared an ordinance to reference the Water Emergency Plan as adopted by Resolution (which inevitably will be more up to date than City Code provisions on the same subject).

Enclosures: Draft Ordinance No. 1022  
Edgerton City Code Chapter XV, Article 4

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve Ordinance No. 1022 Amending Section 15-401 Of Article 4 Of Chapter XV Of The City Code To Specifically Reference A "Water Emergency Plan" That Will Be Maintained And Kept Current By The Governing Body's Adoption Of Resolutions

**Funding Source:** N/A

Prepared by: Michael Mabrey, Utility Superintendent  
Date: July 6, 2016

## **ORDINANCE NO. 1022**

### **AN ORDINANCE AMENDING SECTION 15-401 OF ARTICLE 4 OF CHAPTER XV OF THE CITY CODE TO SPECIFICALLY REFERENCE A “WATER EMERGENCY PLAN” THAT WILL BE MAINTAINED AND KEPT CURRENT BY THE GOVERNING BODY’S ADOPTION OF RESOLUTIONS**

**WHEREAS**, the City desires to adopt a “Water Emergency Plan” that will serve as a guide for City Staff and elected officials to follow in the event of a water shortage; and

**WHEREAS**, said Water Emergency Plan may need to be updated from time to time by the City and the most efficient and practical way to do so is to adopt a Resolution, rather than amending the City Code each time that a revision to the Plan is needed; and

**WHEREAS**, existing provisions of the City Code address water emergencies, and processes to be followed when such an event occurs; and

**WHEREAS**, the governing body believes that the Water Emergency Plan adopted by Resolution (which inevitably will be more up to date than City Code provisions on the same subject) should be referenced in the City Code as taking precedence in the event of an inconsistency between the Plan and City Code provisions.

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

**SECTION 1:** Section 15-401 of Article 4 of Chapter XV of the Edgerton, Kansas Municipal Code is hereby amended to state the following:

15-401.       **PURPOSE; RESOLUTION.** (a) The purpose of this Article is to provide for the declaration of a water supply watch, warning or emergency and the implementation of voluntary and mandatory water conservation measures throughout the City in the event such a watch, warning or emergency and the implementation of voluntary and mandatory water conservation measures throughout the City in the event such a watch, warning or emergency is declared.

(b) From time to time, the governing body may adopt resolutions setting forth a plan or plans and/or procedures to be implemented in the event of a water emergency. These resolutions likely will be more up-to-date and detailed than provisions set forth in this Article and, therefore, in the event of any inconsistency between this Article and the plans adopted by resolution, the plans adopted by resolution will govern.

**SECTION 2: Repeal.** Former Section 15-401 of Article 4 of Chapter XV of the Edgerton, Kansas Municipal Code is hereby repealed.

**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 \_\_\_\_\_ DAY OF JULY, 2016.

\_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Janeice Rawles, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Patrick G. Reavey, City Attorney

Ord. 753, 2003; Ord. 742, 2003; Ord. 664, 1995; Ord. 594, 1989; Ord. 452, 1977; Ord. 354, 1966)

15-306.TOXIC POLLUTANTS; INCREASED COST. Any user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge from the city's treatment works, or any user which discharges any substance which singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance, or replacement of the treatment works, shall pay for such increases costs. The charge to each such user shall be as determined by the responsible plant operating personnel and approved by the governing body. (Ord. 506, 1982)

15-307 APPLICABILITY. The user charge rates established in this article apply to all users, regardless of their location with respect to the city's wastewater facilities. (Ord. 506, 1982)

15-308.BILLING. All users shall be billed monthly. Charges shall be payable at the same time and upon the statement of the water bills of the city. A bill remaining unpaid for a period to exceed 25 days shall be deemed delinquent and governed by sections 15-122:124 of this chapter. (Code 1984, Ord. 506, 1982)

15-309.REVIEW OF USER CHARGES. The city will review the user charge system at least every two years, and revise user charge rates as necessary to ensure that the system generates adequate revenues to pay the costs of operation and maintenance, including replacement, and that the system continues to provide for the proportional distribution of operation and maintenance including replacement costs among users and user classes. (Ord. 506, 1982)

#### ARTICLE 4. WATER CONSERVATION

15-401.PURPOSE. The purpose of this ordinance is to provide for the declaration of a water supply watch, warning or emergency and the implementation of voluntary and mandatory water conservation measures throughout the City in the event such a watch, warning or emergency is declared. (Ord. 690, 1997; Code 1995)

15-402.DEFINITIONS:

- (a) "Water," as the term is used in this ordinance, shall mean water available to the City of Edgerton for treatment by virtue of its water rights or any treated water introduced by the City into its water distribution system, including water offered for sale at any con-operated site.
- (b) "Customer," as the term is used in this ordinance, shall mean the customer of record using water for any purpose from the City's water distribution system and for which either a regular charge is made or, in the case of coin sales, a cash charge is made at the site of delivery.
- (c) "Waste of water," as the term is used in this ordinance, includes, but is not limited to:

- (1) permitting water to escape down a gutter, ditch, or other surface drain; or
- (2) failure to repair a controllable leak of water due to defective plumbing.

(d) The following classes of uses of water are established:

Class 1:

Water used for outdoor watering; either public or private, for gardens, lawns, trees, shrubs, plants, parks, golf courses, playing fields, swimming pools or other recreational areas; or the washing of motor vehicles, boats, trailers, or the exterior of any building or structure.

Class 2:

Water used for any commercial or industrial, including agricultural, purposes: except water actually necessary to maintain the health and personal hygiene of bona fide employees while such employees are engaged in the performance of their duties at their place of employment.

Class 3:

Domestic usage, other than that which would be included in either Classes 1 or 2.

Class 4:

Water necessary only to sustain human life and the lives of domestic pets and maintain standards of hygiene and sanitation. (Ord. 690, 1997; Code 1995)

15-403.DECLARATION OF WATER WATCH. Whenever the governing body of the City finds that conditions indicate that the probability of a drought or some other condition causing a major water supply shortage is rising, it shall be empowered to declare, by resolution, that a water watch exists and that it shall take steps to inform the public and ask for voluntary reductions in water use. Such a watch shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the existence and end of a water watch shall be effective upon their publication in the official City newspaper. (Ord. 690, 1997; Code 1995)

15-404.DECLARATION OF WATER WARNING. Whenever the governing body of the City finds that drought conditions or some other condition causing a major water supply shortage are present and supplies are starting to decline, it shall be empowered to declare by resolution that a water warning exists and that it will recommend restrictions on nonessential uses during the period of warning. Such warning shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the beginning and ending of the water warning shall be effective upon their publication in the official City newspaper. (Ord. 690, 1997; Code 1995)

15-405.DECLARATION OF WATER EMERGENCY. Whenever the governing body of the City finds that an emergency exists by reason of a shortage of water supply



needed for essential uses, it shall be empowered to declare by resolution that a water supply emergency exists and that it will impose mandatory restrictions on water use during the period of the emergency. Such an emergency shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the existence and end of a water supply emergency shall be effective upon their publication in the official City newspaper. (Ord. 690, 1997; Code 1995)

15-406.VOLUNTARY CONSERVATION MEASURES. Upon the declaration of water watch or water warning as provided in Sections 15-403 and 15-404, the mayor is authorized to call on all water consumers to employ voluntary water conservation measures to limit or eliminate nonessential water uses including, but not limited to, limitations on the following uses:

- (a) Sprinkling of water on lawns, shrubs or trees, (including golf courses).
- (b) Washing of automobiles.
- (c) Use of water in swimming pools, fountains and evaporative air conditioning systems.
- (d) Waste of water. (Ord. 690, 1997; Code 1995)

15-407.MANDATORY CONSERVATION MEASURES. Upon the declaration of a water supply emergency as provided in section 15-405, the Mayor is also authorized to implement certain mandatory water conservation measures, including, but not limited to, the following:

- (a) Suspension of new connections to the City's water distribution system, except connections of fire hydrants and those made pursuant to agreements entered into by the City prior to the effective date of the declaration of the emergency.
- (b) Restrictions on the uses of water in one or more classes of water use, wholly or in part;
- (c) Restrictions on the sales of water at coin-operated facilities or sites;
- (d) The imposition of water rationing based on any reasonable formula including, but not limited to, the percentage of normal use and per capita or per consumer restrictions;
- (e) Complete or partial bans on the waste of water; and
- (f) Any combination of the foregoing measures. (Ord. 690, 1997; Code 1995)

15-408.EMERGENCY WATER RATES. Upon the declaration of a water supply emergency as provided in Section 15-405, the governing body of the City shall have the power to adopt emergency water rates by ordinance designed to conserve water supplies. Such emergency rates may provide for, but are not limited to:

- (a) higher charges for increasing usage per unit for use (increasing block rates);
- (b) uniform charges for water usage per unit of use (uniform unit rate); or
- (c) extra charges in excess of specified level of water use (excess demand surcharge). (Ord. 690, 1997; Code 1995)

15-409.REGULATIONS. During the effective period of any water supply emergency as provided for in Section 15-405, the Mayor (or water superintendent) is

empowered to promulgate such regulations as may be necessary to carry out the provisions of this ordinance, any water supply emergency resolution, or emergency water rate ordinance. Such regulations shall be subject to the approval of the governing body at its next regular or special meeting. (Ord. 690, 1997; Code 1995)

#### 15-410. VIOLATIONS, DISCONNECTIONS AND PENALTIES.

- (a) If the Mayor, Water Superintendent, or other city official or officials charged with implementation and enforcement of this ordinance or a water supply emergency resolution learn of any violation of any water use restrictions imposed pursuant to Sections 15-407 or 15-409 of this ordinance, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record or any other person known to the City who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the City determines is reasonable under the circumstances. If the order is not complied with, the City may terminate water service to the customer subject to the following procedures:
  - (1) The City shall give the customer notice by mail or actual notice that water service will be discontinued within a specified time due to the violation and that the customer will have the opportunity to appeal the termination by requesting a hearing scheduled before the City governing body or a City official designated as a hearing officer by the governing body.
  - (2) If such a hearing is requested by the customer charged with the violation, he or she shall be given a full opportunity to be heard before termination is ordered; and
  - (3) The governing body or hearing officer shall make findings of fact and order whether service should continue to be terminated.
- (b) A fee of \$50 shall be paid for the reconnection of any water service terminated pursuant to subsection (a). In the event of subsequent violations, the reconnection fee shall be \$200 for the second reconnection and \$300 for any additional reconnections.
- (c) Violations of this ordinance shall be a municipal offense and may be prosecuted in Municipal Court. Any person so charged and found guilty in Municipal Court of violating the provisions of this ordinance shall be guilty of a municipal offense. Each day's violation shall constitute a separate offense. The penalty for an initial violation shall be a mandatory fine of \$100. In addition, such customer may be required by the Court to serve a definite term of confinement in the City or county jail which shall be fixed by the Court and which shall not exceed 30 days. The penalty for a second or subsequent conviction shall be a mandatory fine of \$200. In addition, such customer shall serve a definite term of confinement in the City or county jail which shall be fixed by the Court and which shall not exceed 30 days. (Ord. 690, 1997; Code 1995)

15-411.EMERGENCY TERMINATION. Nothing in this ordinance shall limit the ability of any properly authorized City official from terminating the supply of water to any or all customers upon the determination of such City official that emergency termination of water service is required to protect the health and safety of the public. (Ord. 690, 1997; Code 1995)

15-412.SEVERABILITY. If any provision of this chapter is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and its applicability to other persons and circumstances shall not be affected thereby. (Ord. 690, 1997; Code 1995)

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Resolution No. 07-14-16C Approving A Water Emergency Plan For The City Of Edgerton, Kansas, And Authorizing The City Administrator To Implement Said Plan As Needed

**Department:** Utilities

**Background/Description of Item:** Staff recommends the City consider adopting a Water Emergency Plan to provide for the means of managing water resources in the event of an emergency or weather-related event. A Water Emergency Plan is also a best management practice for water utilities and is required for water utilities by the Kansas Water Office.

The primary objective of the Water Emergency Conservation Plan for the City is to isolate and conserve an adequate supply of potable water during emergency conditions that will be used only to sustain human life and maintain acceptable standards of hygiene and sanitation. Other topics included in the Plan include Organizational Hierarchy, Mutual Aid, Emergency Equipment/Supplies and Disaster Response. The Plan also include critical contact information needed at time of an emergency.

Staff would recommend the Water Emergency Plan be reviewed on an annual basis simultaneously with the Water Conservation Plan. If Ordinance No. 1022 is adopted by City Council, the Water Emergency Plan may be updated by Resolution rather than amending the City Code.

If Resolution No. 07-14-16C is adopted the Governing Body establishes the "City of Edgerton Water Emergency Plan" as provided herein as the official policy for emergency water and water management during emergencies by the City. The City Administrator shall be responsible to the Governing Body for the enforcement of this Water Emergency Plan. The City Administrator would be authorized to update Appendix A of the Plan as needed to provide the most up-to-date information as to contacts as may be required in an emergency situation. Finally, if adopted, the Governing Body directs and instructs the City Clerk to file this Resolution to provide guidance to the City Administrator, staff, and the general public regarding the City's Water Emergency Plan.

Enclosures: Draft Resolution No. 07-14-16C  
Draft Water Emergency Plan

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve Resolution No. 07-14-16C Approving A Water Emergency Plan For The City Of Edgerton, Kansas, And Authorizing The City Administrator To Implement Said Plan As Needed

**Funding Source:** N/A

Prepared by: Michael Mabrey, Utility Superintendent  
Date: July 6, 2016

## **RESOLUTION NO. 07-14-16C**

### **A RESOLUTION APPROVING A WATER EMERGENCY PLAN FOR THE CITY OF EDGERTON, KANSAS, AND AUTHORIZING THE CITY ADMINISTRATOR TO IMPLEMENT SAID PLAN AS NEEDED**

**WHEREAS**, the City of Edgerton, Kansas (the "City"), desires to provide for the means of managing water resources in the event of an emergency or weather-related event; and

**WHEREAS**, establishing a Water Emergency Plan is a best management practice for water utilities and is required for water utilities by the Kansas Water Office; and

**WHEREAS**, the City has amended its Water Emergency Conservation Plan by separating the plan into two separate documents a copy of Water Emergency Plan is attached hereto and the City desires to approve the Water Emergency Plan to provide for the City's response for water in the event of an emergency;

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

### **WATER EMERGENCY PLAN**

#### **SECTION ONE – ADOPTION**

The Governing Body hereby adopts and establishes the "City of Edgerton Water Emergency Plan" as provided herein as the official policy for emergency water and water management during emergencies by the City.

#### **SECTION TWO - RESPONSIBILITY FOR ENFORCEMENT**

The City Administrator shall be responsible to the Governing Body for the enforcement of this Water Emergency Plan.

#### **SECTION THREE - REVIEW**

The Governing Body shall from time to time review this policy and provide for any changes that are necessary for the prudent management of the City's water resources in the event of an emergency. The City Administrator is hereby authorized to update **Appendix A** of the Plan as needed to provide the most up-to-date information as to contacts as may be required in an emergency situation.

#### **SECTION FOUR – FILING OF CERTIFIED COPIES**

The Governing Body hereby directs and instructs the City Clerk to file this Resolution to provide guidance to the City Administrator, staff, and the general public regarding the City's Water Emergency Plan.

#### **SECTION FIVE – EFFECTIVE DATE**

This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body.

**PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 14<sup>th</sup> day of July, 2016.**

**CITY OF EDGERTON, KANSAS**

By: \_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Janeice Rawles, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Patrick G. Reavey, City Attorney



# **Water Emergency Plan**

## **for the**

# **City of Edgerton, Kansas**

### **2016 Edition**

Adopted by Resolution No.

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## **RESOLUTION NO. 07-14-16C**

### **A RESOLUTION APPROVING A WATER EMERGENCY PLAN FOR THE CITY OF EDGERTON, KANSAS, AND AUTHORIZING THE CITY ADMINISTRATOR TO IMPLEMENT SAID PLAN AS NEEDED**

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#### **SECTION ONE – ADOPTION**

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#### **SECTION THREE - REVIEW**

The Governing Body shall from time to time review this policy and provide for any changes that are necessary for the prudent management of the City's water resources in the event of an emergency. The City Administrator is hereby authorized to update **Appendix A** of the Plan as needed to provide the most up-to-date information as to contacts as may be required in an emergency situation.

#### **SECTION FOUR – FILING OF CERTIFIED COPIES**

The Governing Body hereby directs and instructs the City Clerk to file this Resolution to provide guidance to the City Administrator, staff, and the general public regarding the City's Water Emergency Plan.

#### **SECTION FIVE – EFFECTIVE DATE**

This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body.

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**CITY OF EDGERTON, KANSAS**

By: \_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Janeice Rawles, City Clerk

[END OF PAGE]

## **WATER EMERGENCY PLAN**

### **INTRODUCTION**

The City of Edgerton, Kansas supplies water to the residents inside and outside the corporate city limits of Edgerton along transmission mains from metering and booster pump station sites located east of Baldwin and east of Edgerton.

The City purchases potable water from Baldwin City, Kansas (herein "Baldwin") and raw water from Hillsdale Lake from the Kansas Water Office. The Baldwin metered connection point and booster pump is located at 1897 N. 200 Road in Douglas County east of Baldwin City. The Baldwin contract provides for 74,000,000 gallons per year (250,000 gallons per day maximum) and expires in 2017.

The City entered into a forty-year contract with the Kansas Water Authority for 200,000,000 gallons of raw water per year from Hillsdale Lake and is now in conjunction with Hillsdale Area Water Cooperative (HAWC). Contracts also provide for the treatment of the Hillsdale supply by Miami County Rural Water No. 2 (herein "RWD 2"). This supply is transported by Johnson County Water District No. 7 (herein "JO7") to the City's Spoon Creek Booster Pump Station located at 20690 Spoon Creek Road located east of Edgerton in Johnson County. Both of the City's booster pump stations are checked daily.

The City owns several elevated storage facilities:

- 50,000-gallon tank located at 408 First Street;
- 150,000-gallon tank located at 818 West Eighth Street and;
- 200,000-gallon tank located at 20325 County Line Road.

The City maintains two non-metered emergency connections with JO7. The primary emergency connection with JO7 is located on Edgerton Road and US56 (Morgan St), the secondary connection is located at US-56 and 199<sup>th</sup> Street. The City has an agreement with JO7 dated August 28, 2008 that provides the terms for the primary emergency connection.

### **PURPOSE**

The primary objective of the Water Emergency Conservation Plan (herein "Plan") for the City is to isolate and conserve an adequate supply of potable water during emergency conditions that will be used only to sustain human life and maintain acceptable standards of hygiene and sanitation.

### **ORGANIZATIONAL HIERARCHY**

In the event of a water emergency, the Utility Superintendent shall immediately contact the City Administrator. The City Administrator, or designee, shall determine if an Emergency Operations Center (EOC) is required to organize a proper response. If it is determined that an EOC is needed, the primary location for the EOC shall be located at City Hall, 404 E. Nelson Street. If this location is not available, another location shall be established for the EOC and the following persons or agencies shall be notified immediately:

1. Utility/Public Works Superintendent;
2. City Administrator;

3. City Employees;
4. Mayor and Council Members;
5. Johnson County Emergency Management;
6. Kansas Department of Health and Environment (KDHE) and;
7. Others as necessary.

If necessary, the City Administrator shall issue a Declaration of Emergency to the general public and the news media describing the problem and other pertinent information or directions. KDHE will be notified after the crisis declaration is made and will be kept informed of the progress. If a Declaration of Emergency is not necessary, the City Administrator shall communicate pertinent information to the Governing Body and citizens.

Staff meetings, Special City Council meetings, or other meetings will be held as necessary to make the decisions required for the management of the emergency. All parties will be kept informed of the damages and the steps being taken to correct the problem. Detailed records shall be kept of costs and actions taken so as to assess any financial liability to third parties if necessary and to document the cost for other governmental needs.

The City Administrator, or designee, shall provide communications to the Mayor and City Council, news media and state agencies as necessary. If professional assistance is needed, such as an engineering firm, the City Administrator, or designee, shall make the contacts with the approval of the City Council. If the issue is significant enough that services or equipment are needed prior to the arrangement of a Special City Council meeting, the City Administrator shall move forward with the procurement of any equipment and services necessary. Such services and/or products shall be thoroughly documented to provide a record of the response for the City's use after the issue.

The City Administrator shall work with staff and other applicable agencies to assess damages, determine actions needed, and provide overall supervision. The City Administrator, or designee, will stay in contact with the necessary utilities and agencies named herein, so as to be able to keep current on existing conditions. The City Administrator shall, from time to time, name an assigned supervisor to take command in his or her absence.

### **MUTUAL AID**

If necessary, contacts will be made with other cities or regional rural water districts to solicit assistance or supplies as needed.

### **EMERGENCY EQUIPMENT/SUPPLIES**

The City maintains an inventory of water system maintenance supplies, pipes, fittings, and other necessary supplies. The City also maintains its own equipment that could be used during a water emergency including: a backhoe, loader, dump truck, sewer trailer and bucket truck. Other ancillary equipment such as pumps and small generators are also maintained in the City's inventory. The City has the ability to obtain a large generator from local Rental Stores and possibly local quarry. In addition, the City can call on other cities in the area or local contractors to assist with the provision of services or equipment as may be needed to address an issue. Contact information regarding these agencies and contractors are discussed at the end of this document.

## **DISASTER RESPONSE**

The City has established procedures for the declaration of an emergency. The procedures also describe the steps that should be taken to direct the conservation of water throughout the community as needed. The determination to direct the conservation of water may be made for drought purposes and other types of emergencies.

### Chemical Spill/Contamination

If a chemical spill or other contamination of the water system should occur, immediate notification will be made to the Kansas Department of Health and Environment (KDHE), Johnson County Fire District No. 1 and the Region 7 EPA office. The City Administrator, or designee, shall determine which other agencies shall be notified.

The Utility Superintendent, or designee, will monitor the level of water being pumped and stored at City facilities. If there is contamination from the storage towers, towers that have been contaminated will be immediately shut down. Steps will be taken to isolate the contamination and actions taken to clean up any such contamination.

If water needs to be trucked in from other sources, the City Administrator, or designee, shall make arrangements to secure tanker trucks and potable water from an available source. The possibility of utilizing the BNSF mainline for emergency water tankers exists. If this action is warranted, the City Administrator, or designee, shall contact BNSF to obtain the necessary permissions and to coordinate the deliver.

If the contamination source is determined and is due to a backflow condition, immediate steps will be taken to determine the area of contamination and to isolate it if possible. The area of contamination may be isolated by shutting off valves on the mains along the contamination area. Residents and businesses in the contaminated area will be informed that the water cannot be used until further notice. Mains will be flushed and other necessary steps will be taken to eliminate the contamination. The City will have the water source and supply tested to ensure that contamination no longer poses a threat to the public.

### Power Outage

Should a power outage occur and it is determined that there is not sufficient water in the elevated storage facilities, a portable generator will be used or obtained to operate the pump as needed. Should major damage occur to any of the City's booster pump stations, the Utility Superintendent, or designee shall conduct an assessment of the facilities. Any required repairs will be made to provide for the continued operation of the City's system. If such facilities cannot be repaired immediately, the Utility Superintendent, or designee, will make arrangements for water to be brought in from outside sources.

### Major Water Main Break

A major water main break may trigger water conservation measures. If the Utility Superintendent determines that water conservation measures are prudent or necessary, he or she shall contact the City Administrator to prepare a news release and communicate

with the media. The City Administrator shall also contact the Governing Body to inform them of the situation. The Utility Superintendent shall contact other agencies for any assistance. The leak will be isolated and crews will make the necessary repairs. If needed, an alternate water supply will be established.

#### Damaged Storage Facility

Should a storage tank facility be damaged, the tank will be isolated from the water system and an assessment of the needed repairs shall be made. Repairs or replacement will be made as determined and approved by the Utility Superintendent. If pumping is required to be made directly into the system, sufficient personnel will be made available to monitor the situation.

#### Terrorist Threats

If terrorist threats are made, the Johnson County Sheriff's Department will be immediately notified. Steps will be taken to safe guard the City water facilities. If radioactive fallout occurs, notification will be made to the officials listed in the Organizational Hierarchy section of this document. All necessary steps will be taken to protect the water supply. If necessary, another source of water will be utilized.

## **APPENDIX A**

### **PUBLIC OFFICIALS**

City Administrator: Beth Linn

Office: Edgerton City Hall

PO Box 255

404 E. Nelson Street

Edgerton, KS 66021

Phone: (913) 893-6231 office

Utility Superintendent: Michael Mabrey

Office: Big Bull Creek Wastewater Treatment Facility

20600 Homestead Lane

Edgerton, KS 66021

Phone: (913) 893-6231 office

(913) 709-7278 cell

Utility Department:

Chase Forrester, Maintenance Technician I

Phone: (913) 292-4077 cell

Public Works Employees:

Trey Whitaker, Public Works Superintendent

Phone: (816) 206-2358

Jim Elrod, Assistant Superintendent

Phone: (913) 927-4773

Cody Ferris

Phone: (913) 553-8952

Collin Williams

Phone: (913) 506-4447

Colton Feilden

Phone: (913) 634-5707

City Hall:

Phone: (913) 893-6231

### **OTHER AGENCIES**

KDHE, Emergency 24/7

Phone: (785) 296-1670

KDHE, NE Dist. Lawrence

Phone: (785) 842-4600

KDHE, Bureau of Water

Phone: (785) 296-5500

Johnson County Rural Water District No. 7

Phone: (913) 856-7375

Miami County Rural Water District No. 2

Phone: (913) 783-4325

Kansas Water Office

Phone: (785) 296-3185

Baldwin City Water Department

Phone: (785) 594-6427

Baldwin City Public Works Director

Phone: (785) 766-6607

City of Gardner Water Plant

Phone: (913) 856-7246

City of Gardner Public Works Department

Phone: (913) 856-6945

Johnson County Emergency Management

Phone: (913) 715-1007

Kansas Rural Water Association

Phone: (785) 336-3760

Johnson County Officials:

JoCo Sheriff's Department (non-emergency dispatch)

Phone: (913) 715-5400

Johnson County First District No. 1

Phone: (913) 893-6820 office

Johnson County Emergency Communications

Phone: (913) 826-1020 office

Johnson County Environmental

Phone: (913) 492-0402

### **SUPPLIERS**

Water Line Maintenance/Repair

Olathe Winwater Works Company  
1165 W 149<sup>th</sup> St.  
Olathe, KS 66062  
(913) 829-3300

HD Supply Waterworks  
11510 S. Strang Line Rd  
Olathe, Ks 66062  
(913) 469-5820

Water Towers and Telemetry

Utility Service Company  
11414 Wil Mar Drive  
Liberty, MO 64068  
Tom Stechmann (314) 420-4912

Utility Service Company  
Kansas Service Center  
1259 S 220<sup>th</sup> St. PO Box 362  
Pittsburg, Ks 66762  
(800) 835-0145 (620) 232-2160

System Manufacturing Inc.  
PO Box 23039  
Overland Park Ks 66283  
(913) 422-8405

EFI – Engineered Fluid Inc.  
1308 N. Maple Street  
PO Box 723  
Centralia, Il 62801  
(618)533-1351

Micro Comm Inc.  
15895 S Pflumm Rd  
Olathe, Ks 66062  
(913)390-4500

**RENTAL EQUIPMENT**

Gerken Rental  
260 N Moonlight Rd  
Gardner Ks, 66030  
(913) 856-8882

Bledsoe Rental  
208 W Dennis Ave  
Olathe Ks, 66061  
(913) 764-3337

**CONTACTS**

*Generator and Equip*

Logan Contractor Supply  
1325 S Enterprise St.  
Olathe, KS 66061  
(913) 768-1551

*Tanker Railroad Cars*

BNSF Railways  
2341 Argentine Blvd  
Kansas City, KS 66106  
(913) 551-2853  
Contact: Ron Tilsworth

*Heavy Equipment*

Foley Equipment	(816) 753-5300
Heartland Midwest	(913) 397-6653
Vermeer Great Plains	(913) 782-3655
KC Bobcat	(913) 829-4600
Coleman Equipment	(913) 422-3040
Albert Chapman	(913) 893-6744

*Tanker Trucks*

Wise Dairy	(913) 893-6621
Water Haul Co.	(913) 856-6399



Vermeer Great Plains (913) 782-3655  
Heartland Midwest (913) 397-6653  
Brown Const. (913) 406-9056