

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
February 9, 2017**

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 January 26, 2017
6. Approve Application FP2016-04, Final Plat, Midwest Gateway and Accept Any Dedications
7. Approve Ordinance No. 1048 Granting To Kansas Gas Service, A Division Of One Gas, Inc., A Non Exclusive Natural Gas Franchise And The Right And Privilege To Construct, Use And Maintain Natural Gas Service Lines In The Public Right-Of-Way Within The Present Or Future Corporate Limits Of The City Of Edgerton, Kansas For The Purpose Of Supplying Natural Gas Services To The City Of Edgerton, Kansas And Its Inhabitants Pursuant To K.S.A. 12-2001 Et Seq.

Regular Agenda

8. **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.
9. **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.

Business Requiring Action

10. **CONSIDER CHARTER ORDINANCE NO. 23 EXEMPTING THE CITY OF EDGERTON, KANSAS, FROM THE PROVISIONS OF K.S.A. 15-201, RELATING TO THE ELECTION OF OFFICERS, THEIR TERMS OF OFFICE, TRANSITIONS TO NOVEMBER ELECTIONS, THE FILLING OF GOVERNING BODY VACANCIES, AND NOMINATION PETITIONS; AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT, AND REPEALING CHARTER ORDINANCE NO. 4**

Motion: _____ Second: _____ Vote: _____

11. Report by the City Administrator

- Confirm Maintenance Technician II Job Description
- Confirm Edgerton Notify JoCo Subscriptions

12. Report by the Mayor

- Discussion regarding Policy Governance

13. Future Meeting/Event Reminders:

- February 14th 6:00 PM – Planning Commission Work Session
- February 14th 7:00 PM – Planning Commission Meeting
- February 15th Noon – Senior Lunch
- February 20th – City Offices Closed President's Day
- February 23rd 7:00 PM – City Council Meeting

**14. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319
(b) (2) 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

15. Adjourn Motion: _____ Second: _____ Vote: _____

City of Edgerton, Kansas
Minutes of City Council Regular Session
January 26, 2017

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on January 26, 2017. 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
Clay Longanecker	present
Darius Crist	present
Cindy Crooks	present

Jody Brown	absent
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With a quorum present, the meeting commenced.

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

2. WELCOME

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

AGENDA

4. Agenda Approval was considered and approved.

MEETING MINUTES

5. Approve City Council Meeting Minutes January 12, 2017 was considered and approved.

FINAL PLAT – FP2016-04, MIDWEST GATEWAY

6. Approve Application FP2016-04, Final Plat, Midwest Gateway and accept any dedications was considered.

FINAL PLAT – FP2016-03, LOGISTICS PARK KANSAS CITY SOUTHEAST – 4TH PLAT

7. Approve Application FP2016-03, Final Plat, Logistics Park Kansas City Southeast, 4th Plat and accept any dedications was considered.

Mayor Roberts asked that items #6 and #7 be removed from the consent agenda.

Motion by Longanecker, seconded by Crist, to approve items #4 and #5 of the consent agenda.

Motion was approved, 4-0.

FINAL PLAT – FP2016-04, MIDWEST GATEWAY

There was some discussion and explanation about item no. 6- FP2016-04, it was the decision to hold this item until the next regular meeting.

Motion by Crooks, seconded by Longanecker, to table item #6, until the February 9th, 2017.

Motion to table the matter was approved, 4-0.

FINAL PLAT – FP2016-03, LOGISTICS PARK KANSAS CITY SOUTHEAST – 4TH PLAT

Community Development Director Ken Cook presented information about item no. 7, FP2016-03, and answered questions.

Motion by Crooks, seconded by Crist, to approve Item #7.

Motion was approved, 4-0.

8. PUBLIC COMMENTS

None

9. DECLARATION

None

Public Works Superintendent Trey Whitaker introduced new staff member Randall Bennett, as Public Works Maintenance I, and announced that Cody Ferris was promoted to Foreman for Public Works.

BUSINESS REQUIRING ACTION

ORDINANCE NO. 1044 – UNIFIED DEVELOPMENT CODE AMENDMENT

10. APPROVAL OF ORDINANCE 1044 AMENDING THE EDGERTON UNIFIED DEVELOPMENT CODE (UDC) ARTICLE 5, INDUSTRIAL ZONING DISTRICTS INCLUDING UPDATED REGULATIONS APPLICABLE TO MONUMENT SIGNS IN THE L-P ZONING DISTRICT WAS CONSIDERED.

Community Development Director Kenny Cook presented information about the Unified Development Code and the changes and updates that need to be done. One of the primary items that staff has determined needs a substantial update is in regards to the sign regulations for the L-P District. The City of Edgerton Planning Commission held a Public Hearing and discussed their vision for monument signs in the L-P District. The Planning Commission sent proposed regulations to the City Council for consideration. The City Attorney has reviewed the regulations and has made some minor changes.

Motion by Longanecker, seconded by Troutner, to approve Ordinance No. 1044 amending the Edgerton Unified Development Code.

Motion was approved, 4-0.

ORDINANCE NO. 1045 – REZONING FROM A-G TO L-P

- 11. ORDINANCE NO. 1045 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 82 ACRES OF LAND (EAST SIDE OF WAVERLY ROAD AND NORTH OF 183RD STSREET) IN EDGERTON, KANSAS FROM AG, AGRICULTURAL, TO THE L-P, LOGISTICS PARK DISTRICT WAS CONSIDERED.**

Community Development Director Kenny Cook gave some background information about the application for rezoning. The property is located on the eastside of Waverly Road and north of 183rd Street. The Planning Commission held a public hearing on January 14, 2017. A number of property owners located within the City of Gardner did speak at the public hearing and voiced concern in regards to the request. The Planning Commission recommended approval of the application with some stipulations.

Motion by Longanecker, seconded by Crist, to approve Ordinance No. 1045.

Motion was approved, 4-0.

2017 CHAMBER OF COMMERCE WORK PLAN

- 12. 2017 WORK PLAN PROPOSED BY THE GARDNER EDGERTON CHAMBER OF COMMERCE WAS CONSIDERED.**

Jason Camis, Gardner Edgerton Chamber of Commerce was present and introduced his new employee Meghan McDermott. Ms. McDermott will be working part time in the Chamber office. Mr. Camis presented the 2017 work plan for the City of Edgerton. There are three areas listed in the agreement with several items listed under each heading. The three areas are Advocacy, Collaboration and Exposure. Discussion incurred about many of the listings and dates for events for the upcoming year.

Motion by Longanecker, seconded by Crist, to approve the 2017 Work Plan proposed by the Gardner Edgerton Chamber of Commerce.

Motion was approved, 4-0.

The next two items, Ordinance No. 1046 and 1047 were discussed together.

ORDINANCE NO. 1046 – MUNICIPAL CODE AMENDMENTS, CHAPTER I

- 13. ORDINANCE NO. 1046 AMENDING CHAPTER 1 OF THE CITY CODE TO INCLUDE WRITTEN POLICIES RELATED TO MANAGEMENT OF THE CITY'S FINANCES, BUDGETING, AND CASH RESERVES WAS CONSIDERED.**

ORDINANCE NO. 1047 - MUNICIPAL CODE AMENDMENTS, CHAPTER I

14. ORDINANCE NO. 1047 AMENDING CHAPTER 1 OF THE CITY CODE TO INCORPORATE SEVERAL PREVIOUSLY ADOPTED FINANCE, PURCHASING, AND COMPLIANCE RELATED POLICIES WAS CONSIDERED.

Motion by Crooks, seconded by Longanecker, to table Ordinance No. 1046 and Ordinance No. 1047 to a future Meeting Date.

Motion to table Ordinance No. 1046 and Ordinance No. 1047 was approved, 4-0.

15. REPORT BY THE CITY ADMINISTRATOR

WAVERLY ROAD UPDATE

Beth Linn, City Administrator presented information on the Waverly Road project. A letter from David Hamby, P.E., CFM, City Engineer was presented to Mayor and Council explaining the plans to improve Waverly Road from the Railroad to Highway 56. This letter states the length of the project and the construction cost per linear feet. After much discussion, the Mayor called for a vote.

Motion by Longanecker, seconded by Crooks, not to partner with the City of Gardner or Johnson County Public Works Department as presented, on the Waverly Road Project.

The Yea votes: Crooks, Longanecker, and Roberts as tie breaker. The Nay votes: Crist, and Troutner. Council member Brown was absent from the meeting.

Motion was approved, 3-2.

Ms. Linn reported that all "No Truck" signs are up.

EASTER EGG HUNT

the Easter Egg Hunt was discussed. Tegan Meadors, Park and Recreation Coordinator, shared information that the Girl Scouts will not be doing the Easter Egg Hunt. Mayor Roberts asked for some time to explore the options, perhaps just until the next meeting.

16. REPORT BY THE MAYOR

The Mayor spoke about the upcoming Kansas Rural Water Association conference, and asked if anyone would like to attend this year. There is also a need for a voting delegate and an alternate delegate, please let City Administrator know if you would like to attend. The dates for the conference are March 28-30, 2017.

Mayor Roberts, City Administrator Beth Linn, and others spoke to the Senate Commerce Committee and they were very happy with the growth rate that is happening here.

17. FUTURE MEETINGS/EVENT REMINDERS

- February 9th 7:00 pm – City Council Meeting
- February 14th 6:00 pm – Planning Commission Work Session
- February 14th 7:00 pm Planning Commission Meeting

- February 15th Noon – Senior Lunch
- February 20th City Offices Closed President's Day
- February 23 7:0 pm – City Council Meeting

Mayor Roberts asked Beth Linn to speak about the Senior Lunch. Ms. Linn stated that approximately six years ago that Senior Lunch was a senior social event and city employees were invited to attend. As the years have gone by, the city staff numbers have grown to seventeen and the staff is giving the Senior Lunch back to the seniors. Tegan Meadors, Park and Recreation Coordinator, will do a short presentation before lunch. Charlie Troutner has heard people asking "How come the City doesn't come any more."

EXECUTIVE SESSION – REAL PROPERTY ACQUISITION

18. RECESS 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 WAS CONSIDERED.

Motion by Crooks, seconded by Crist, to recess into executive session for ten minutes to include City Attorney and City Administrator.

Motion was approved, 4-0.

Meeting recessed at 8:03 pm.

Motion by Crooks, seconded by Crist, to reconvene, no action taken.

Motion was approved, 4-0.

Meeting reconvened at 8:13 pm.

EXECUTIVE SESSION – ATTORNEY CLIENT PRIVILEGE

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

Motion by Crooks, seconded by Crist, to recess into executive session for ten minutes to include City Attorney and City Administrator.

Motion was approved, 4-0.

Meeting recessed at 8:15 pm.

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

Motion was approved, 4-0.

Meeting reconvened at 8:25 pm.

20. ADJOURN

Motion by Crist, seconded by Crooks to adjourn the meeting.

Motion was approved, 4-0. Meeting adjourned at 8:25 p.m.

Janeice L. Rawles, CMC

City Clerk

Approved by the Governing Body on

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Application FP2016-04, Final Plat, Midwest Gateway

Department: Community Development

Background/Description of Item: The City of Edgerton has received Application FP2016-04 for final plat of the Midwest Gateway and which is located on the North side of 191st Street and a quarter mile East of Homestead Lane. The final plat includes approximately 32 acres and is made up of a single lot. The Plat does not contain the dedication of additional public street ROW as 191st Street ROW was previously acquired. The Plat does include the dedication of certain easements required as part of the development of the property.

Staff, including City Engineer, has reviewed the Final Plat submittal for compliance with the Approved Preliminary Plat and requirements in Section 13.3 of Article 13 of the Edgerton UDC. Review comments are detailed in the attached staff report.

The Edgerton Planning Commission reviewed the application on January 10, 2017. The Planning Commission recommended approval of Application FP2016-04 for Final Plat of Midwest Gateway subject to compliance with the following stipulations as listed in the staff report dated January 6, 2017:

1. All Final Plat requirements of the City listed above shall be met or addressed prior to recording of the Plat.
2. The commencement of any improvements shall not occur prior to the approval and endorsement of the final plat and the submittal to and approval of construction plans for all streets, sidewalks, storm water sewers, sanitary sewers, and water mains contained within the final plat by the Governing Body. Sanitary sewer drawings and specifications must be submitted to and approved by the City of Edgerton and Kansas Department of Health and Environment prior to the commencement of any improvements.
3. A Public Improvement Inspection Fee, established by the Fee Schedule for the Unified Development Code, shall be submitted with the document of financial assurance as defined in Section 13.7 prior to the commencement of any improvements.
4. The applicant shall meet all requirements of Recording a Final Plat as defined in Section 13.5 of the Edgerton Unified Development Code, including payment of excise tax.
5. The applicant shall meet all requirements of Financial Assurances as defined in Section 13.7 of the Edgerton Unified Development Code.

Enclosure: Staff Report from January 10, 2017 Planning Commission meeting
Final Plat
Final Plat Application FP2016-04 for Midwest Gateway

Recommendation: Approve Application FP2016-04, Final Plat, Midwest Gateway located on the North side of 191st Street and a quarter mile East of Homestead Lane.

Funding Source: N/A

Prepared by: Kenneth Cook, Community Development Director
Date: January 23, 2017

NAME OF PROPOSED SUBDIVISION: Midwest Gateway

LOCATION OR ADDRESS OF SUBJECT PROPERTY: 32180 W 191st Street

LEGAL DESCRIPTION: Lot 1 Midwest Gateway, Final Plat

CURRENT ZONING ON SUBJECT PROPERTY: L-P Logistics Park CURRENT LAND USE: Undeveloped

TOTAL AREA: 32.445 Acres NUMBER OF LOTS: 1 AVG. LOT SIZE: N/A Sq. Ft.

DEVELOPER'S NAME(S): Aaron Schlager / Keith Copaken PHONE: 816-701-5000

COMPANY: Midwest Gateway Venture, LLC FAX: 816-701-5099

MAILING ADDRESS: 1100 Walnut, Suite 2000 Kansas City MO 64106
Street City State Zip

PROPERTY OWNER'S NAME(S): Keith Copaken PHONE: 816-701-5000

COMPANY: Midwest Gateway Venture, LLC FAX: 816-701-5099

MAILING ADDRESS: 1100 Walnut, Suite 2000 Kansas City MO 64106
Street City State Zip

ENGINEER'S NAME(S): Matt Kist PHONE: 913-888-7800

COMPANY: Shafer, Kline & Warren FAX: 913-888-7868

MAILING ADDRESS: 1250 Corporate Ave Lenexa KS 66219
Street City State Zip

SIGNATURE OF OWNER OR AGENT: Midwest Gateway Venture, LLC, a Delaware limited liability company
By: IRA Foxfield JV, LLC a Delaware limited liability company its: Manager
By: CB MGW, LLC a Kansas limited liability company its Manager 1.

NOTE: Ten (10) copies of the proposed preliminary plat must accompany this application for staff review. One (1) reduced copy (8 1/2 x 11) must also be submitted with the application.

FOR OFFICE USE ONLY

Case No. FP- 2016-04 Amount of Fee Paid: \$ 310.00 Date Fee Paid: 12/20/16

Received By: Debra S Bragg Date of Hearing: —

FINAL PLAT INSTRUCTIONS

SUBMITTAL DEADLINE: The applicant shall submit an application at least forty-five (45) days prior to a scheduled meeting. If the final plat complies with the preliminary plat, Planning Commission and Governing Body may consider approval without notice or public hearing.

PLANNING COMMISSION REVIEW AND DECISION: The Edgerton Planning Commission meets in the City Hall on the second Tuesday of every month. The Planning Commission shall review the final plat and other material submitted with it to determine conformity preliminary plat. The Planning Commission shall act upon the final plat within ninety (90) days after submission, unless the subdivider shall waive or consent to an extension of the ninety (90) day period.

GOVERNING BODY APPROVAL: Following the approval of a final plat by the Planning Commission, the Governing Body shall review the instrument for dedications and reservations and assure that the final plat and construction plans for all proposed streets, sidewalks, storm water sewers, sanitary sewers and water mains meet the standards of the City of Edgerton. The Governing Body may either approve the final plat, return the final plat and/or construction plans to the applicant with instructions and specifications to conform to City standards, or deny the final plat and/or construction plans with a refusal to accept dedication. If the Governing Body denies the final plat and/or construction plans, a set of written findings must be given to the applicant within 30 (thirty) days.

RECORDING OF FINAL PLAT: Upon approval of a final plat by the Governing Body, the applicant shall record the plat with the Register of Deeds within a period of one year. If the final plat is not recorded within one year from the date of approval by the Governing Body, it shall be considered null and void. Before any final plat shall be signed by the Zoning Administrator and filed by the Register of Deeds, the applicant shall submit a certificate of title indicating the ownership of all property within the bounds of the subdivision.

The applicant shall provide the Zoning Administrator with one copy of the final plat that was approved by the Governing Body on Mylar®. The applicant shall also return one copy of the final plat that was recorded by the Register of Deeds.

FEES DUE BEFORE ENDORSEMENT OF FINAL PLAT: Article 10 of Chapter IV of the Edgerton City Code imposes an excise tax \$0.10 per square foot of Final Plat. Prior to endorsement of any final plat, all excise taxes must be paid or City staff must determine that an exemption from payment prior to platting is applicable, all in accordance with Article 10 of Chapter IV of the City Code. In addition, a New Street Light Fee of \$250 each shall be submitted prior to the endorsement of any final plat.

VESTING AND CONFLICTING REQUIREMENTS: Initial rights for a final plat shall vest for a period of three (3) years. If all streets, sidewalks, storm water sewers, sanitary sewers and water mains have not been installed and the development of structures commenced after three (3) years, the final plat shall be considered null and void.

The requirements and standards in force at the time of the adoption of a final plat shall remain and shall continue to govern and not be set aside by the adoption of subsequent standards. Standards (such as setbacks) appearing on a plat which are greater than those imposed by this ordinance are valid, and shall be duly noted and enforced by building permits. Restrictive covenants are private instruments between buyer and seller. The Zoning Administrator does not enforce restrictive covenants unless such restrictions are part of a Planned Unit Development, or unless the City itself, as a condition of platting, is a party to such agreements. Nothing contained in these regulations is intended to void the obligation of any party to adhere to the terms of all contracts, conditions, and covenants of record.

ASSURANCES: Developers are required to install all streets, storm water sewers, sanitary sewers and water mains and other services to all lots (in a designated phase) as they appear on the final plat and/or construction plans prior to receiving a building permit from the Zoning Administrator. Developers are required to install all sidewalks on a lot as they appear on the final plat and/or construction plans prior to receiving a certificate of occupancy from the Zoning Administrator. Developers are also required to reimburse the City of Edgerton for the cost of all street signs, stop signs and speed limit signs.

Exceptions: The Zoning Administrator may issue building permits for lots in an approved subdivision when such lots have direct access to an existing public right-of-way and when, in his/her opinion, building construction would not interfere with the orderly process of the installation of facilities and utilities.

Financial Assurance: Prior to the commencement of any improvements, all required infrastructure (streets, sidewalks, storm water sewers, sanitary sewers, and water mains) must be assured by a financial instrument (performance and maintenance bond or special benefit district). Financial assurances must be made in a form and amount acceptable and approved by the City Attorney. Unless otherwise indicated by special resolution of the Governing Body, financial assurances shall be equal to the contract cost of purchase and installation of all facilities and utilities and valid for a period ending no less than two years after acceptance by the City of Edgerton. If substantial progress in installing the infrastructure is not evident within two hundred eighty (280) days after the approval of the final plat by the Governing Body, the City of Edgerton shall take appropriate action to exercise the financial assurance.

Public Improvement Inspection Fee: If a Developer is required to construct any public improvements, including streets, sidewalks, storm water sewers, sanitary sewers and water mains, that construction must be inspected by city staff or their designee. Developers are required to pay 3% of construction costs to the City for those inspections.

As Builts: Prior to acceptance of public improvements by the City, the developer shall provide two (2) sets of prints for all public improvement projects, excluding sidewalks, corrected to show the project as constructed and shall accurately and completely denote all changes made during the construction. Each sheet within the prints shall be clearly marked as "Conforming to Construction Records" and shall include the date of revision and certifications by a Kansas licensed engineer. This set of plans shall be substantially similar to the set of construction plans that was approved by the Governing Body.

CHECKLIST

The following items shall be included on the final plat.

- ☐ Scale, the same used for the preliminary plat; North point; vicinity map.
- ☐ The words "FINAL PLAT" followed by the name of the subdivision at the top of the sheet, and then followed by a metes and bounds description of the tract.
- ☐ The instrument of survey which shows the point of beginning, corners, bearings, courses, distances, exterior boundaries, interior lot boundaries, abandoned lot lines, pins, monuments found or set. All P.I.'s corners, boundaries must be monumental with a 2" x 24" metal bar.
- ☐ A boundary survey of third order surveying accuracy (maximum closure error one in five thousand (1 in 5,000), with bearings and distances referenced to section or fractional section corners or other base line shown on the plat and readily reproducible on the ground.
- ☐ Individual notations and a TABLE showing: lot area, setbacks, and building envelopes.
- ☐ A number for each lot, starting (if practical) in the northwest corner.
- ☐ All easements with widths, and roads with curve data.
- ☐ Ingress/egress limitations, if required.
- ☐ The location of existing utility easements.
- ☐ A written legal description from the survey.
- ☐ An instrument of dedication for all roads and easements.
- ☐ Special notations required as a condition of platting by the Planning Commission.
- ☐ Approved phases – clearly delineated.
- ☐ Private travel easements.
- ☐ The Owner's Certificate with Notary Seal.
- ☐ Certificate of the Governing Body with City Clerk's attest and Seal.
- ☐ Edgerton City Planning Commission chair and secretary approval.
- ☐ Certificate of the Register of Deeds.
- ☐ Surveyor's Certificate and Seal and certificate for survey review by the County Surveyor or designated Land Surveyor.
- ☐ Certificate of the Zoning Administrator.

STAFF REPORT SUMMARY

January 6, 2017

To: Edgerton Planning Commission
Fr: Kenneth Cook, AICP, CFM, Community Development Director
Re: FP2016-04, Final Plat for Midwest Gateway, located on the North side of 191st Street and 1,500 feet West of Kill Creek Road.

REQUEST

The applicant is seeking approval of a Final Plat based on an approved preliminary site plan, preliminary plat and the L-P, Logistics Park District zoning requirements. This project is located to the West of the original LPKC development and directly South of the BNSF Intermodal facility. The proposal includes a 522,436 square foot speculative warehouse.

DISCUSSION ITEMS

Staff recommends the Planning Commission review the below summary of items to note areas that may need consideration by the Planning Commission. Other items noted in the Staff Report shall be addressed by applicant in revised submittal, but do not appear to be items in need of discussion by the Planning Commission.

1. Include table showing lot area, setbacks and building envelope. Need to update setbacks to show a 50 foot front setback and 25 foot side setbacks.
2. Show a drainage easement for the detention pond.
3. Update the wording of the instrument of dedication.
4. Include certificate for Zoning Administrator.

RECOMMENDATION

City staff recommends **approval** of FP2016-04 for the Final Plat, Midwest Gateway subject to the suggested stipulations, below.

1. All Final Plat requirements of the City listed above shall be met or addressed prior to recording of the Plat.
2. The commencement of any improvements shall not occur prior to the approval and endorsement of the final plat and the submittal to and approval of construction plans for all streets, sidewalks, storm water sewers, sanitary sewers, and water mains contained within the final plat by the Governing Body. Sanitary sewer drawings and specifications must be submitted to and approved by the City of Edgerton and Kansas Department of Health and Environment prior to the commencement of any improvements.
3. A Public Improvement Inspection Fee, established by the Fee Schedule for the Unified Development Code, shall be submitted with the document of financial assurance as defined in Section 13.7 prior to the commencement of any improvements.
4. The applicant shall meet all requirements of Recording a Final Plat as defined in Section 13.5 of the Edgerton Unified Development Code, including payment of excise tax.
5. The applicant shall meet all requirements of Financial Assurances as defined in Section

13.7 of the Edgerton Unified Development Code.

STAFF REPORT

January 6, 2017

To: Edgerton Planning Commission
Fr: Kenneth Cook, AICP, CFM, Community Development Director
Re: Application FP2016-04 for Final Plat for Midwest Gateway, located north side of 191st Street and one-quarter mile east of Homestead Road.

APPLICATION INFORMATION

Applicant/Property Owner: Aaron Schlagel, Midwest Gateway Venture, LLC
Keith Copaken, Midwest Gateway Venture, LLC

Requested Action: Final Plat – Midwest Gateway

Legal Description: Part of the SW 1/4, Section 34, Township 14 South, Range 22 East. in the City of Edgerton, Johnson County, Kansas. See attached final plat for full legal description.

Site Address/Location: North side of 191st Street and 1,500 feet West of Kill Creek Road.

Existing Zoning and Land Uses: City of Edgerton L-P (Logistics Park) zoning on vacant land.

Existing Improvements: None.

Site Size: 32.445 Acres

PROJECT DESCRIPTION

The applicant is seeking approval of a final plat based on an approved preliminary and the L-P, Logistics Park District zoning requirements. The initial, two lot, Preliminary Plat was approved November 12, 2013. The currently valid, one lot, Preliminary Plat was approved December 17, 2015. While this lot is located adjacent to the intermodal facility, it is not considered part of Logistics Park Kansas City. The subject property is located on the North side of 191st Street and approximately a quarter mile East of Homestead Lane and is zoned L-P, Logistics Park. The City's Unified Development Code (UDC) defines this district as a limited multimodal industrial zone created to support activities related to truck, rail and other transport services.

INFRASTRUCTURE AND SERVICES

Infrastructure was reviewed previously per the rezoning and preliminary plat. Some conditions continue to exist as noted below.

- a. 191st Street had been constructed as a heavy haul corridor. It is a 40 foot wide two lane road constructed with 14 inch thick concrete. 191st Street will still require upgrades in the future as development occurs in the area which could include the construction of additional travel lanes and sidewalks. The funding for these improvements will be made as part of a tri-party agreement regarding the development of Logistics Park Kansas City. The City has typically required adjacent property owners that are not part of LPKC to sign agreements not to protest the formation of a benefit district that would also be used to fund these improvements.
- b. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane.
- c. The property is located within an area identified as Zone X and is defined as Areas determined to be outside the 500-year flood elevation. No base Flood Elevations have been determined.
- d. The property has access to sanitary sewer service. A gravity sewer line is located on the South side of 191st Street across from the Southwest corner of the site. This line flows into the pump station that is located at the Southeast corner of 191st and Homestead Lane. Another pump station is located at the Northeast corner of the site.
- e. The property is located within the service area of Rural Water District No. 7. The new water tower for Water 7 is located on Lot 3 of the first plat of the Logistics Park Kansas City Phase IV. A 12-inch water main is located along the 191st Street property frontage.
- f. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Fire District No. 1. A fire station is located in the City of Edgerton approximately 3.5 miles to the west, and one approximately 2.5 miles to the northeast in the City of Gardner.

FINAL PLAT REVIEW

Staff has reviewed the Final Plat submittal for compliance with the Approved Preliminary Plat and requirements in Section 13.3 of Article 13 of the Edgerton UDC. Review comments are listed below.

1. Scale, the same used for the preliminary plat; North point; vicinity map. *The same scale is being used for the Final Plat as the Preliminary Plat. **Final Plat Complies.***
2. The words "FINAL PLAT" followed by the name of the subdivision at the top of the sheet, and then followed by a metes and bounds description of the tract. **Final Plat Complies**
3. The instrument of survey which shows the point of beginning, corners, bearings, courses, distances, exterior boundaries, interior lot boundaries, abandoned lot lines, pins, and monuments found or set. All P.I.'s corners, boundaries must be monumented with a 2" x 24" metal bar. **Update Final Plat.**
 - a) *The plat currently shows all monuments being ½" x 24" Rebar while the regulations require 2" x 24" metal bar. Staff believes that the 2" measurement is a typographical error and that it should be ½".*
 - b) *Show the basis of bearing on the graphic part of the plat.*
 - c) *Show names or recording data for the adjacent unplatted parcels.*

4. A boundary survey of third order surveying accuracy (maximum closure error one in five thousand (1' in 5,000), with bearings and distances referenced to section or fractional section corners or other base line shown on the plat and readily reproducible on the ground. *Information depicted. Final Plat Complies.*
5. Individual notations and a TABLE showing: lot area, setbacks, and building envelopes. *Please add table. Setbacks currently shown do not comply with L-P District requirements. Front setback should be 50 feet and side setbacks should be 25 feet. Update Final Plat.*
6. A number for each lot, starting (if practical) in the northwest corner. *Final Plat Complies.*
7. All easements with widths, and roads with curve data. *A drainage easement should be provided for the detention pond. Update Final Plat.*
8. Ingress/egress limitations if required. Information is shown and declared. *Final Plat Complies.*
9. The location of existing utility easements. *Final Plat Complies.*
10. A written legal description from the survey. *Final Plat Complies.*
11. An instrument of dedication for all roads and easements. *The Final Plat includes language for the dedication of right-of-way (streets) and other types of similar rights-of-way including utility easements. The wording of these dedications needs to be modified to match the standard wording that the City of Edgerton uses. Update Final Plat.*
12. Special notations required as a condition of platting by the Planning Commission. *Final Plat Complies.*
13. Approved phases – clearly delineated. *Not applicable. Final Plat Complies.*
14. Private travel easements. *Existing driveway easement shown. Final Plat Complies.*
15. The Owner's Certificate with Notary Seal. *Final Plat Complies.*
16. Certificate of the Governing Body with City Clerk's attest and Seal. *Final Plat Complies.*
17. Edgerton City Planning Commission Chair and Secretary approval. *Final Plat Complies.*
18. Certificate of the Register of Deeds. *Register of Deeds utilizes their own stamp and requires space to be reserved in the top left corner to accommodate it. No additional certificate is required. Final Plat Complies.*
19. Surveyor's Certificate and Seal and certificate for survey review by the County Surveyor or designated Land Surveyor. *County Surveyor utilizes their own stamp, therefore no other certificate is required. Final Plat Complies.*
20. Certificate of the Zoning Administrator. *Language not present, please add. Update Final Plat.*

RECOMMENDATION

City staff recommends **approval** of FP2016-04 for the Final Plat, Midwest Gateway, subject to compliance with the following stipulations:

1. All Final Plat requirements of the City listed above shall be met or addressed prior to recording of the Plat.
2. The commencement of any improvements shall not occur prior to the approval and endorsement of the final plat and the submittal to and approval of construction plans for all streets, sidewalks, storm water sewers, sanitary sewers, and water mains contained within the final plat by the Governing Body. Sanitary sewer drawings and specifications must be submitted to and approved by the City of Edgerton and Kansas Department of Health and Environment prior to the commencement of any improvements.

3. A Public Improvement Inspection Fee, established by the Fee Schedule for the Unified Development Code, shall be submitted with the document of financial assurance as defined in Section 13.7 prior to the commencement of any improvements.
4. The applicant shall meet all requirements of Recording a Final Plat as defined in Section 13.5 of the Edgerton Unified Development Code, including payment of excise tax.
5. The applicant shall meet all requirements of Financial Assurances as defined in Section 13.7 of the Edgerton Unified Development Code.

ATTACHMENTS

Application FP2016-04

Final Plat Midwest Gateway

FINAL PLAT OF
MIDWEST GATEWAY
PART OF THE SW 1/4, SECTION 34, TOWNSHIP 14, RANGE 22,
CITY OF EDGERTON, JOHNSON COUNTY, KANSAS

LEGAL DESCRIPTION:

All that part of a tract of land described as the J.A. Pearce Tract in the Southwest Quarter of Section 34, Township 14 South, Range 22 East as said tract is shown and described in the 1892 Re-Survey of said Section Township and Range, Johnson County, Kansas, said tract of land being more particularly described as follows:

Commencing at the Southeast corner of the Southwest Quarter of said Section 34; thence S 88° 10' 27" W, along the South line of said Southwest Quarter, a distance of 360.36 feet, to the true point of beginning of subject tract; thence continuing S 88° 10' 27" W, along said South line, a distance of 947.45 feet, thence N 02° 16' 29" W, parallel with the East line of said J.A. Pearce Tract, a distance of 1170.31 feet; thence N 53° 52' 24" E, a distance of 1140.81 feet, to a point on the East line of said J.A. Pearce Tract; thence S 02° 16' 29" E (S 02° 16' 32" E, Deed), along the East line of said J.A. Pearce Tract, a distance of 1813.21 feet, to the true point of beginning.

The above described tract contains 1,413,318 square feet or 32.445 acres more or less.

OWNERS CERTIFICATION AND DEDICATION:

The undersigned proprietor of the above described tract of land has caused the same to be subdivided in the manner as shown on the accompanying plat, which subdivision and plat shall hereafter be known as "MIDWEST GATEWAY".

The proprietors, successors, and assigns, of property described on this plat hereby dedicate for public use all land described on this plat as streets or public ways not heretofore dedicated. Acceptance of the dedication of land for public right-of-way purposes described on this plat is for the sole purpose of maintaining right-of-way, and does not constitute acceptance of any terms or conditions set forth in any agreement not shown on this plat.

An easement is granted to lay, construct, alter, repair, replace or operate one or more sewer lines and all appurtenances convenient for the collection of sanitary sewage, together with the right of ingress and egress, over and through those areas designated as "Sanitary Sewer Easement" or "S/E" on this plat are hereby dedicated to the City of Edgerton or their assigns.

The undersigned proprietor of the above described land hereby consents and agrees that the governing body of any special assessment district shall have the power to release such land proposed to be dedicated for streets and roads, or parts thereof, for public use, from the lien and effect of any special assessments, and that the amount of the unpaid special assessments on such land dedicated, shall become and remain a lien on the remainder of this land fronting or abutting on such dedicated road or street.

IN TESTIMONY WHEREOF, the undersigned proprietors have hereunto subscribed their hand.

OWNER:
Midwest Gateway Venture, LLC

By _____
Keith Copaken
STATE OF _____)
COUNTY OF _____)SS.

This instrument was acknowledged before me on this _____ day of _____, 2017 by
Keith Copaken of Midwest Gateway Venture, LLC.

Notary Public _____ My Commission Expires: _____

APPROVED by the Governing body of the City of Edgerton, this ____ day of _____, 2017.

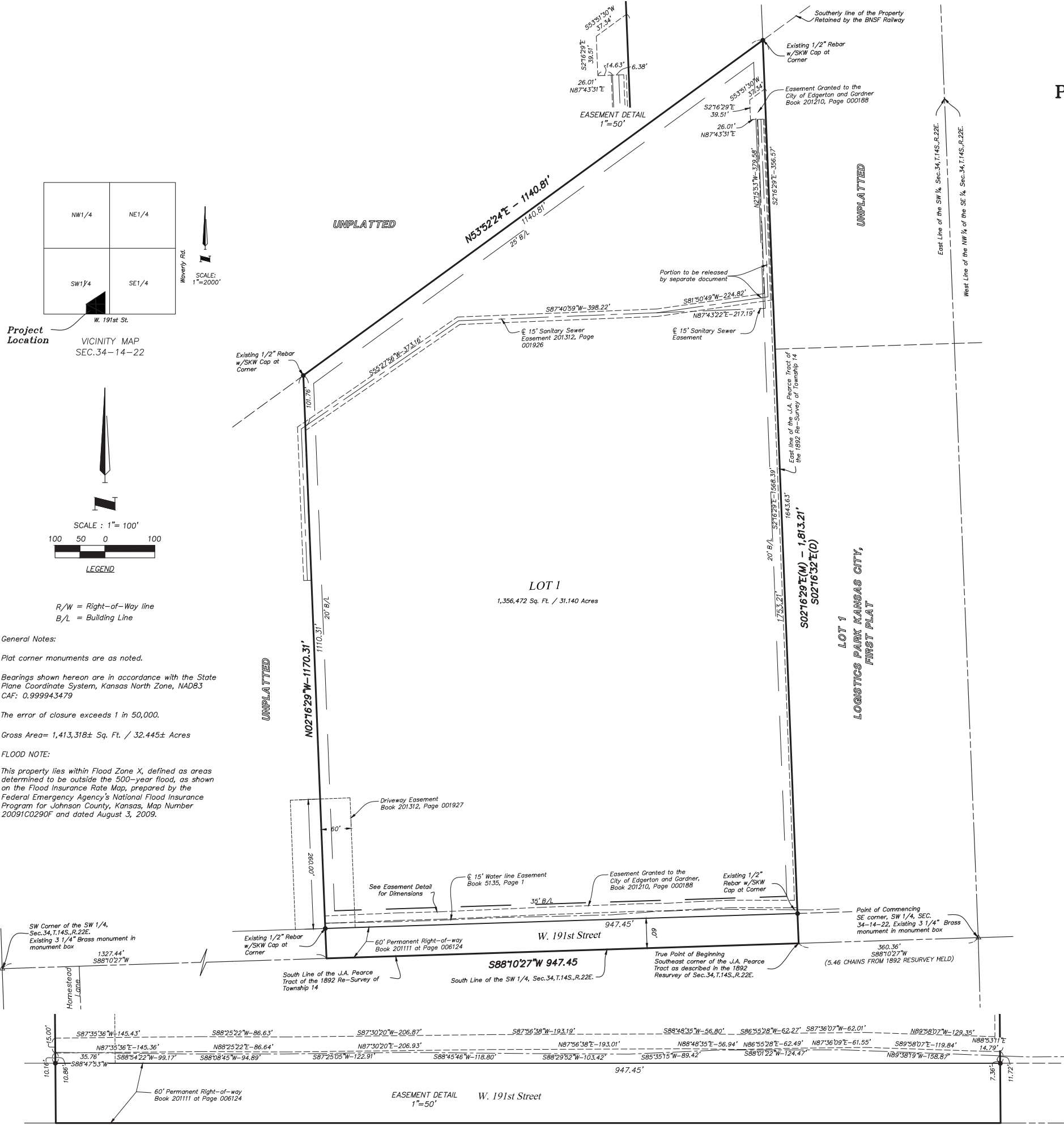
Donald Roberts, Mayor _____ Janeice Rawles, Clerk _____
APPROVED by the City of Edgerton, Kansas Planning Commission, this ____ day of _____, 2017.

Chuck Davis, Chairman _____ Attest: _____
Maria O'Neill, Secretary

I hereby certify that the information shown hereon is based on a field survey performed under my supervision
on August 30, 2013.

Scott D. Confer, KS LS-1249

SHAFER, KLINE & WARREN, INC.
ENGINEERS ~ SURVEYORS
11250 CORPORATE AVENUE
LENEXA, KANSAS 66219
(913) 888-7800 www.skw-inc.com



AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 1048 Granting To Kansas Gas Service, A Division Of One Gas, Inc., A Non Exclusive Natural Gas Franchise and the Right and Privilege to Construct, Use and Maintain Natural Gas Service Lines in the Public Right-of-Way Within the Present or Future Corporate Limits of the City of Edgerton, Kansas for the Purpose of Supplying Natural Gas Services to the City of Edgerton, Kansas and Its Inhabitants pursuant to K.S.A. 12-2001 et seq.

Department: Administration

Background/Description of Item: The City of Edgerton had an active franchise agreement with Kansas Gas Service, a division of One Gas, Inc., which was due to expire on June 8, 2016. On May 26, 2016, the Governing Body approved Ordinance No. 1016 to extend the franchise while Kansas Gas Service and City Attorney staff continued to discuss possible modifications to the franchise.

The City Attorney has been working with representatives of Kansas Gas Service regarding the proposed language to finalize the franchise agreement. The City Attorney and Kansas Gas Service have resolved the concerns. The franchise ordinance allows the for collection and payment to the City a five percent (5%) sum received from the sale of gas within the City. Additionally, Kansas Gas Service shall pay the City a sum equal to five percent (5%) of all revenues received by the Company from the transportation of gas for delivery only (not sale of gas) to customers within the City. The franchise fee shall be paid monthly.

The term of the franchise agreement shall remain in effect for a period of ten (10) years.

City Attorney has reviewed and approved Ordinance No. 1048

Enclosure: Draft Ordinance No. 1048

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 1048 Granting to Kansas Gas Service, A Division of One Gas, Inc. a Non Exclusive Natural Gas Franchise and Right-of-Way Privilege Within Present or Future Corporate Limits of the City for a term of ten (10) years

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: February 6, 2017

ORDINANCE NO. 1048

AN ORDINANCE GRANTING TO KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC., A NON EXCLUSIVE NATURAL GAS FRANCHISE AND THE RIGHT AND PRIVILEGE TO CONSTRUCT, USE AND MAINTAIN NATURAL GAS SERVICE LINES IN THE PUBLIC RIGHT-OF-WAY WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF EDGERTON, KANSAS FOR THE PURPOSE OF SUPPLYING NATURAL GAS SERVICES TO THE CITY OF EDGERTON, KANSAS AND ITS INHABITANTS PURSUANT TO K.S.A. 12-2001 ET SEQ.

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

Section 1. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

- (A) The Company shall mean Kansas Gas Service, a division of ONE Gas, Inc., its successors and assigns.
- (B) City shall mean the City of Edgerton, Kansas.
- (C) Facilities shall mean all mains, services, pipes, conduits and appliances and improvements thereto, either on, under or above ground, necessary or convenient for the transmission, transportation, distribution, or sale of natural gas within the City to the inhabitants thereof for any use, including domestic, commercial, and industrial purposes.
- (D) Gas Service shall mean the supplying, selling, transmitting, transporting, or distributing of natural gas within the City through the use of Company facilities.
- (E) Public improvement shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects, which are supported by public funds.
- (F) Public project shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature, which is supported by public funds.
- (G) Public Right-of-way shall mean only the area of real property in which the city has a dedicated or acquired right-of-interest in the real property as defined by K.S.A. 17-1902. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way.
- (H) Revenues shall mean those amounts of money which the Company receives from its customers within the City from the sale of gas and from the transportation of gas to customers within the City and for the use of its utility facilities by others within the City under rates, temporary or permanent, and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. "Revenues" shall also include all fees or rentals received by the Company for the lease or use of pipeline capacity within the corporate limits of the City. Included within "Revenues" shall be all amounts paid to the Company by the City. Revenues shall not include other revenues received by the Company, which are not related to the sale or transportation of natural gas. These include, but are not limited to, connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, ad returned check charges as such

terms are used in tariffs filed and approved.

Section 2. Grant of Franchise.

- (A) Pursuant to K.S.A. 12-2001 et seq. there is hereby granted to the Company the right, privilege, franchise, permission and authority to construct, maintain, extend and operate its facilities, in through and along the rights-of-way for the purpose of supplying natural gas or processed gas for all purposes to the City and its inhabitants and consumers in the vicinity thereof, and for the distribution of natural gas from or through said City for the full term of this franchise; subject, however, to the terms and conditions herein set forth. The City further grants the Company the right, privilege, franchise, permission and authority to lay, install, maintain, and operate over, across and along all of the rights-of-way of the City all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of the City and in carrying on such business. Notwithstanding the foregoing, the Company shall comply in all respects with Article 3 of Chapter XII of the City Code governing use and excavation of the public right-of-way. Provided, however, the Company's agreement to comply with Article 3 of Chapter XII of the City Code shall not be construed as waiving the Company's right to contest, object to, or challenge, any requirement therein as provided pursuant to applicable Kansas or federal law.
- (B) Nothing in this franchise ordinance, and the grant hereof, shall be interpreted as granting to the Company the authority to provide non-gas regulated utility services, including electric, telephone, and cable services, without a separate grant of a franchise from the City.

Section 3. Governing Rules and Regulations. This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by the laws of the State of Kansas. The rates to be charged by the Company for service within the present or future corporate limits of the City and the rules and regulations regarding the character, quality and standards of service to be furnished by the Company shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by the Company. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes the Company from recovering from its customers any cost associated with services provided hereunder, then the City and the Company shall renegotiate the terms of this Ordinance. In determining the rights and duties of the Company, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the City.

Section 4. Use of Right-of-Way. In the use of the right-of-way under this Ordinance, the Company shall be subject to Article 3 of Chapter XII of the City Code, and all other rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power, and is subject to all applicable laws, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. In addition, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the public right-of-way, provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulations, policy, resolution, or ordinance proposed, adopted, or promulgated by the City.

Section 5. Franchise Fee.

- (A) In consideration for the grant of this franchise, the Company shall pay the City a sum equal to five percent (5%) of all revenues per annum received from the sale of gas within the City and from revenues received by the Company from the use of its utility facilities by others within the City. In addition, the Company shall pay to the City a sum equal to five percent (5%) of all revenues received by the Company from the transportation of gas for delivery only (not sale of gas) to customers within the City.
- (B) The franchise fee shall be paid monthly by a method approved by the City and Company. An accounting by the Company shall be submitted with the monthly franchise fee to enable the City to determine that all gas distributed, sold, or transported within the City has been properly assessed a franchise fee and such fee has been paid to the City. The Company shall pay the applicable fee to the City within thirty (30) days of the last day of the applicable month for which a fee payment is due and owing. Payments received after the due date shall be subject to a late payment charge equivalent to the statutory rate of interest on the unpaid amount. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge equivalent to the statutory rate of interest on the unpaid amount; provided such late payment charges shall 1) begin to accrue forty-five (45) days after notice is mailed to the Company; and 2) the late payment charge shall only apply to audit generated payments agreed to by the City and the Company.
- (C) The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property taxes, sales and excise taxes, and any permit fees and charges for working in the right-of-way, pavement cuts or other permit fees and charges based on restoring premises to their same condition, or charges made for privileges which are not in any way connected with the natural gas business, as such, will be imposed on the Company and are not covered by the payments herein. For any such permit fees that Company is not exempt from paying by virtue of this Franchise, City agrees to make arrangements and cooperate with Company in accepting payments in a form or manner that minimizes delay or disruption to Company's day-to-day activities.
- (D) The City shall provide copies of annexation ordinances to the Company on a timely basis. The City shall provide to Company a copy of the annual boundary resolution adopted by the City. The fees provided for in this Section 5 shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than 60 days after the date the City provides Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.
- (E) Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins following the "effectiveness" date provided for in Section 15 herein below. Prior to that date, payments shall continue to be calculated and paid in the manner previously provided in Ordinance No. 814.

Section 6. The City shall have access to and the right to examine during normal business hours, those of the Company's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by the Company shall be paid within thirty (30) days of the recalculation and any over-payment by the Company shall be discounted from the next payment(s) due.

Section 7. Sharing of Space. The City encourages the conservation of right-of-way by the sharing of space by all utilities. All said agreements and installations shall be subject to all existing and future

ordinances and regulations of the City. Company agrees that it will not grant any entity rights to occupy the rights-of-way without providing notice to the City.

Section 8. Indemnification and Hold-Harmless. The Company, its successors and assigns, shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, for the payment of which said City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the Company, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of gas service facilities within the City or outside the City.

The indemnity provided above does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Company and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state, without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and the Company and does not create or grant any rights, contractual or otherwise, to any person.

Section 9. Assignment of Franchise. This franchise shall be assignable only in accordance with the laws of the state of Kansas, as the same may exist at the time when any assignment is made. If the Company intends to assign this franchise, the Company shall notify the City in writing at least 60 days prior to the proposed assignment of the franchise.

Section 10. Conditions of Franchise. This contract, franchise, ordinance, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. Each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Company's control. This franchise shall not be exclusive. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance provided, however, that this provision shall not obligate a party to settle any labor strike.

Section 11. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Clerk, 404 East Nelson, Edgerton, Kansas 66021. For the purpose of this Agreement, notice to the Company will be to: President, Kansas Gas Service, 7421 West 129th Street, Overland Park, Kansas 66213. Notice will be effective upon delivery by hand delivery or by first class mail to the above address until the City or the Company notifies the other, in writing, of a change in address.

Section 12. Length of Franchise Agreement. The rights and privileges granted by this Ordinance shall remain in effect for a period of ten (10) years from the effective date thereof.

Section 13. Rights and Duties of Grantee upon Expiration of Ordinance. Upon expiration, termination, or forfeiture of this Ordinance, whether by lapse of time or by agreement between the Company and the City the Company shall have the right, but not the obligation, unless necessary for the protection of the public health and safety, to remove from right-of-way and public property all of its facilities used in its business within reasonable time after such expiration or forfeiture. It shall be the duty of the Company immediately upon such removal, to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 14. Termination or Forfeiture of Franchise.

- (A) In case of failure on the part of the Company, its successors and assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings.
- (B) Before the City proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Company shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such ninety (90) day period the City deems that the conditions of such franchise have not been complied with by the Company and that such franchise is subject to cancellation by reason thereof, the City in order to terminate such franchise shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Company shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period.
- (C) If within such thirty (30) day period the Company does institute an action, as above provided, to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 15. Effectiveness. This ordinance shall become effective and be in force and shall be a binding contract between the Company and the City of Edgerton, Kansas, their successors and assigns, from and after the following: 1) the ordinance has been approved by the Company in writing pursuant to Section 19, 2) the ordinance has been adopted by the governing body, and 3) the ordinance has been published in the official city newspaper, all as provided by K.S.A. 12-2001. The Company shall pay for the required publication of this ordinance.

Section 16. Severability. If any provision, section or subsection of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections or subsections or applications of this ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this ordinance are declared to be severable.

Section 17. Non Waiver. Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

Section 18. Repeal. To the extent of its validity on the date of effectiveness of this ordinance, Ordinance No. 814 is hereby repealed.

Section 19. Company Acceptance. The Company shall, within sixty (60) days, after the final publication of this ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The acceptance

of this ordinance, shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Company subject to the provisions of the laws of the State of Kansas.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF EDGERTON, KANSAS ON THE 9TH DAY OF FEBRUARY, 2017.

DONALD ROBERTS, Mayor

ATTEST:

JANEICE RAWLES, City Clerk

APPROVED AS TO FORM:

PATRICK G. REAVEY, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Charter Ordinance No. 23 Exempting The City Of Edgerton, Kansas, From The Provisions Of K.S.A. 15-201, Relating to the Election of Officers, Their Terms of Office, Transitions to November Elections, the Filling of Governing Body Vacancies, and Nomination Petitions; and Providing Substitute and Additional Provisions On the Same Subject, and Repealing Charter Ordinance No. 4.

Department: Administration

Background/Description of Item: In 1968, The City of Edgerton's Governing Body approved Charter Ordinance No. 4, part of which provided for the Governing Body's members, successors, and terms – but did not reference the time-frame for elections. As customary with the time, City elections occurred in April, of each odd-numbered year. Recent State legislative enactments made mandatory that cities transition the election process to November. Other State Legislative enactments require the cities to specify whether or not the elections will be partisan or non-partisan; and also suggested that persons filing for city office must accompany their filing with signed nomination petition(s) by other qualified electors, based upon city discretion.

The Charter Ordinance would allow the City to exempt itself and make inapplicable to it the provision of K.S.A. 15-201, which applies to Edgerton, but is part of an enactment which does not apply uniformly to all cities. The Governing Body would remain as same with Mayor and five Council members, which shall be residents and qualified electors of the City of Edgerton with four-year terms. The general elections shall take place on the Tuesday succeeding the first Monday in November, 2017. Succeeding elections will be held every two years in the same manner. Elected Official positions expiration date would occur on the second Thursday of January after the November general election during the preceding year. Current terms expiring in April 2017 would expire on the second Thursday in January, 2018; terms expiring in April 2019, would expire on the second Thursday in January, 2020.

In accordance with K.S.A. 25-205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or declaration of candidacy, accompanied by any required fee. The nomination petition must be signed by five (5) qualified electors of the City of Edgerton. Statewide, it is believed most cities are choosing between five (5) and ten (10) electors requirement on the petition.

Passage of the Charter Ordinance would provide changes from current method, as noted below:

1. Provide for City Election in November of each odd-numbered year
2. Change expiration term of existing elected positions
3. Add requirement for nomination petition to be signed by five (5) City of Edgerton qualified electors
4. Repeal Charter Ordinance No. 4

Charter Ordinance No. 23 was prepared and approved by the City Attorney.

Enclosure: Draft Charter Ordinance No. 23

Related Ordinance(s) or Statute(s): K.S.A. 15-201 and KS.A. 25-205

Recommendation: Approve Charter Ordinance No. 23 Exempting The City Of Edgerton, Kansas, From The Provisions Of K.S.A. 15-201, Relating to the Election of Officers, Their Terms of Office, Transitions to November Elections, the Filling of Governing Body Vacancies, and Nomination Petitions; and Providing Substitute and Additional Provisions On the Same Subject, and Repealing Charter Ordinance No. 4.

Funding Source: N/A

Prepared by: Beth Linn, City Administrator

Date: February 6, 2017

CHARTER ORDINANCE NO. 23

A CHARTER ORDINANCE EXEMPTING THE CITY OF EDGERTON, KANSAS, FROM THE PROVISIONS OF K.S.A. 15-201, RELATING TO THE ELECTION OF OFFICERS, THEIR TERMS OF OFFICE, TRANSITIONS TO NOVEMBER ELECTIONS, THE FILLING OF GOVERNING BODY VACANCIES, AND NOMINATION PETITIONS; AND, PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND REPEALING CHARTER ORDINANCE NO. 4.

WHEREAS, existing City Charter Ordinance No. 4 references the election of a mayor and five councilmembers, and their terms, but does not reference when elections will occur; and

WHEREAS, recent State legislative enactments make it mandatory that cities transition to November elections; and

WHEREAS, the governing body believes it makes sense to clarify the city's ordinances to indicate that city elections will now occur in November of each odd-numbered year, instead of April, and set forth how this change will affect terms of office; and

WHEREAS, the recent State legislative enactments also require that cities specify whether city elections will be partisan or nonpartisan, and the governing body believes it is in the best interest of the city and its constituents that city elections remain nonpartisan; and

WHEREAS, the recent State legislative enactments also suggest that persons filing for city office must accompany their filing with signed nomination petitions by other qualified electors of the City of Edgerton, but the City has the discretion to determine how many nomination petitions are required.

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

Section 1. The City of Edgerton, Kansas, by the power vested in it by Article 12, Section 5 of the Kansas Constitution hereby elects to and does exempt itself and make inapplicable to it the provisions of K.S.A. 15-201, which applies to this city, but is part of an enactment which does not apply uniformly to all cities.

Section 2. The governing body shall consist of a mayor and five council members to be elected to terms as set forth herein. The mayor and council members shall be residents and qualified electors of the City of Edgerton, Kansas.

Section 3. Those governing body positions with terms expiring in April 2017, shall expire on the second Thursday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms expiring in April 2019, shall expire on the second Thursday in January of 2020, when the city officials elected in the November 2019 general election take office.

Section 4. General elections shall take place on the Tuesday succeeding the first Monday in November 2017. Succeeding elections will be held every two years for all such governing body positions whose terms have expired. A mayor and two council members shall be elected at one election, and the remaining three council members shall be elected at the succeeding election. The mayor and all council members shall have four year terms. The determination of what year a term is up for election shall relate back to those members of the governing body elected in the year 1965 having a term that expired in 1969 and those members of the governing body elected in the year 1967 having a term that expired in 1971.

Section 5. In case of a vacancy in the council occurring by reason of resignation, death, or removal from office or from the city, the mayor, by and with the advice and consent of the remaining council members, shall appoint an elector to fill the vacancy until the next election for that office. In case any person elected as a council member neglects or refuses to qualify within 30 days after election, the council member shall be deemed to have refused to accept the office and a vacancy shall exist.

The mayor may, with the consent of the remaining council members, appoint a suitable elector to fill the vacancy.

Section 6. In case of a vacancy in the office of mayor, the president of the council shall become mayor until the next regular election for that office and a vacancy shall occur in the office of the council member becoming mayor.

Section 7. In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by five of the qualified electors of the City of Edgerton.

Section 8. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 9. This Charter Ordinance shall take effect 61 days after the final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided by Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective upon approval by the majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, this 9th day of February, 2017.

Donald Roberts, MAYOR

Attest:

Janeice Rawles, CITY CLERK

[SEAL]

APPROVED AS TO FORM:

Patrick G. Reavey, CITY ATTORNEY