

**EDGERTON CITY COUNCIL
MEETING AGENDA
AMENDED
CITY HALL, 404 EAST NELSON STREET
September 26, 2024
7:00 P.M.**

Call to Order

1. Roll Call

_____ Roberts _____ Longanecker _____ Lewis _____ Lebakken _____ Malloy _____ Conus

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. Approve Minutes from September 12, 2024 Regular City Council Meeting

5. Approve Resolution No. 09-26-24A Establishing Fees and Rates for Permits, Licenses and Services for the City of Edgerton, Kansas

Motion: _____ Second: _____ Vote: _____

Regular Agenda

6. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

7. **Public Comments.** The City of Edgerton encourages public participation in local governance issues. To facilitate an efficient and effective meeting, persons wishing to address the City Council must sign-up before the meeting begins. Speakers must provide their name and address for the record and are limited to three (3) minutes. The maximum time limit for all speakers will be thirty (30) minutes. Comments on personnel matters or matters pending before court/other outside tribunals are not permitted. Any comments are for informational purposes only. No action will be taken.

The Mayor may modify these provisions, as necessary. The Mayor may limit any unnecessary, off-topic, or redundant comments or presentations. Speakers should address their comments to City Council members only and should not speak to fellow audience members. City Council members will not engage in a dialogue or debate with speakers. Speakers and audience members should conduct themselves in a civil and respectful manner. Disruptive conduct may result in removal from the meeting.

Business Requiring Action

8. **CONSIDER AUTHORIZING THE CITY ADMINISTRATOR TO APPROVE THE PURCHASE OF A TRUCK TO REPLACE TRUCK 528**

Motion: _____ Second: _____ Vote: _____

9. **CONSIDER ORDINANCE NO. 2170 AMENDING CHAPTER XII ARTICLE 2 REGARDING USE AND REGULATION OF CITY PARKS AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH.**

Motion: _____ Second: _____ Vote: _____

10. **Report by the City Administrator**

- 312 E 5th St. Update
- Public Works Quarterly Update
- 2024-2025 Snow Season Presentation

11. **Report by the Mayor**

12. **Future Meeting Reminders:**

- October 8: Planning Commission – 7:00 PM
- October 10: City Council Meeting – 7:00 PM
- October 10: CIP Budget Work Session – Following Council Meeting
- October 24: City Council Meeting – 7:00PM
- November 12: Planning Commission – 7:00PM
- November 14: City Council Meeting – 7:00PM

13. **CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO THE ATTORNEY/CLIENT EXCEPTION TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR FOR DISCUSSIONS RELATED TO CONTRACT NEGOTIATIONS (K.S.A. 75- 4319(B)(2))**

Motion: _____ Second: _____ Vote: _____

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

EVENTS

- 9/27: Spooky Movie Night: Hocus Pocus
- 9/28: Cops N Bobbers
- 9/28: Pumpkin Yoga
- 9/28: Park Poker
- 10/4 – 10/5: Meat Inferno
- 10/8: Tales for Tots
- 10/22: Royal Iced Candy Corn Cookie
- 10/28: Spooktacular Jack-O-Lantern Showcase

City of Edgerton, Kansas
Minutes of City Council Regular Session
September 12, 2024

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas September 12, 2024. The meeting convened at 7:00PM with Mayor Roberts presiding.

1. ROLL CALL

Clay Longanecker	present
Josh Lewis	absent
Deb Lebakken	absent
Bill Malloy	present
Ron Conus	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator, Beth Linn
- City Clerk, Alex Clower
- City Attorney, Todd Luckman
- Public Works Director, Dan Merkh
- Parks and Recreation Director, Levi Meyer
- Development Services Director, Zach Moore
- Director of Finance, Karen Kindle
- Assistant to the City Administrator, Kara Banks
- Assistant to the City Administrator, Trey Whitaker
- Recreation Superintendent, Brittany Paddock

Bond Counsel, Scott Anderson

2. WELCOME. Mayor Roberts welcomed all in attendance.

3. PLEDGE OF ALLEGIANCE. All present participated in the 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. Approve Minutes from August 22, 2024 Regular City Council Meeting
5. Approve Application PUD2024-0101, Revised Final PUD Plan/Plat for Dwyer Farms, Phase 2, located southwest of the intersection of Braun Street/207th Street and W. 8th Street/Edgerton Road, Edgerton, Kansas
6. Approve Resolution No. 09-12-24A Approving the Mayoral Appointment for Certain Public Officials for the City of Edgerton, Kansas
7. Approve Concurrence to Bid 2024 CDBG Sanitary Sewer Rehabilitation Project

Councilmember Longanecker moved to approve the Consent Agenda, seconded by Councilmember Malloy. The Consent Agenda was approved, 3-0.

Regular Agenda

8. **Declaration.** There were no declarations made.
9. **Public Comments.** There were no public comments made.

Business Requiring Action

10. CONSIDER RESOLUTION NO. 09-12-24B AUTHORIZING THE CITY OF EDGERTON, KANSAS TO CONSENT TO A PARTIAL ASSIGNMENT OF A TIF AND A CID DEVELOPMENT AGREEMENT AND AUTHORIZING THE AMENDMENT OF BOND DOCUMENTS FOR THE EDGERTON CROSSING WOODSTONE PROJECT

Mr. Anderson addressed the Council. He stated most are familiar with Woodstone project. He stated the City has previously entered into TIF and CID, a portion of TIF comes from CID Sales Tax. He stated Woodstone sold a portion to Maverik for a travel center, at the time the City did a partial assignment from Woodstone to Maverik. He stated with respect to Maverik site, they're taking on the responsibility of developing, and are now purchasing another 2.5 acres to make the project site a bit bigger. He stated the resolution for consideration does what we've previously done and allows for a partial assignment and allows the Mayor to execute the agreements. He stated this doesn't change the agreement with Woodstone in any other way, they're still obligated to develop within the timelines of the agreement.

Councilmember Conus asked if they've started anything yet.

He stated there is no building yet.

Mayor Roberts stated the roads are in and it looks a lot different.

With no further questions or comments, Mayor Roberts requested a motion to approve Resolution No. 09-12-24B, authorizing the partial assignment of a TIF and CID development agreement and authorizing the amendment of bond documents for Edgerton Crossing Woodstone Project.

Councilmember Longanecker moved to approve the motion, seconded by Councilmember Conus. Resolution No. 09-12-24B was approved, 3-0.

11. CONSIDER ORDINANCE NO. 2167 ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE THE RENEWAL OF A CONDITIONAL USE PERMIT (CU2024-0100) ALLOWING BILLBOARD FOR AD TREND, LLC ON THE PROPERTY LOCATED AT 36450 FRONTAGE ROAD, EDGERTON, KANSAS

Mr. Moore addressed the council. He stated as introduced, the next two items on the agenda if approved will issue two permits to allow for the continuous use of billboards on the property located just at 36450 Frontage Road, just off I35. He stated these billboards existed since 2010 and the current conditional use is set to expire this year so the owners are requesting extension

of conditional use for another 5 years. He stated this was reviewed and approved by both staff and planning commission against the golden criteria and City Code. A Public Hearing was held with planning commission in which the commission recommended approval.

With no questions or comments, Mayor Roberts requested motion to approve Ordinance No. 2167, approving the renewal of Conditional Use Permit, CU2024-0100.

Councilmember Malloy moved to approve the motion, seconded by Councilmember Longanecker. Ordinance 2167 was approved, 3-0.

12. CONSIDER ORDINANCE NO. 2168 ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE THE RENEWAL OF A CONDITIONAL USE PERMIT (CU2024-0101) ALLOWING BILLBOARD FOR AD TREND, LLC ON THE PROPERTY LOCATED AT 36450 FRONTAGE ROAD, EDGERTON, KANSAS

With no questions or comments, Mayor Roberts requested motion to approve Ordinance No. 2168, approving the renewal of Conditional Use Permit, CU2024-0101.

Councilmember Conus moved to approve the motion, seconded by Councilmember Longanecker. Ordinance 2168 was approved, 3-0.

13. PUBLIC HEARING TO DISCUSS A POSSIBLE DANGEROUS AND UNSAFE BUILDING EXISTING AT 301 E 5TH STREET IN THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS PURSUANT TO RESOLUTION 07-11-24A AND CITY OF EDGERTON MUNICIPAL CODE CHAPTER IV, ARTICLE 11, SECTION 4-1107

Mr. Moore stated in July staff came forward and presented a building officials report with several items listed needing work for this address. He stated the property owner is unable to be in attendance this evening but their written statement was included in the packet. He stated staff has met with property owner on multiple occasions, they have addressed the structural concerns, repaired the roof, worked on the electrical meter and have power to building as well as addressed concerns with tree debris on site. He stated staff is not recommending presenting another resolution at this time to deem this building unsafe, but do have to hold this public hearing statutorily.

Councilmember Longanecker asked if staff has inspected the inside and if it looks to be in better shape and on its way to be livable.

Mr. Moore stated yes, they have made significant progress towards that.

Mayor Roberts opened the public hearing at 7:11PM.

With no comments or questions, Mayor Roberts then closed the public hearing at 7:11PM.

Mayor Roberts stated from a building perspective as a whole, they've done the work. Mayor Roberts asked if there needs to be a motion to state what was needing addressed has been satisfied.

Mr. Luckman stated if the City deems it as owner satisfied and there is no action needed under the code, they can motion to satisfy resolution. He stated sometimes, if there are additional things that need to be checked off, it can be continued, but that doesn't sound like the case here. He stated this doesn't stop the ability of the City that if it were to fall back and be a hazard, the City can then refile.

With no further questions or comments, Mayor Roberts requested motion to satisfy the Resolution No. 07-11-24A establishing the time and place for a public hearing as September 12, 2024 at 7:00PM to determine whether the property at 301 E 5th Street is a dangerous or unsafe structure.

Councilmember Longanecker moved to approve the motion, seconded by Councilmember Malloy. The motion was approved, 3-0.

Councilmember Conus asked if the city will still plan to have periodic inspections.

Mr. Moore stated that is correct.

Mayor Roberts stated it's hard to force the owner to do interior work, but structural is done and that is the biggest priority.

**14. CONSIDER ORDINANCE NO. 2169 AMENDING ARTICLE 3 –
AGRICULTURAL AND RESIDENCE DISTRICTS - OF THE UNIFIED
DEVELOPMENT CODE (UDC) OF THE CITY OF EDGERTON, KANSAS AND
REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT
THEREWITH**

Mr. Moore stated staff did a review of the UDC, specifically the portion that speaks to R1, single family district. He stated there are a few areas that were identified to clarify as far as design standard, including driveways and fences.

He stated the UDC currently has two standards for driveways. One, is the minimum width of 18ft. He stated staff is not proposing to change that minimum width, but proposing including a maximum width allowed. He stated staff would suggest including a 35% of lot frontage being that width, while also introducing no driveway being greater than 30ft and having a 2.5ft wing on either side where it meets the roadway. He stated the max width at the property line would be 35ft, which is not greater than what's currently allowed at LPKC. He stated the thought process for that is if a trailer truck can fit, a passenger vehicle of any kind then should be able to. He stated the second clarification would be the materials allowed. The Code today states it has to be made of concrete or asphalt, that's been kept there to insure it's pavement but added

new language to stress that gravel materials are prohibited. He stated there is a clause that brick could be accent material but not to be used within the right-of-way area.

Councilmember Longanecker asked if the area is over 50ft from the road, could some other material then be used.

Mr. Moore stated the clause is drafted that once they go back 50ft from the right of way, it's then a case by case basis such as gravel or loose aggregate could be used for larger lot but it has to be reviewed.

Ms. Linn stated that was recommended by Planning Commission and really related to the rural residential area.

Councilmember Longanecker stated there's that house north of Meriwood that has a pond and pretty long driveway; if they were to update, would that all then have to be concrete?

Mr. Moore stated this change would not affect the existing condition. The way it's currently drafted, if there were to be an update, they could replace like for like.

Ms. Linn stated they could maintain the current surface.

Mr. Moore stated some houses in town have gravel pad next to their lot, but they don't have connection, they would not be able to increase the gravel surface to cover and cannot add to that.

Ms. Linn stated the key is, it's a legal non-conforming use and was done before the code. They can maintain that in its current state but cannot add on. She stated if they let it go to grass and it goes away, they cannot then go back to gravel. If the use is abandoned, it is then gone.

Mr. Moore stated there is one additional clause for the number of driveways for service to the residence. Staff is recommending that number be limited to one.

Mayor Roberts stated he's not opposed to the gravel piece, it looks different in the community area than it does in the rural residential areas.

Mr. Moore stated these changes would apply to the R1 district, not those in the agricultural district.

Councilmember Longanecker confirmed, the homes around here in the community then.

With no further questions or comments regarding driveways, Mr. Moore then moved on to the change in fence requirements.

Mr. Moore stated with the change, there will be a 25ft set back for gated driveways. He stated as far as standard fencing, it is now clearer with the update the materials allowed and prohibited. He stated the front line of the house, forward and for new development, staff is

proposing a 3.5ft high and 50% opacity, with wire type material being prohibited. He stated staff landed on 3.5ft as recommended due to pricing not changing much in going higher than that and 305ft is the standard eye height. He stated once you move from front line to back and side, standard would be 6ft as the height maximum, allowing materials like Woodstock, chain link, but prohibiting wire type material. He stated staff presented this to Planning Commission and it was recommended for approval without any stipulations.

Mayor Roberts asked if the 25ft set back for the gate is from the Right of Way or Road.

Mr. Moore stated this would typically be a foot back from the sidewalk.

There were no further questions or comments.

Ms. Linn asked if council is interested in approving ordinance as its presented.

Mayor Roberts stated he's interested in removing the piece about the 50ft gravel. He stated he understands having it in the rural residential area, not within he city/community area.

Councilmember Longanecker stated on a case by case basis would be okay, think if they have a definite reason they could come to council and ask.

Mr. Moore then asked if the motion should state that they come to council or write that in with having administrative approval.

Ms. Linn stated she thinks the strongest mechanism for our code to work, is consistency. She stated when you open the gate for case by case basis, what makes case (a) better than case (b).

Mayor Roberts agreed. He stated once you give it to one, then how do you not give it to another. He stated he doesn't like that either, makes it very difficult to be consistent. He stated we know what will happen, everyone will want to argue their point.

Ms. Linn stated she thinks we could edit the ordinance to remove section 'I'. She sated if there came a time where there was something new, we could bring the code back for revision.

Mayor Roberts stated if there is a unique situation, they could go through various process.

Mr. Moore stated that is correct, they could go to board of zoning appeals.

Mr. Luckman it's not just financial reasons too to go through that process, could be odd shaped lot, etc.

Councilmember Conus stated since it only effects the R1 district, he thinks this is acceptable.

Mayor Roberts stated he's hearing motion to approve the ordinance removing section 5.D.I.

With no further discussion, Mayor Roberts requested motion to approve the Ordinance with Section 5.D.I removed.

Councilmember Malloy moved to approve the motion, seconded by Councilmember Longanecker. The motion was approved, 3-0.

15. CONSIDER CHANGE ORDER TO CONTRACT WITH INCITE DESIGN STUDIO FOR CONSTRUCTION PHASE SERVICES AS PART OF THE GREENSPACE PROJECT FOR \$53,580

Ms. Robertson addressed the council. She stated council approved a contract with Incite Design Studio for the design of The Greenspace. The scope and budget of the project were defined and an update was brought forward in September 2022. She stated in late 2022, the design for The Greenspace was approved with a contract for Phase 2 services. She stated then in February 2023, Council approved the concurrence to bid for construction of The Greenspace and the contract for construction was awarded in July 2023 to Combes Construction. She stated construction phase services are listed within the packet. Supplemental Services were listed in the original contract document as additional costs if required or requested by the Owner. She stated a re-design for the oven hood was required and approved by the City Administrator to accommodate the approved oven for the facility. She stated Third Party Special Inspection Services are also required to ensure quality assurance of the construction materials placed during construction. IDS contracted the inspection and testing services through a third-party contractor and passed the cost to Edgerton without a markup. She stated both these additional services and costs included in this change order are included in the packet details. This change order encompasses modifications encountered at this point in the construction schedule and does not include the final overrun/underrun for the project. She stated currently there are funds available in miscellaneous contingency budget items that could cover this change order within The Greenspace total project cost. She stated it is the recommendation of Staff to approve this change order for construction phase services of The Greenspace to Incite Design Studio for a total cost of \$53,580.

Councilmember Longanecker asked, special inspection services wasn't a known cost.

Ms. Robertson stated it's listed as a supplemental service that they would then have to issue back as a change order to include otherwise the City would have to go out and find a contractor separately. She stated technically it shouldn't go through the contractor because it's checking their work.

Mayor Roberts stated it was in the contract then, just no dollar amount.

Ms. Robertson stated yes, the architect contracted it out.

Mr. Merkh stated if we were to have chosen the contractor, they would have been one of the top contractors we selected as well.

With no further questions or comments, Mayor Roberts requested motion to approve the change order to the contract with Incite Design Studio for construction phase services for a total of \$53,580.

Councilmember Longanecker moved to approve the motion, seconded by Councilmember Malloy. The motion was approved, 3-0.

16. CONSIDER CHANGE ORDER #16 TO CONTRACT WITH COMBES CONSTRUCTION FOR ADDITIONAL PAVEMENT RELATED TO CONSTRUCTION OF THE GREENSPACE PROJECT

Mr. Merkh addressed the council. He stated in July 2023, the contract was awarded for The Greenspace Project and construction began in August. He stated included in the packet is the City's Purchasing Policy which sets the approval authority for change orders. He stated in March of this year, Council was updated about change orders that were approved within the authority of the City Administrator and at that same meeting, another change order was approved with Council authority. He stated in April of this year, Council approved the change order to rebuild the sanitary sewer connection for the library. He stated since the last update, six change orders were approved with the authority of the City Administrator, these change order details are listed in the council packet.

He stated the purchasing policy requires approval by the Governing Body for Change Order #16. This Change Order is an increase not to exceed (+\$29,728.00) to have Combes Construction and their subcontractors rebuild the asphalt pavement along East 3rd Street where the alley behind the Greenspace will connect to the road and along Martin where the new parking lot entrance will connect to the road. The asphalt in these areas was found to be very thin, less than 2 inches thick in some areas and in poor condition. He stated City Staff requested Combes estimate a maximum not exceed number to restabilize the pavement subgrade and place new asphalt along segments of E 3rd Street and Martin Street.

He stated the design team has reviewed all change orders and finds the costs to be reasonable and appropriate for the scope of work involved. He stated included in the packet is detail showing the previously approved change orders to date and recommended Change Order #16 for consideration by City Council.

He stated if Change Order #16 is approved by City Council, the contract amount would be revised from \$6,761,000.00 to \$6,870,489 (+\$109,489).

He stated the change orders shown encompass modifications encountered at this point in the construction schedule and do not include the final overrun/underrun of quantities for the project. He stated contractually the project substantial completion is set for February of 2025. Any additional change orders, including the final change order, will be forwarded for authorization (as needed by policy) at a future Council date.

He stated in September, 2022 an updated project scope and budget was approved by Council with an overall project cost of \$8,704,500. The change orders with Combes Construction are within the project budget.

He stated it is the recommendation of staff to approve Change Order #16 to Combes Construction for a maximum Not to Exceed of \$29,728.00.

He stated he did want to point out that review was taken of 3rd Street on the West side of The Greenspace, and the existing road has some degradation with a lot of degradation to 3rd. He stated this plan has a not to exceed because we had a price to go to the center line of the road. He stated in that, we want to make sure we connect to sound material, we had the estimate for price to center but there are other options to come up with. He stated the discussion now is to see if there is any direction from council if we were to do a rebuild of the other half.

He stated the first option is a not to exceed, option two would be to continue with this approach but also do a mill and overlay on the West side. He stated, we do not have price yet for this but based on estimates do think that cost would be a total of \$70K including the connection they're talking about but also the base repair. He stated a complete rebuild from the alley to the north would be around \$250K. He stated we don't have a design to do a full rebuild. He stated in 2020 a PCI was completed and scored 80, today that estimate is around 50.

He stated staff would recommend to at least approve the not to exceed presented so they can get started and then if there is another option council would like to recommend, staff can begin working on the process for that.

Councilmember Longanecker asked if this other option would take care of the problem there.

Mr. Merkh stated a real repair would require base repair, there are problems with both options including some coordination with the fire district.

Councilmember Longanecker stated he doesn't see a good thought of leaving a part of the road undone to just wait for the road to fall apart a couple years down the road.

Mayor Roberts stated would we build this different than any other option that's presented right now.

Mr. Merkh stated yes, would have to look at options surrounding that but asphalt would be easier to maintain over concrete.

Ms. Linn stated could also look at improved stormwater advance by taking a look at issues with water standing on public vs. private with a potential to do valley gutter there at the curb in front of fire department to get the water to go south.

Mayor Roberts stated plan 1, is a year or two of improvement but then we'll have to go back and fix it. He asked how long plan 2 will last.

Mr. Merkh stated if we could adequate base repair, it would be north of 10 years. He stated asphalt typically has a life of 30 years with mill and overlay.

Mayor Roberts stated and option 3, how long would that last.

Mr. Merkh stated with adequate maintenance, about 30 years.

Mayor Roberts stated what is the score around over on Martin.

Mr. Merkh stated high 80s in 2020 and would likely be slightly less than that now, it's still in pretty good shape.

Ms. Linn stated the piece by the Fire Department is such a small piece of the road but has a ton of use. She stated the key is to balance out the long list of things we want to accomplish with the stewardship of the builders. She stated the recommendation hearing is plan b, secondary to that then is how to finance. Is this then included as part of the project?

Mr. Luckman asked if this was all in the beginning change order and if there were specs in the contract that would apply to reconstruction like this, could do an addendum to the contract.

Mayor Roberts stated is it possible to add into Second Street project.

Ms. Linn stated possible but with complete rebuild option.

Councilmember Malloy stated this makes more sense to him.

Mayor Roberts stated the work has to be done and we have to spend the money to do so, this might be worth looking into.

Mr. Merkh stated yes, it can be added with conversations with the contracts also, there will be costs with it not being connected. He stated there is also some potential for scheduling problems as this has to be done in conjunction with the Fire Department. He stated it's definitely doable, just need to have conversations to set it in stone.

Ms. Linn stated the way this action is worded, it's for a not to exceed roughly \$30K. Is the council direction to minimize to most extent possible and be conservative there in ht connection.

Mayor Roberts stated it's coming back one way or another, can't do full project within The Greenspace, we don't have the engineering for that.

Mr. Merkh stated current contract with RIC for Second Street, this would be only contract that would require a change order for this to happen, would need to define where, when, and costs, etc.

Mayor Roberts stated he thinks we could prioritize this as part of the second street project since it hasn't gone to bid yet.

Ms. Linn stated we could contrast the documents a lot of ways, if we do concrete there vs. asphalt, etc. She asked what the direction of Council would be there.

Mayor Roberts stated he's in favor of doing the minimal amount right now to make it operational and at the best state it can be knowing we can add this as a better construct to the Second Street project.

With no further discussion, Mayor Roberts then requested motion to approve the not to exceed for Change Order #16 for \$29,728.

Councilmember Longanecker moved to approve the motion, seconded by Councilmember Malloy. The motion was approved, 3-0.

Ms. Linn stated staff will work to bring back information of how further construction there could work with the Second Street project and evaluate what best material should be used there.

17. Report by the City Administrator

- Discussion Regarding Updated Park Regulations

Mr. Meyer addressed the council and handed out a memo regarding code changes for the City parks including park hours, reservation costs, violations, etc.

There were no questions or comments. Mayor Roberts stated it is staffs intent to bring this back in a couple weeks. He stated if there are questions or comments that arise while reviewing, please reach out to Beth so staff can have an answer or solution with legal review if needed, by the next meeting.

Ms. Linn stated with approval of the ordinance, signs will be produced will all info that is needed at the parks.

Mayor Roberts asked if there is anything specific that has to be done regarding tort claims.

Mr. Luckman stated limitations works, there is a generalized test of the statute. He stated as long as you're clearly establishing rules/regulations, then it attaches.

18. Report by the Mayor

Mayor Roberts reported that he met the new owner of the Cottonwood building. He stated the owner seems to want to keep it as an office and his daughter may do some tutoring.

19. Future Meeting Reminders

Mayor Roberts reminded the Council of the future meetings for the Council and Planning Commission.

20. Adjourn

Councilmember Longanecker moved to adjourn, seconded by Councilmember Conus. The meeting was adjourned at 8:21PM with a 3-0 vote.

Submitted by Alex Clower, City Clerk

DRAFT

City Council Action Item

Council Meeting Date: September 26, 2024

Department: Administration

Agenda Item: Consider Resolution No. 09-26-24A Establishing Fees and Rates for Permits, Licenses and Services for the City of Edgerton, Kansas

Background/Description of Items:

The City of Edgerton updates the Fee Resolution to reflect the changes in rates for the water/wastewater charges for the next calendar year. Below are those changes.

Water/Wastewater Rates for 2025

Staff has worked closely with Raftelis Financial Consultants the last few years to complete a biennial rate study for both water and wastewater utilities. In their report, Raftelis recommends a small rate increase each year of the forecast period to avoid larger rate increases. The rate increases recommended for 2025 are listed below. The 2025 Budget adopted by the Council on August 22, 2024, included these rate increases. The attached fee resolution formally adopts the rate increases and sets the effective date as the **January 1, 2025 utility bills.**

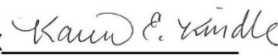
Utility	2025 Average Rate Increase	Typical Customer Bill 2024 (3,000 gallons)	Typical Customer Bill 2025 (3,000 gallons)
Water	\$2.15	\$44.78	\$46.93
Wastewater	\$1.51	\$37.02	\$38.53

Related Ordinance(s) or Statue(s): Ordinance No. 1006

Funding Source: n/a

Budget Allocated: n/a

Finance Director Approval:

x 
Karen Kindle, Finance Director

Recommendation: Approve Resolution No. 09-26-24A Establishing Fees and Rates for Permits, Licenses and Services Within the City of Edgerton, Kansas.

Enclosed: Draft Fee Resolution – redlined

Prepared by: Alex Clower, City Clerk

RESOLUTION NO. ~~10-19-23D09-26-24~~

A RESOLUTION ESTABLISHING FEES AND RATES FOR PERMITS, LICENSES AND SERVICES WITHIN THE CITY OF EDGERTON, KANSAS.

WHEREAS, pursuant to Ordinance No. 1006, the City Council indicated that all City Fees that previously were spread throughout the City Code, and would require an Ordinance amending that particular part of the Code to change the fee, would instead be consolidated into a City Fee Resolution such that all fees could be better monitored and, any revisions thereto, could be accomplished via resolution instead of an ordinance; and

WHEREAS, City Staff continue to work on consolidating said fees into this Fee Resolution and, as those fees are added in, revised versions of this Resolution will be presented for Council approval.

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

SECTION 1: FEES.

The following fees shall be due and payable to the City Clerk:

OPEN RECORDS

Prepayment	Required if total estimate exceeds \$25.00
Production/Inspection Fee, if item is not readily available	\$20.00 per request
Copying/Facsimile Fee (no charge for first ten (10) pages)	\$0.10 per page after first ten
Mailing Fee	Actual mailing costs
Staff Searches, one (1) hour or more	
Records custodian/administrative staff,	\$30.00 per hour
Dept heads/City Administrator/Elected Officials	\$50.00 per hour
Contracted Professionals (IT, Attorneys, etc.)	Hourly rates charged to City

ANIMAL CONTROL

Animal Registration Fees:

Neutered/Spayed dog or cat	\$5.00
Unneutered/Non-spayed dog or cat	\$25.00
Seniors (age 60+ plus) with neutered/spayed dog or cat	\$No Charge
Chicken registration	\$50.00
Chicken registration for senior residents (60-plus age 60+)	\$25.00
Breeder Fee	\$500.00
Late Registration Fee	\$25.00
Duplicate Tag Fee	\$1.00

Animal Redemption Fees:

Registered	
First pick up	\$No charge
Second pick up	\$50.00
Third pick up	\$100.00
Non-Registered, Neutered/Spayed	
First pick up	\$50.00
Non-Registered, Unneutered/unspayed	
First pick up	\$100.00
City provided rabies vaccination	\$50.00
Habitual Violator (animal picked up more than three times in one year)	\$250.00
Boarding Fee	\$10.00 per day

Animal Adoption Fees:

Neutered/Spayed Pet	\$50.00
Pet Neutered/Spayed by the City	\$100.00

BEVERAGES

Cereal Malt Beverages

General Retailer	\$100.00
Limited Retailer	\$35.00
Change of Location Fee	\$5.00

Drinking Establishments

License Fee – Biennial occupation tax	\$500.00
---------------------------------------	----------

Private Club

License Fee – Class A Biennial occupation tax	\$500.00
License Fee – Class B Biennial occupation tax	\$500.00

Special-EventSpecial Event

Permit Fee	\$50.00
------------	---------

Caterer

Permit Fee	\$250.00
------------	----------

Retail

Permit Fee Biennial occupation tax \$500.00

BUILDINGS AND CONSTRUCTION

Permit Fees – Non-Residential Building

<i>Total Valuation</i>	<i>Fee</i>
\$1.00 to \$500	\$22.00
\$501.00 to \$2,000.00	\$22.00 for the first \$500.00 plus \$2.75 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$63.00 for the first \$2,000.00 plus \$12.50 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001 to \$50,000.00	\$352.00 for the first \$25,000.00 plus \$9.00 for each additional \$1,000.00, or fractions thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$580.00 for the first \$50,000.00 plus \$6.25 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$895.00 for the first \$100,000.00 plus \$5.00 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,000.00 to \$1,000,000.00	\$2,855 for the first \$500,000.00 plus \$4.25 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,000.01 and up	\$4,955.00 for the first \$1,000,000.00 plus \$2.75 for

A plan review fee shall be assessed at sixty-five percent (65%) of the calculated building permit fee. each additional \$1,000.00, or fraction thereof

Other Inspections and Fees

Inspections outside of normal business hours (minimum charge – two hours)	\$50.00 per hour
Re-inspection fees assessed	\$50.00 per hour
Inspections for which no fee is specifically indicated (minimum charge – one-half hour)	\$50.00 per hour
Additional plan review required by changes, additions or revisions to plans (or total hourly cost to the jurisdiction, whichever is greatest. Cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of employees involved)	\$50.00 per hour
For use of outside consultants for plan checking or inspections (costs include administrative and overhead costs)	Actual Costs

Permit Fees – Residential Building

<i>Total Valuation</i>	<i>Fee</i>
\$1 to \$500	\$13
\$501 to \$2,000	\$13 for first \$500.00 plus \$1.50 for each additional \$100.00 or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$35.50 for the first \$2,000.00 plus \$8.00 for each additional \$1,000 or fraction thereof, to and including \$25,000.
\$25,001 to \$50,000	\$219.50 for the first \$25,000 plus \$6.50 for each additional \$1,000 or fraction thereof, to and including \$50,000.
\$50,001 to \$100,000	\$381.00 for the first \$50,000 plus \$4.00 for each additional

	\$1,000 or fraction thereof, to and including \$100,000.
\$100,001 to \$500,000	\$582.00 for the first \$100,000 plus \$3.00 for each additional \$1,000 or fraction thereof, to and including \$500,000.
\$500,000 and up	\$1,782.00 for the first \$500,000 plus \$2.00 for each additional \$1,000 or fraction thereof.

A plan review fee shall be assessed at sixty-five percent (65%) of the calculated building permit fee.

Other Inspections and Fees

Inspections outside of normal business hours (minimum charge – two hours)	\$50.00 per hour
Re-inspection fees assessed	\$50.00 per hour
Inspections for which no fee is specifically indicated (minimum charge – one-half hour)	\$50.00 per hour
Additional plan review required by changes, additions or revisions to plans (or total hourly cost to the jurisdiction, whichever is greatest. Cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of employees involved)	\$50.00 per hour
For use of outside consultants for plan checking or inspections (costs include administrative and overhead costs)	Actual Costs
Certificate of Occupancy	\$10.00
Fire Review and Inspection - Core and Shell 100 square feet to 12,500 square feet Multi-Family (R-3) Commercial Zoning Districts (C-D, C-1, C-2) Industrial Zoning Districts (B-P, L-P, I-G, I-H)	\$250.00
Fire Review and Inspection - Tenant Finish	\$250.00

100 square feet to 12,500 square feet
 Multi-Family (R-3)
 Commercial Zoning Districts (C-D, C-1, C-2)
 Industrial Zoning Districts (B-P, L-P, I-G, I-H)

Fire Review and Inspection - Core and Shell 12,501.00 square feet or greater Multi-Family (R-3) Commercial Zoning Districts (C-D, C-1, C-2) Industrial Zoning Districts (B-P, L-P, I-G, I-H)	\$0.02 per square foot
---	------------------------

Fire Review and Inspection - Tenant Finish 12,501 square feet or greater Multi-Family (R-3) Commercial Zoning Districts (C-D, C-1, C-2) Industrial Zoning Districts (B-P, L-P, I-G, I-H)	\$0.02 per square foot
---	------------------------

Permit Fees - Fuel Gas Code

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

Permit Fees – Plumbing Code

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

Permit Fees – Mechanical Code

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour

Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour
--	------------------

Permit Fees – Electrical Code

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Issuance of annual permit	\$250.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

Moving Buildings

House/building/derrick or other structure permit	\$250.00 + Staff Time to monitor the move
--	---

Oil and Gas Wells

Permit Fee	\$150.00 per well
License Fee	\$25.00 per well

Fire Insurance Proceeds Fund

Final Settlement Funds (K.S.A. 40-3901 <u>et seq.</u>)	\$5,000.00 or 10% of covered claim payment, whichever is less
---	---

BUSINESS LICENSE

General License	\$5.00
Solicitor’s License – Investigation Fee	\$50.00
Solicitor’s License – Issuance Per day	\$25.00
Solicitor’s License – Six Months	\$250.00
Adult Entertainment Business License	\$250.00
Adult Entertainment Manager’s License	\$20.00
Adult Entertainers License	\$20.00
Adult Entertainment Service’s License	\$20.00
Mobile Food Vender License	\$100.00
Block Party	\$25.00

FIREWORKS

Fireworks – Temporary Retail Sale Application Fee	\$500.00
Fireworks – Temporary Retail Sale Bond	\$1000.00
Public Display Application Fee	\$100.00

SOLID WASTE

Customer Unit Charge – Monthly (One trash container and one recycle container)	\$7.50
Extra Trash Container Charge – Monthly	\$5.00
Extra Recycle Container Charge – Monthly	\$1.00

PUBLIC PROPERTY

City Hall

Community Hall Rental – Residents (24-hrs midnight)	\$100.00
Community Hall Rental – Non-Residents (24-hrs midnight)	\$150.00
Rental Deposit Required for Rental (Refundable) (Refundable - Due at time of Reservation)	\$50.00

Formatted: Font: Bold, Underline

Formatted: Indent: Left: 0", Hanging: 0.5"

Ball Fields~~Overnight Camping (by special permit) — \$10.00~~

Baseball Field #1 – 50% Resident Roster	Free
Baseball Field #1 – Non-Residents	\$10 / hour
Rental Deposit Required for Field Key Rental (Refundable) (Due at time of Reservation)	\$50.00

Formatted: Font: Bold, Underline

Formatted: Indent: Left: 0", Hanging: 0.25", Tab stops: 4.5", Left

Formatted: Indent: First line: 0"

Martin Creek Park Lights	
-Ball field #1 Lights	\$20 / hour
-Horse Shoe Pit Lights	\$20 / hour

Park Shelters

Park Shelters – Residents	No charge
Park Shelters – Non-residents	\$50 per half day

Formatted: Font: 11 pt, Bold, Underline

Formatted: Indent: First line: 0.25"

~~Right Of Way Permit — \$100.00~~

Formatted: Font: Bold, Underline

Miscellaneous

~~Overnight Camping (by special permit) — \$10.00~~

Formatted: Indent: Left: 0", First line: 0"

Formatted: Font: Bold, Underline

Formatted: Indent: Left: 0.25", Hanging: 4.25"

~~Right-Of-Way Permit — \$100.00~~

Formatted: Indent: Left: 0", First line: 0"

PUBLIC OFFENSES

Non-sufficient Funds/Returned Check Fee	\$25.00
Abatement Administrative Fee	\$50.00 per abatement
Abatement Administrative Fee-Tall Weed/Grass	\$50.00 for the first abatement with the fee increasing by \$50.00 for each subsequent abatement

UNCONVENTIONAL VEHICLES

Permit - initial sticker	\$100.00
Permit - annual renewal with no infractions	\$25.00
Permit - annual renewal with infractions	\$100.00

UTILITIES - WATER

Water Rate

WATER
[Customer Service Charge + Vol. Rate = Monthly Bill]

Customer Service Charge

Meter Size	Inside City	Outside City
5/8"	\$23.86 <u>25.00</u>	\$35.73 <u>37.43</u>
1"	\$28.35 <u>29.70</u>	\$42.49 <u>44.51</u>
1 1/2"	\$35.83 <u>37.54</u>	\$53.72 <u>56.27</u>
2"	\$44.84 <u>46.97</u>	\$67.22 <u>70.41</u>
3"	\$65.84 <u>68.97</u>	\$98.70 <u>103.39</u>
4"	\$95.81 <u>100.37</u>	\$143.68 <u>150.50</u>
6"	\$170.76 <u>178.88</u>	\$256.10 <u>268.26</u>
8"	\$260.72 <u>273.11</u>	\$391.06 <u>409.64</u>

Volumetric Rate [per 1,000 gallons]

Tiers	Inside City	Outside City
0-2,000	\$4.93 <u>5.17</u>	\$7.36 <u>7.71</u>

2,001-10,000	\$11.06 <u>11.59</u>	\$16.54 <u>17.33</u>
>10,000	\$15.24 <u>15.97</u>	\$22.81 <u>23.89</u>

Water System Development Fees

System Development Fee (based on size of water meter)

<u>METER SIZE</u>	<u>CHARGES</u>
5/8"	\$4,300
1"	\$10,750
1.5"	\$21,500
2"	\$34,400
3"	\$64,500
4"	\$107,500
6"	\$215,000
8"	\$344,000

Water Connection Fees

Connections Charge: Inside City - Regular (¾-inch service, with ¾-inch by 5/8 inch-meter)	\$1,250.00
Connections Charge: Outside City - Regular (¾-inch service, with ¾-inch by 5/8-inch meter)	\$7,500.00
Connections Charge: Other Sizes	TBD by Governing Body
Water Service Application (inside city limits)	\$30.00
Water Service Application (outside city limits)	\$75.00
Cut Off Fee (during normal business hours)	\$25.00
Afterhours Cut off Fee (during non-business hours)	\$100.00
Meter Testing (if meter is correct)	\$10.00
Hydrant Meter Refundable Deposit	\$1,500.00

UTILITIES - WASTEWATER

Wastewater Rate

WASTEWATER

[Customer Service Charge + Vol. Rate = Monthly Bill]

Customer Service Charge

~~\$8,628.28~~

Volumetric Rate

~~\$9.97~~ 9.58 [per 1,000 gallons]¹

LPKC Infrastructure

\$1.00 [per 1,000 gallons]

¹ For residential use properties, Section 15-305(b) of Article 3 of Chapter XV of the City Code will determine the level of gallons.

Wastewater System Development Fees

System Development Fee (based on size of water meter)

<u>METER SIZE</u>	<u>CHARGES</u>
5/8"	\$4,800
3/4"	\$6,600
1"	\$12,000
1.5"	\$24,000
2"	\$38,400
3"	\$72,000
4"	\$120,000
6"	\$240,000
8"	\$384,000

Wastewater Connection Fees

Connection Charge and Inspection Fee \$750.00
Wastewater Service Application Fee \$30.00

Wholesale Wastewater Rate \$3.68 [per 1,000 gallons]

Significant Industrial User Fees

Permit fee \$250
User Admin Fee \$250

Private Disposal System Fees

Installation Permit	\$250.00
Significant Alteration and Repair Permit	\$100.00
Minor Repair	\$50.00
Non-Residential Annual Operation Permit (first year fee included in Installation Permit Fee)	\$50.00
Septic/Holding Tank Removal	\$100.00
Inspection, non-business hours (2-hour charge minimum, additional to inspection fee)	\$15.00 per hour

VEHICLE PERMITS

Restoration Permit	\$250.00/new or renewal
--------------------	-------------------------

ZONING AND DEVELOPMENT FEES

Manufactured Home Park License	\$100.00
Temporary Mobile Home Fee	\$25.00
Planned Unit Development: Conceptual Plan/Preliminary Plat Fee	\$200.00 plus \$2.00 per lot
Final Plan/Final Plat Fee	\$300.00 plus \$5.00 per lot
Board of Zoning Appeals Variance or Appeal Fee	\$250.00 plus publication fees
Rezoning Fee	\$250.00 plus publication fees
Conditional/Special Use Permit Fee	
Residential Zoning Districts	\$100.00 plus publication fees
Non-Residential Zoning Districts	\$1,000.00 plus publication fees
Temporary Construction Activities	
Permit Fee	\$500.00
Amended Application Requiring Another Planning Commission Review, Post Approval	\$250.00
Expired Permit – treated as a new permit	\$500.00
Blasting Permit (one (1) year)	\$500.00
Home Occupation Permit Fee	\$5.00
Preliminary/Final Site Plan Fee	\$200.00 plus \$10.00 per acre plus publication fees
Site Plan Re-review Fee	\$200.00 plus \$1.00 per acre

Revised Site Plan Fee	
Requiring Planning Commission Approval	\$250.00
Requiring Zoning Administrator Approval	\$100.00
Preliminary Plat Fee	\$300.00 plus \$10.00 per lot plus publication fees
Preliminary Plat Re-review Fee	\$300.00 plus \$10 per lot
Final Plat Fee	\$300.00 plus \$10.00 per lot plus publication fees
Final Plat Re-review Fee	\$300.00 plus \$10 per lot
Lot Split Fee	\$100.00
Street Excise Tax	\$0.10 per square foot of final plat
Park Impact Fee/Residential	\$300.00 per lot
Park Impact Fee/Commercial	\$0.08 per square foot of building
Park Impact Fee/Industrial	\$0.08 per square foot of building
New Street Light Fee	\$250.00
New Public Improvement Plan Review Fee	
Street/Stormwater/Water/Sewer	\$300.00
Re-review Fee	\$300.00
New Public Improvement Inspection Fee	
Street/Stormwater	Actual cost of inspection + 2% administrative fee
Water/Sewer	Actual cost of inspection + 2% administrative fee
Land Disturbance (greater than one acre)	\$250.00
Flood Plain Development Permit	\$75.00
Zoning Verification Letter	\$75.00 per request
Temporary Certificate of Occupancy Extension	\$100 per request
Temporary Sales and Events Permit	No fee

Sign Fees

Home Occupation Sign	\$35.00
Temporary/Banner Sign	\$35.00
Pole Sign	\$125.00
Monument Sign	\$35.00
Façade/Wall Sign	\$35.00
Mobile Home Park Sign	\$35.00
Subdivision Name Sign	\$35.00
Apartment Complex Name Sign	\$35.00

SECTION 2: Effective Date. This Resolution shall become effective immediately upon adoption by the Governing Body with the changes to the water and wastewater rates becoming effective on the January 1, 2025 utility bill.

SECTION 3: Repealer. Any fees or resolutions inconsistent herewith are hereby repealed and said City Code references (along with other specific fee references throughout the City Code that will now be controlled by the Fee Resolution) will be formally withdrawn via a future ordinance.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS ON THIS ~~19TH~~ DAY OF OCTOBER, 2023-26TH DAY OF SEPTEMBER, 2024.

Formatted: Superscript

DONALD ROBERTS, MAYOR

ATTEST:

ALEXANDRIA CLOWER, CITY CLERK

APPROVED AS TO FORM:

~~LEE W. HENDRICKS, CITY ATTORNEY~~ TODD LUCKMAN for
Stumbo Hanson, LLP, City Attorneys

City Council Action Item

Council Meeting Date: September 26, 2024

Department: Public Works

Agenda Item: Consider Authorizing the City Administrator to Approve the Purchase of a Truck to replace truck 528.

Background/Description of Item:

On August 22, 2024, staff presented the recommended 2025 Budget to City Council for approval. Part of this presentation staff made recommendations for funding of the Current Vehicle & Equipment Program 2025-2029. Outlined in this recommendation was the purchase of a Class 5 Truck with flat-bed (1-ton) to replace Truck 528 which has reached the end of its useful life. The budget set for this vehicle is \$74,250 for the truck, \$9,500 for the snowplow, and \$8,400 for the salt spreader. The total budget for the truck purchase and the upfit is \$92,150.

The Vehicle and Equipment Policy requires the preparation of the specifications for the replacement of equipment with an effort for those to be as "standard" as possible to provide economical and efficient repairs. It also requires that the city first use cooperative purchasing partnership if available. In this case there are currently no options for cooperative purchasing. In the current state of the market, there is not an ability to order vehicles as has been done in the past. With this process staff will be taking the lowest most qualified bid.

The new method for purchasing vehicles is off lot. This new method consists of the following factors that the City has not had to deal with in the past: (1) the price will vary depending on what vehicle a dealer receives that meets the City's specifications; (2) these purchases do not include any incentives or price breaks; (3) the City is competing with the public, private contractors, and others to secure an available vehicle; (4) these vehicles are not typically held by the seller to allow City Staff time to obtain authorization for the purchase. This new purchasing environment for vehicles requires flexibility in being able to authorize the purchase with an extremely fast turnaround, usually within 0-24 hours (with a deposit). This is a different approach than in the past when staff would present cooperative purchasing bids and request authority for an amount that was set in the bids and then order the vehicle.

Public Works Vehicle Specification:

Class 5 (1-Ton/F-350 or similar)

- Extended Cab or Crew Cab

- 4X4
- Long Bed
- Power Group – Power locks, power and heated mirrors, power windows
- Cruise Control
- Upfitter Switches
- Limited Slip

Estimated Dealership Cost: \$49,987 to \$75,670 (9.6.2024)

Estimated Aftermarket Upfit Options: Cost \$25,300.

- Emergency Lighting
- Snowplow
- Salt Spreader
- Flat bed

Total Price as Optioned = \$75,287 to \$100,970.

Staff recommends giving the City Administrator the authority to approve the purchase of a Class 5 truck (1-ton) off lot and the upfit at \$92,150, as outlined in the Vehicle & Equipment Current Program. The payment source for the budgeted amount is the Equipment Reserve Fund-General..


Staff will look at multiple dealerships in the metro area, as well as dealers in the region not exceeding a distance of 250 miles to find a unit that meets the specifications outlined above as well as one that fits within the proposed budget. The attached pricing summary shows available inventory and pricing in that 250 mile radius as of publication of the packet. As noted above, pricing and availability can change.

Staff recommends disposing of Truck 528 via online auction.

Related Ordinance(s) or Statue(s): N/A

Funding Source: General Fund

Budget Allocated: Total \$92,150

x 

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Authorize the City Administrator to approve the vehicle purchase and upfit to replace truck 528, in an amount not to exceed \$92,150 and approve disposal of Truck 528 via online auction.

Enclosed: Pricing Summary

Prepared by: Dan Merkh, Public Works Director

Public Works Vehicle Specification

Class 5 (1-Ton)
 Ext. Cab - Or Crew Cab
 4X4
 Long Bed
 Power Group
 Cruise Control
 Upfitter Switches
 Limited Slip

Model	Model/Unit Specification	Unit Cost
Ford F 350	EXLB, XL, 4x4, SRW - 6.8L Gas	
	1 Olathe Ford	\$ 62,236.00
	2 Hamilton Ford, Crane, MO	\$ 55,060.00
	3 Woodhouse Ford, Blair, NE	\$ 55,935.00
		Av. \$ 57,743.67

Total Cost for Up-Fit Unit

\$	87,536.00
\$	80,360.00
\$	81,235.00

Model	Model/Unit Specification	Unit Cost
Ram 3500	CCLB, Tradesman, 4x4, SRW - 6.4L Gas	
	1 Briggs CDJR, Topeka, KS	\$ 55,340.00
	2 Matthews CDJR, Vinita, OK	\$ 49,987.00
	3 Sid Dillon CDJR, Lincoln, NE	\$ 51,460.00
		Av. \$ 52,262.33

\$	80,640.00
\$	75,287.00
\$	76,760.00

Model	Model/Unit Specification	Unit Cost
Chevy 3500	CCLB (Flat-bed), LT, 4x4, DRW - 6.6 L Gas	
	1 Macke Motors, Lake City, IA	\$ 61,395.00
		Av. \$ 61,395.00

\$	78,695.00
----	-----------

Model	Model/Unit Specification	Unit Cost
GMC 3500	EXLB, SLE, 4x4, SRW - 6.6 L Gas	
	1 Robert Brogden	\$ 59,272.00
		Av. \$ 59,272.00

\$	84,572.00
----	-----------

Equipment Up-Fit	Unit Cost
Plow, Spreader, Emergency Lighting	\$17,300
Flat-Bed	\$8,000

City Council Action Item

Council Meeting Date: September 26, 2024

Department: Parks and Recreation

Agenda Item: Ordinance No. 2170 amending Chapter XII of the Municipal Code regarding use and regulation of City Parks and repealing all ordinances in conflict therewith.

Background/Description of Item:

With the impending opening of The Greenspace and Glendell Acres Park, staff determined existing codes related to parks and recreation should be updated. The current Chapter 12 of Edgerton City Codes have been in place since at least 2013.

Our primary goal of this update was to keep the language simple, and consistent across all chapters of the code. We sought to allow staff the opportunity to post specific rules and regulations on-site at properties. A common example would be code stating damaging city properties is prohibited, then using on-site signs to prohibit hanging on basketball rims.

We sought to develop a comprehensive chapter by comparing codes from other agencies and adding relevant sections into our own codes. We reviewed similar codes from the following communities: Olathe, Overland Park, Merriam, Shawnee, Gardner, Ottawa, Wellsville, Sterling, and the Johnson Co. Park and Recreation District.

The proposed update combines the previous Chapter 12 Articles 1 & 2 into new Article 1 to include all "City Properties" such as park lands, recreational areas and other City facilities.

These updates and accompanying overview were presented to Council September 12, 2024.

Related Ordinance(s) or Statue(s): Edgerton City Code Chapter 12 Articles 1 & 2

Funding Source: n/a

Budget Allocated: n/a

Finance Director Approval: n/a

Recommendation: Approve Ordinance No. 2170 amending Chapter XII of the Municipal Code regarding use and regulation of City Parks and repealing all ordinances in conflict therewith.

Enclosed: Ordinance #2170

Prepared by: Levi Meyer, Parks and Recreation Director

ORDINANCE NO. 2170

AN ORDINANCE AMENDING CHAPTER XII ARTICLE 2 REGARDING USE AND REGULATION OF CITY PARKS AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH.

BE IT ORDAINED BY THE CITY OF EDGERTON, KANSAS:

Section 1. AMENDED CODE

That Article 2, Chapter XII of the City Code is amended, by replacement of existing code provisions with the following:

12-101. PURPOSE.

The purpose of this Code is:

- (a) To provide quality park facilities and recreation opportunities to the citizens of the City of Edgerton; and
- (b) To prescribe rules, regulations and enforcement procedures for public safety and awareness, to conserve park resources, to emphasize the highest standards for services and programs, and to ensure that the future recreational needs of the City of Edgerton citizens are addressed.

12-102. SCOPE.

This Code shall be applicable to all lands, buildings, and facilities (hereinafter collectively referred to as "Properties" or individually referred to as "Property") dedicated or used for public park, playground or recreational uses and that are under the jurisdiction of the City of Edgerton, Kansas (hereinafter "City") and to all persons who enter upon such Properties. The Properties shall include the following parklands and recreational areas:

Martin Creek Park (*20200 Sunflower Rd.*)

Manor Park (*410 1st St.*)

Glendell Acres Park (*310 W. Edgewood Dr.*)

Edgerton Lake (*501 E. 6th St.*)

Bridgewater Lake (*519 W. Martin St.*)

The Greenspace and Lawn (*303 E. Nelson St.*)

- (a) This Code shall also be applicable to all Properties dedicated or used for public park, playground or recreational uses and acquired by the City of Edgerton after the date of publication of this Code and, further, the Properties need not be named within the Code in order for the Code to be enforceable in the Properties.

12-103. DISCLAIMER OF LIABILITY.

- (a) This Code shall not be construed nor interpreted as imposing upon the City of Edgerton or any of their officials, officers, agents, or employees
 - 1) any liability or responsibility for damages to any property; or
 - 2) any liability or responsibility for any personal injury.

- (b) In addition, neither the City of Edgerton nor any individual duly authorized to enforce this Code, who acts in good faith and without malice in the performance of official duties shall assume or have imposed upon them any personal liability, and they are hereby relieved from personal liability for damage that may occur to any person or property as a result of any act required by this Code in the discharge of official duties.

12-104. AMENDMENTS AND ADDITIONS.

This Code may be supplemented, or its provisions may be amended by resolution duly adopted by the City Council of Edgerton, Kansas, (hereinafter referred to as "governing body") and any such amendments or additions shall be incorporated within and codified as a part of this Code.

12-105. DEFINITIONS.

- (a) "Adult" means any person who is 18 years of age or older.
- (b) "Alcoholic Liquor" means alcohol, spits, wine, beer and every liquid or solid, patented or not, containing alcohol, sprits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage. *(3-201)*
- (c) "Bicycle" means every device propelled by human power upon which any person may ride, having two (2) tandem wheels. Bicycle also includes those 'electric assisted bicycles' that are pedal assisted, as defined in Kansas law KSA 8-1489, and any amendments thereto.
- (d) "Cereal Malt Beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute but does not include any such liquor which is more than 3.2 percent alcohol by weight. *(3-201)*
- (e) "Fireworks" mean those items as defined by the rules and regulations of the Kansas state fire marshal, and shall include but not be limited to: firecrackers, torpedoes, sparklers, Roman candles, sky rockets, pin wheels, cap or toy pistols (except such pistols or any like device designed to discharge paper caps containing not more than .25 grains of explosive mixture), canes, bombs, cannons or other like devices and all classes of fireworks that may be shot into the air or propelled over the ground by explosive discharges or any device using blank cartridges. *(4-20)*
- (f) "Motor Vehicle" Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively on stationary rails or tracks. *(14-301)*
- (g) "Motorized Wheeled Device" is any device with wheels that is propelled by a motor or battery, used to transport persons, and is not subject to being registered as a vehicle by the Division of Vehicles of the Kansas Department of Revenue. *(11-702)*
- (h) "Refuse" shall include all garbage and/or rubbish or trash. *(8-501)*
- (i) "Sidewalk" is that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians. *(11-702)*
- (j) "Street or Highway" is the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic. Where the word "highway" or the word "street" is used in this Article, it shall mean street, avenue, boulevard, thoroughfare, trafficway, alley and other public way for vehicular travel by whatever name unless the context clearly indicates otherwise. *(11-702)*
- (k) "Trolling Motor" means a self-contained unit that includes an electric motor, propeller and controls, and is affixed to an angler's boat, canoe or kayak, either at the bow or stern.
- (l) "Watercraft" means every vessel designed to be propelled by machinery, oars, paddles, or wind action upon a sail for navigation on the water.

12-106. POLICE JURISDICTION OVER CITY PROPERTIES.

The City Administrator, or their designee, and law enforcement officers of the City shall have full power to enforce City ordinances and regulations governing all Properties and shall maintain order therein and thereon.

12-107. RULES AND REGULATIONS.

The City Administrator, or their designee, is authorized to establish rules and regulations pertaining to the use of City Properties and activities therein and thereon. Such rules and regulations may be amended by the City Administrator, or their designee, from time to time. A copy of such rules and regulations shall be available at the office of the City Administrator, or their designee, during regular hours of operation. It shall be unlawful to violate such rules and regulations.

The following restrictions are placed on the use of all City Properties:

- (a) Glass bottles and glass containers are prohibited.
- (b) Persons are prohibited from using or occupying playgrounds or playground equipment other than for the purposes intended.
- (c) The City Administrator, or their designee, shall establish rules and regulations for use of athletic fields, courts, and other specialized recreational areas.
- (d) It shall be unlawful for any person, except duly authorized City employees, to ice skate, ice fish, sled, drive or walk on or in the ice of any City water body.
- (e) It shall be unlawful for any person to play or practice golf in any City Facility.

12-108. PARK HOURS.

Neighborhood Parks (*Manor Park, Glendell Acres Park, Bridgewater Lake, and The Greenspace Lawn*) shall be closed for use by the public between the hours of Sunset and Sunrise.

Community Parks (*Martin Creek Park and Edgerton Lake*) shall be closed for use by the public between the hours of 11:00 p.m. and 5:00 a.m. except on Fridays and Saturdays when the same shall remain open until 12:00 a.m.

Parks may be closed temporarily, or opening hours extended temporarily in case of emergency, adverse weather conditions, maintenance, or unusual circumstances as determined and ordered by the City Administrator or designee.

12-109. REFUSE DISPOSAL, LITTERING.

While on city property, all persons shall properly dispose of refuse and trash in receptacles provided for such purpose. No person shall transport any refuse into any City Facility for the purpose of disposal therein. No such waste or contaminating material shall be discarded otherwise in or upon City Facility.

12-110. DAMAGING PROPERTY.

It shall be unlawful for any person to commit an act of vandalism in a park area by willfully or wantonly injuring, damaging, mutilating, defacing, destroying, digging, removing, or substantially impairing any kind of property, vegetation, fixture, structure or improvement within City Facility. Furthermore, it shall be unlawful for any person to affix, post, or place any bills or signs on City Facility except for in accordance with the terms of a valid Special Event Permit.

It shall be unlawful for any person, except duly authorized City employees or agents acting in the course of their employment, to take, injure, or disturb any live or dead tree, soil, plant, shrub, or flower, or to install any encroachment structure, place any manmade or natural materials on or in any City Facility, or otherwise interfere with the natural state of a City Facility.

12-111. FIRES.

Fires shall be built only in vessels specifically designed for cooking such as portable grills. All fires, coals, ashes, or other materials shall be properly extinguished by the persons starting such fire immediately after use thereof, and before being deposited in trash containers. No hot or burning coals or materials of any kind shall be dumped or deposited on any City Facility. Open fires such as campfires or fire pits are prohibited. Fires may be prohibited entirely as a protective measure when ordered by the governing body.

12-112. OVERNIGHT CAMPING.

Overnight camping on park property is prohibited.

12-113. SWIMMING, BATHING, WADING.

It shall hereafter be unlawful for any person to swim, bathe, or wade in the lakes of the City.

12-114. FISHING AND FROGGING.

All persons granted a permit or license to fish at any lakes of the City shall be required to observe the restrictions on fishing and frogging as provided for in the laws of the State of Kansas and the regulations or rules of the State of Kansas Department of Wildlife and Parks. Restrictions on length and daily creel limits shall apply where posted.

- (a) Except for special fishing hours that may be authorized by the City Administrator, or their designee, from time to time, the hours for lawful fishing shall be the same as the posted Facility hours. Fishing at any time other than during posted Facility hours is unlawful.

12-115. FIREARMS AND WEAPONS.

All City ordinances regarding firearms and weapons under the Uniform Public Offense Code, as adopted by the City, are applicable to all Properties subject to this Code. As such, it is unlawful for any person to use or discharge any type of archery device, firearm, rifle handgun or shotgun in which gunpowder, black powder, air, spring or any other type of force is used to propel a projectile from the weapon if in violation of these ordinances. The throwing of knives, hatchets and axes are prohibited in City Properties.

12-116. HUNTING.

No person shall in any manner pursue, catch, injure, kill, trap, molest, or remove any wildlife (either bird or animal) within the boundaries of City Properties except as provided in "FISHING AND FROGGING".

12-117. DOGS AND CATS.

Dogs and cats present within a park area shall be subject to the provisions of Chapter 2 of Edgerton City Code.

- (a) For the purpose of this section, the term "leash" means a physical tether attached to the dog or cat by which a person can maintain control over the dog. Leash length must not exceed 8 feet. Electronic collars and other devices, even though manufactured for control purposes, do not meet the leash requirements of this section.

- (b) All dogs and cats shall be kept leashed and under control while within City Properties, except that when within the designated boundaries of OFFLEASH AREAS dogs may be allowed to run or swim off leash.
- (c) No person shall release or abandon in any City Properties any wild or domesticated animal, including mammals, fishes, fowls, reptiles and amphibians.
- (d) Owners of dogs or cats are responsible for removing and properly cleaning up after and disposing of defecation.

12-118. OFF-LEASH DOG FACILITIES; RULES ESTABLISHED.

The following rules shall be in effect for all off-leash facilities located with the city:

- (a) Dogs must always be under the control and in view of their handler.
- (b) Handlers are limited to a maximum of three (3) dogs in the off-leash area at a time.
- (c) All dogs must have current vaccinations evidenced by visible tag(s) and City license.
- (d) Female dogs in heat, or un-neutered male dogs, are not allowed in the off-leash areas.
- (e) Children less than 16 years of age must always be under adult supervision while they are within the boundaries of the off-leash areas.
- (f) Any dog under investigation for, or finally determined as, being a "dangerous animal," is prohibited from being in any off-leash area.
- (g) Additional rules and regulations may be posted on-site at such facilities.

12-119. FIREWORKS.

Persons within a City Facility shall be subject to the provisions of Chapter 4, Article 20 of Edgerton City Code regarding the use of fireworks.

12-120. ALCOHOLIC BEVERAGES.

It is unlawful for any person to bring, consume, or possess on the premises of any City Facility any alcoholic liquor or cereal malt beverage. Exceptions provided according to State law (*K.S.A. 41-719*).

12-121. PARK SHELTER RESERVATIONS.

All requests for reservations of park shelters shall be made to the City Administrator, or their designee.

12-122. COMMERCIAL USES.

No park shall be used for any commercial enterprise in any form without the express consent of the governing body.

12-123. SOLICITATIONS.

Solicitors within a park area or City Property shall be subject to the provisions of Chapter 5, Article 2 of Edgerton City Code.

12-124. AMPLIFIED SOUNDS.

Any amplified sound within the boundaries of a park shall be subject to the provisions of Chapter 11, Article 6 of the Edgerton City Code.

12-125. BOATING.

Subject to the additional restrictions contained within this Code, Kansas law shall govern the use and operation of watercraft on City Facility waters.

- (a) Only non-motorized watercraft are allowed at Bridgewater Lake.

- (b) The use of privately owned watercraft shall be restricted to Edgerton Lake.
- (c) The use of gasoline motors with any watercraft other than for emergency or official City business shall be prohibited.
- (d) Electric motorized watercraft are prohibited on waters in City Properties, except for battery or electric-powered trolling motors utilized for fishing on permitted Properties.
- (e) All trailered watercrafts shall be launched only at boat ramps and then in accordance with posted launching regulations.
- (f) No watercraft of any kind shall be stored, kept or left unattended in City Facility waters, at shoreline, or on marginal land.

12-126. SKATING.

No person shall, at any time, skate except upon areas designated by the City and at such times and pursuant to such rules as the City may post.

12-127. BICYCLES.

It shall be unlawful for any person to ride a bicycle on any City Property except on roads, sidewalks, or designated bicycle paths. No bicycle shall be parked, placed or otherwise left in any place in a City Property other than a bicycle rack, if any, provided by the City.

12-128. MOTOR VEHICLES.

Motor vehicles, when within the boundaries of City Properties, shall be subject to all applicable Kansas State laws.

Motor vehicles are prohibited from being operated within any City Properties except parking lots, access drives to parking lots, and park streets or areas specifically established by the governing body for motor vehicle use. The presence of motor vehicles in parking lots, access drives or park streets during periods of time the Property is not open to the public is prohibited. Nothing in this section shall preclude the City from conducting regular maintenance as may be required throughout the City Properties. No person shall operate a motor vehicle in or upon any City Property at a speed more than fifteen miles per hour.

12-129. PENALTY.

Violation of any provision of this article is a Class C public offense and any person, partnership or corporation convicted thereof shall be punished as provided by Chapter XI, Article 1 of the City Code. In addition, if the person is convicted of any violation that has resulted in damage to City property, the City may obtain an order of restitution from the Municipal Court for the cost of repair of any such damage.

ARTICLE 2. USE AND EXCAVATION OF THE PUBLIC RIGHT-OF-WAY

12-201. GENERAL. No person shall excavate the right-of-way, construct, or use the facilities within the right-of-way of the City except as provided herein. (Ord. 797, 2005)

12-202. PURPOSE.

- (a) To recognize the City's primary role as chief steward of the right-of-way and its duty to its citizens to recover the costs of managing the right-of-way and incursions into it;

- (b) To clarify and regulate conditions of occupancy and construction for those ROW-users occupying space within the City's right-of-way given the anticipated increased use of the right-of-way by various ROW-users throughout the country;
- (c) To recognize the necessity for sound management practices in light of the increased use of the right-of-way and the fact that the right-of-way is a limited resource;
- (d) To treat each ROW-user equitably and in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technologies and situation of each particular ROW-user;
- (e) To minimize disruption, visual impact or inconvenience to the public, and to preserve the public health, safety and welfare; and
- (f) To comply with state and federal legislation. (Ord. 797, 2005)

12-203. DEFINITIONS.

- (a) For purposes of this Ordinance, the following words and phrases shall have the meaning given herein:
 1. "**Abandoned Facilities**" means those facilities owned by the ROW-user that are not in use and will not be utilized by the ROW-user in the future.
 2. "**Affiliate**" means any person controlling, controlled by or under the common control of a "service provider".
 3. "**Applicant**" means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.
 4. "**Area of Influence**" means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.
 5. "**City**" means the City of Edgerton, Kansas, a municipal corporation and any duly authorized representative.
 6. "**City Superintendent**" means the City Superintendent of the City of Edgerton, Kansas, or their authorized representative.
 7. "**Construct**" means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.
 8. "**Day**" means calendar day unless otherwise specified.
 9. "**Emergency**" means a condition that (a) poses a clear and immediate danger to life or health, or of a significant loss of property; or (b) requires immediate repair or replacement in order to restore service to a user.
 10. "**Excavate**" means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.
 11. "**Excavation Fee**" means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activities of the ROW-user and its contractors and/or subcontractors.
 12. "**FCC**" means Federal Communications Commission.
 13. "**Facility**" means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, appurtenances, or other equipment.
 14. "**Governing Body**" means the Mayor and the City Council of the City of Edgerton, Kansas.

15. "**Governmental Entity**" means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States or of the United States.
16. "**KCC**" means the Kansas Corporation Commission.
17. "**Parkway**" means the area between a property line and the street curb. Sometimes called boulevard, tree-shelf or snow-shelf.
18. "**Pavement**" means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.
19. "**Permit and Inspection Fee**" means the fee charged by the City to recover its cost incurred for right-of-way management, including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits; and other costs the City may incur in managing the provisions of this Ordinance.
20. "**Permittee**" means any person to whom a right-of-way permit is issued to excavate a right-of-way.
21. "**Person**" means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
22. "**Public Improvement**" means any project undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.
23. "**Public Lands**" means any real property owned or leased by the City that is not right-of-way.
24. "**Registration**" means the application process of a service provider, the approval of the application by the City, and the authorization of the service provider to use any portion of the right-of-way within the City to provide service both within and beyond the City limits.
25. "**Repair**" means the temporary construction work necessary to make the right-of-way useable.
26. "**Repair and Restoration Costs**" means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW-user and its contractors and/or subcontractors in the right-of-way.
27. "**Restoration**" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, that existed before the commencement of the work.
28. "**Right-of-way**" means the area on, below or above streets, alleys, bridges, and parkways.

29. "**Right-of-way Permit**" means the authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.
30. "**Routine Service Operation**" means a work activity that makes no material change to the facilities and does not disrupt traffic.
31. "**ROW-user**" means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an agreement pursuant to K.S.A. 12-2901 et seq. with the City regarding the use and occupancy of the City's right-of-way.
32. "**Service**" means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, Open Video Systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.
33. "**Service Provider**" means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee; provided, that this definition shall also include persons owning, possessing or having an interest in facilities in the right-of-way that are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actual facility owner provides any service as defined herein.
34. "**Street**" means the pavement and sub-grade of a City residential, collector or arterial roadway. (Ord. 797, 2005)

12-204. POLICY.

- (a) It is the policy of the City to authorize any ROW-user to utilize the right-of-way in a competitively neutral, non-discriminatory manner that maximizes the efficient use of and conserves the right-of-way and minimizes the burden on the right-of-way, physically and aesthetically. Any use of the right-of-way by a ROW-user shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements.
- (b) The right granted to the ROW-user to use the right-of-way is limited to the use that the ROW-user has filed with the City in accordance with this Ordinance. These rights are for the exclusive use of the ROW-user except where otherwise provided herein, or when authorized by the City.
- (c) This Ordinance also is designed to regulate occupancy and excavations in the right-of-way by providing, among other things, for the issuance of permits which grant the authority to utilize and occupy the right-of-way within the City.
- (d) All ROW-users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and are subject to all applicable laws, orders, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to

permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the right-of-way. (797, 2005)

12-205. ADMINISTRATION.

- (a) The City Superintendent is the principal city official for administration of right-of-way permits for work and excavations made in the right-of-way. The City Superintendent may delegate any or all of the duties hereunder.
- (b) The City Superintendent is the principal City Official responsible for administration of the registering of a service provider. The City Superintendent may delegate any or all of the duties hereunder. (Ord. 797, 2005)

12-206. REQUIREMENTS OF SERVICE PROVIDER.

- (a) Any existing service provider must register within thirty (30) days of the effective date of this Ordinance.
- (b) Any person, who is not an existing service provider prior to the effective date of this Ordinance and who wishes to become a service provider, must first register with the City.
- (c) The service provider shall report any changes in its registration information within thirty (30) days.
- (d) No service provider shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the City.
- (e) The information required for registration includes the following:
 - 1. Identity and legal status of service provider, including related affiliates.
 - 2. Name, address, telephone number, fax number and email address of officer, agent or employee responsible for the accuracy of the registration statement.
 - 3. Name, address, telephone number, fax number and email address of the local representative of the service provider who shall be available at all times to act on behalf of the service provider in the event of an emergency.
 - 4. Proof of any necessary City permit, license, certification, grant, registration, franchise agreement or any other required authorization.
 - 5. Description of the service provider's intended use of the right-of-way.

Additionally, the following information shall be provided when requested by the City Superintendent:

- 1. Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the KCC.
 - 2. Information sufficient to determine whether the service provider is subject to franchising by Kansas law.
 - 3. Information sufficient to determine whether the service provider has applied for and received any certificate of authority required by the KCC.
 - 4. Information sufficient to determine that the service provider has applied for and received any permit or other approvals required by the FCC.
 - 5. Such other information as may be reasonably required by the City to complete the registration statement.
- (f) Each service provider shall designate a local person familiar with the facilities who will act as a local agent for the service provider and will be responsible for satisfying

- information requirements of this Ordinance. The service provider shall present to the City the agent's name, address, telephone number, fax number and email address. The agent shall be the person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The service provider shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.
- (g) Prior to construction, reconstruction, repair, maintenance, or relocation of facilities owned by the service provider in the right-of-way, the service provider shall first obtain the necessary right-of-way permit as provided hereafter.
 - (h) Prior to providing service to the City and its residents, the service provider shall first obtain the necessary franchise agreement, if any, from the City.
 - (i) The service provider shall participate in any joint planning, construction and advance notification of right-of-way work, including coordination and consolidation of street cut work as directed by the City Superintendent. In addition, the service provider shall cooperate with other service providers and the City for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with safety, and to minimize traffic and other disruptions, including street cuts.
 - (j) The service provider shall furnish maps showing the location of facilities of the service provider within the City as provided hereafter.
 - (k) The City shall not exercise its authority under this provision to in any way deter competition or discriminate against any service provider. (Ord. 797, 2005)

12-207.MAPPING REQUIREMENTS OF SERVICE PROVIDER.

- (a) The service provider shall keep and maintain accurate records and as-built drawings depicting accurate location of all its facilities constructed, reconstructed or relocated in the right-of-way.
- (b) Within ten (10) days of a request by the City, the service provider will provide to the City information concerning such facilities as may be reasonably requested.
- (c) When available to the service provider, such information will be submitted electronically in an AutoCad format to the extent compatible with the City's Geographical Information Systems (GIS) and Johnson County Automated Integrated Mapping Systems (AIMS) provided, however, that nothing herein shall be construed to require the service provider to acquire or modify any electronic mapping system.
- (d) Underground facilities shall be differentiated from overhead facilities.
- (e) Such mapping and identification shall be at the sole expense of the service provider. (Ord. 797, 2005)

12-208. SERVICE PROVIDER'S RIGHT TO SELL, TRANSFER, LEASE, ASSIGN, SUBLET OR DISPOSE.

- (a) Except as provided hereafter, the service provider shall not sell, transfer, lease, assign, sublet or dispose of its facilities, or any portion thereof, that is located in City right-of-way, or any right, title or interest in the same, or transfer any rights granted by the City to any person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, without notice to the City. This provision shall not apply to the sale of property or equipment in the normal course of business or to the sale or lease of facilities to reseller service providers. No notice to the City shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation,

partnership, or other entity controlling, controlled by or under common control with the service provider. (Ord. 797, 2005)

12-209. Reserved. (Ord. 797, 2005)

12-210. USE OF THE RIGHT-OF-WAY.

- a. The ROW-user's use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. The City may reserve sufficient space within the right-of-way for future public improvements. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.
- b. The ROW-user shall coordinate the placement of facilities in a manner which minimizes adverse impact on any public improvement, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvements.
- c. The ROW-user shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- d. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the right-of-way or other public lands of the City.
- e. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its City Superintendent, shall have the right to consult and review the location, design and nature of the facility prior to its being installed.
- f. All newly constructed facilities shall be located underground, unless such requirement is waived by the Planning Commission as part of a development plan. The ROW-user shall comply with all requirements of the City relating to underground facilities. The governing body may grant a special exception to this requirement on a temporary or permanent basis on such terms as the governing body may deem appropriate in cases of emergency, safety concerns, unusual circumstances, or some other good cause. In addition, in cases where temporary electrical power or communication service is reasonably required for emergencies or for building construction purposes, the Mayor or Governing Body may grant special permission for the temporary construction and use of poles, wires and other above-ground facilities for a period not to exceed one hundred and twenty (120) days; provided, in the event that resolving said emergency or completing said construction cannot be concluded within said time period because of a shortage of material, a natural disaster, strikes, or other circumstances beyond the control of the parties, or by unusual hardships, then the time may be extended to an additional temporary period or periods necessary to allow completion of such construction. When above-ground facilities are allowed pursuant to this section, said facilities shall be located only as directed by the City, including, but not limited to, requirements regarding location and height.
- g. The ROW-user shall not interfere with the facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a service

provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time.

- h. The City Superintendent may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently, or pursuant to current technology the City Superintendent expects will someday be, located within the right-of-way. All right-of-way permits issued by City Superintendent shall indicate the proper corridor for the ROW-user's facilities. Any ROW-user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by the City Superintendent for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, user service needs and hardship to the ROW-user.
- i. If, in the preparation and planning of a right-of-way project, the City Superintendent deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the City Superintendent shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such right-of-way, the City Superintendent may require the ROW-user to use such conduit, and to contribute to the expense of such conduit, provided, however, the ROW user's use of the conduit is reasonable and appropriate under the circumstances.
- j. All earth, sod, landscape features, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the City Superintendent that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the City Superintendent may direct the City to make such repair or replacement and bill the ROW-user for the City cost. The City Superintendent has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do any necessary additional work.
- k. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's facilities in the right-of-way shall be in accordance with applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Ordinance may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the City Superintendent and having received a permit for such improvement. The City Superintendent may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes,

which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.

- l. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.
- m. The City shall have the authority to prohibit the use or occupancy of a specific portion of the right-of-way by a ROW-user due to public health, safety or welfare considerations. (Ord. 797, 2005)

12-211.FACILITY RELOCATION.

- (a) The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.
- (b) The ROW-user shall promptly remove, relocate or adjust any facilities located in private easement, as directed by the City, for a public improvement, at City expense, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to again relocate its facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.
- (c) As soon as working drawings are available for public improvements which will require the ROW-user to relocate its facilities, the City shall provide the ROW user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- (d) Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove, and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.
- (e) Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the ROW-user.
- (f) In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.

- (g) It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement. (Ord. 797, 2005)

12-212.PROTECTION OF THE PUBLIC.

- (a) It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- (b) The City shall not be liable for any damage to or loss of any of the ROW-user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.
- (c) The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this Ordinance to the extent caused by the acts or omissions of the ROW-user.
- (d) The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.
- (e) Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- (f) Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- (g) Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- (h) The City Superintendent, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of-way so as to prevent such trees from coming in contact with the facilities of the ROW-user.
- (i) In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. The type and size of such replacement tree shall be reasonably determined by the City Superintendent. Further, in review of the ROW-user's plan, the City

Superintendent, in his discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.

- (j) Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW-user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen (15) days written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the person advising of the actual operation. (Ord. 797, 2005).

12-213. RIGHT-OF-WAY VACATION.

- (a) If the City vacates a right-of-way which contains the facilities of the service provider, and if the vacation does not require the relocation of the service provider's facilities, the City shall reserve, to and for itself and all service providers having facilities in the vacated right-of-way, an easement for the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
- (b) If the vacation requires the relocation of facilities, and
 1. If the vacation proceedings are initiated by the service provider, the service provider must pay the relocation costs.
 2. If the vacation proceedings are initiated by the City, the service provider must pay the relocation costs unless otherwise agreed to by the City and the service provider.
 3. If the vacation proceedings are initiated by a person other than the service provider or the City, such other person must pay the relocation costs. (Ord. 797, 2005)

12-214. ABANDONMENT AND UNUSABLE FACILITIES.

- (a) A ROW-user owning abandoned facilities in the right-of-way must either:
 1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The City Superintendent may allow underground facilities or portions thereof to remain in place if the City Superintendent determines that it is in the best interest of public safety to do so. At such time, the City may take ownership and responsibility of such vacated facilities left in place; or
 2. Provide information satisfactory to the City that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
 3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the City. If the ROW-user proceeds under this section, the City may, at its option, purchase the equipment, require the ROW-user, at its own expense to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.
- (b) Facilities of a ROW-user who fails to comply with this section, and whose facilities remain unused for two (2) years, shall be deemed to be abandoned after the City

has made a good faith effort to contact the ROW-user, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession and ownership of the facility and restoring it to a useable function, or (c) requiring the removal of the facility by the ROW-user. (Ord. 797, 2005)

12-215.PERMIT REQUIREMENT.

- (a) Except as otherwise provided, no ROW-user may excavate any right-of-way or conduct any repair, construction, or reconstruction of facilities located within the right-of-way without first having obtained the appropriate right-of-way permit.
- (b) There are two exemptions to this provision:
 - 1. Contractors working on the construction or reconstruction of public improvements on behalf of the City.
 - 2. ROW-users performing routine service operations which do not require excavation in the right-of-way and do not disrupt traffic for more than four (4) hours.
- (c) No person owning or occupying any land abutting on a public right-of-way shall construct, maintain, or permit in or on the portion of the public right-of-way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate right-of-way permit.
- (d) A right-of-way permit is required for emergency situations. If due to an emergency it is necessary for the ROW-user to immediately perform work in the right-of-way, and it is impractical for the ROW-user to first get the appropriate permit, the work may be performed, and the required permit shall be obtained as soon as possible during the next City working day.
- (e) No permittee may excavate the right-of-way beyond the date or dates specified in the right-of-way permit unless the permittee:
 - 1. Makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and
 - 2. A new right-of-way permit or permit extension is granted.
- (f) Right-of-way permits issued shall be conspicuously displayed by the permittee at all times at the indicated work site and shall be available for inspection by the City Superintendent, other City employees and the public.
- (g) Prior to the commencement of excavation, the permittee shall identify and locate any buried facilities to be spray painted according to the Uniform Color Code required by the Kansas One Call.
- (h) At the discretion of the City Superintendent, the permittee may be required to notify the occupants of all properties within two hundred feet (200') of the excavation prior to the commencement of such excavation. Door hangers shall be sufficient to satisfy such notification requirement.
- (i) At the discretion of the City Superintendent, the permittee may be required to notify the Johnson County Sheriff's Office, the local Fire Department and Johnson County Med-Act of the schedule and location of such excavation prior to the commencement of such excavation.
- (j) All excavations by the permittee shall have a metal marker inserted into the excavation of the restored pavement, which shall identify the ROW-user.
- (k) Before receiving a right-of-way permit, the applicant must show proof of any necessary permit, license, certification, grant, registration, franchise agreement or

any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC.

- (l) Any ROW-user who is found to be working in the public right-of-way without a permit will be directed to stop work until a permit is acquired and properly posted at the work site. The only exception allowed is for emergency repair work.
- (m) Any permittee found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the Manual on Uniform Traffic Control Devices. (Ord. 797, 2005)

12-216. PERMIT APPLICATIONS.

- (a) Application for a right-of-way permit shall be submitted to the City Superintendent by either the ROW-user or by the person who will do the work and/or excavation in the right-of-way.
- (b) Right-of-way applications shall contain and be considered complete only upon receipt of the following:
 1. Compliance with verification of registration;
 2. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;
 3. A traffic control plan;
 4. Payment of all money due to the City for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter. (Ord. 797, 2005)

12-217. LIABILITY INSURANCE, PERFORMANCE AND MAINTENANCE BOND REQUIREMENT.

- a. The permittee shall file with the City evidence of commercial general and automobile liability insurance with an insurance company licensed to do business in Kansas. The general liability limit will be not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate. The automobile liability limit will not be less than one million dollars (\$1,000,000) combined single limit. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent acts or omissions of the permittee. If the permittee is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.
- b. The permittee shall at all times during the term of the permit, and for two (2) years thereafter, maintain a performance and maintenance bond in a form approved by the City Attorney. The amount of the bond will be \$2,000 or the value of the restoration, whichever is greater, for a term consistent with the term of the permit plus two (2) additional years, conditioned upon the permittee's faithful performance of the provisions, terms and conditions conferred by this Ordinance. Alternatively, if the permittee anticipates requirements for multiple right-of-way permits, the

permittee may choose to meet the bond requirements for the above prescribed term as follows:

1. 10 permits or less/year: \$15,000 annual bond
2. 25 permits or less/year: \$30,000 annual bond
3. Unlimited permits/year: \$50,000 annual bond

In the event the City shall exercise its right to revoke the permit as granted herein, then the City shall be entitled to recover under the terms of said bond the full amount of any loss occasioned.

- c. A copy of the Liability Insurance Certificate and Performance and Maintenance Bond must be on file with the City Clerk.
- d. No performance and maintenance bond will be required for permits issued for driveway placement, driveway replacement, residential street approach or landscaping work such as irrigation systems and tree planting. No performance and maintenance bond will be required for any governmental entity. No performance and maintenance bond or liability insurance will be required of any residential property owner working in the right-of-way adjacent to his/her primary residence, who does not utilize a contractor to perform the excavation. (Ord. 797, 2005)

12-218. RIGHT-OF-WAY PERMIT FEES AND COSTS.

- (a) The right-of-way permit fee shall be recommended by the City Superintendent and listed in the Schedule of Fees maintained in the City Clerk's office.
- (b) The right-of-way permit fee may include a permit and inspection fee, and an excavation fee.
- (c) Fees paid for a right-of-way permit, which is subsequently revoked by the City Superintendent, are not refundable.
- (d) Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.
- (e) The City may also charge and collect any necessary repair and restoration costs.
- (f) The right-of-way permit fee shall be waived where the ROW-user is required to remove, relocate or adjust facilities located in the right-of-way as directed by the City for a public improvement.
- (g) The right-of-way permit fee may be waived when reasonably required by the City for reasons of public health, safety and welfare. (797, 2005)

12-219. ISSUANCE OF PERMIT.

- (a) If the City Superintendent determines that the applicant has satisfied the requirements of this Ordinance, the City Superintendent shall issue a right-of-way permit.
- (b) The City Superintendent may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the permittee in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.
- (c) When a right-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bond for additional facilities is reasonably

determined to be insufficient, the posting of an additional or larger performance and maintenance bond for the additional facilities may be required.

- (d) Issued permits are not transferable.
- (e) If work is being done for the ROW-user by another person, a subcontractor or otherwise, the person doing the work and the ROW-user shall be liable and responsible for all damages, obligations, and warranties herein described.
- (f) Individual right-of-way permits are limited to a maximum of 1,200 feet of contiguous work length. (Ord. 797, 2005)

12-220.PERMITTED WORK.

- (a) The permittee shall not make any cut, excavation or grading of right-of-way other than excavations necessary for emergency repairs without first securing a right-of-way permit.
- (b) The permittee shall not at any one time open or encumber more of the right-of-way than shall be reasonably necessary to enable the permittee to complete the project in the most expeditious manner.
- (c) The permittee shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavations to those excavations that are necessary for efficient operation.
- (d) The permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.
- (e) The permittee shall notify the City no less than three (3) working days in advance of any construction, reconstruction, repair, location or relocation of facilities which would require any street closure or which reduces traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of an emergency as reasonably determined by the permittee, no such closure shall take place without notice and prior authorization from the City.
- (f) Non-emergency work on arterial and collector streets may not be accomplished during the hours of 7:00 AM to 8:30 AM and 4:00 PM to 6:00 PM, in order to minimize disruption of traffic flow.
- (g) All work performed in the right-of-way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the permittee's expense. Such signage shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices, unless otherwise agreed to by the City.
- (h) The permittee shall identify and locate any underground facilities in conformance with the Kansas Underground Utility Damage Prevention Act "Kansas One Call" system.
- (i) The permittee shall be liable for any damages to underground facilities due to excavation work prior to obtaining location of such facilities, or for any damage to underground facilities that have been properly identified prior to excavation. The permittee shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.
- (j) Whenever there is an excavation by the permittee, the permittee shall be responsible for providing adequate traffic control to the surrounding area as determined by the City Superintendent of the City. The permittee shall perform work on the right-of-way at such times that will allow the least interference with the

normal flow of traffic and the peace and quiet of the neighborhood. In the event the excavation is not completed in a reasonable period of time, the permittee may be liable for actual damages to the City for delay caused by the permittee pursuant to this Ordinance.

- (k) All facilities and other appurtenances laid, constructed and maintained by the permittee shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, as well as the rules and regulations of the Kansas Corporation Commission or any other local, state or federal agency having jurisdiction over the parties.
- (l) Following completion of permitted work for new construction, the permittee shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale and certified to the City as accurately depicting the location of all utility facilities constructed pursuant to the permit. When available to the permittee and upon request by the City Superintendent, maps and drawings provided will be submitted in AUTOCAD.DXF or AUTOCAD.DWG automated formats. Such information shall be subject in all respects and shall have the benefit of protection as set forth in the section entitled "Mapping Requirements of Service Provider" contained herein.
- (m) The City may use the as-built records of the service provider's facilities in connection with public improvements.

12-221. RIGHT-OF-WAY REPAIR AND RESTORATION.

- (a) The work to be done under the right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the permittee or when work was prohibited by unseasonable or unreasonable conditions, the City Superintendent may extend the date for completion of the project upon receipt of a supplementary application for a permit extension.
- (b) All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the permittee shall be fully repaired or replaced promptly by the permittee at its sole expense and the reasonable satisfaction of the City. The City Superintendent has the authority to inspect the repair or replacement of the damage, and if necessary, to require the permittee to do the additional necessary work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed fifteen days will be provided to allow for the deficiencies to be corrected.
- (c) After any excavation, the permittee shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than it was prior to the excavation thereof.
- (d) In addition to repairing its own street cuts, the permittee must restore any area within five (5) feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations.
- (e) If the permittee fails to restore the right-of-way in the manner and to the condition required by the City Superintendent, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the permittee and its surety that, unless within five (5) days after serving of such notice, a satisfactory

- arrangement can be made for the proper restoration of the right-of-way, the City shall immediately serve notice of failure to comply upon the surety and the permittee, and the surety shall have the right to take over and complete the work; provided, however, that if the surety does not commence performance thereof within ten (10) days from the date of notice, the City may take over the work and prosecute same to completion, by contract or otherwise at the expense of the permittee, and the permittee and its surety shall be liable to the City for any and all excess cost assumed by the City by reason of such prosecution and completion.
- (f) The permittee responsible for the excavation who leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the Manual on Uniform Traffic Control Devices and any applicable federal or state requirement.
 - (g) If an excavation cannot be back-filled immediately and left unattended, the permittee shall securely and adequately cover the unfilled excavation. The permittee has sole responsibility for maintaining proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.
 - (h) In restoring the right-of-way, the permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During the twenty-four (24) months, the permittee shall, upon notification from the City Superintendent, correct all restoration work to the extent necessary, using any method as required by the City Superintendent. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the City Superintendent (not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable). In the event the permittee is required to perform new restoration pursuant to the foregoing guarantee, the City Superintendent shall have the authority to extend the guarantee period for such new restoration for up to an additional twenty-four (24) months from the date of the new restoration.
 - (i) The twenty-four (24) month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.
 - (j) Payment of an excavation fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration. (Ord. 797, 2005)

12-222.JOINT APPLICATIONS.

- (a) Applicants may apply jointly for permits to excavate the right-of-way at the same time and place.
- (b) Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay. (Ord. 797, 2005)

12-223.SUPPLEMENTARY APPLICATIONS.

- (a) A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be excavated must do the following prior to the commencement of work in that greater area: (a)

make application for a permit extension and pay any additional fees required thereby; and (b) receive a new right-of-way permit or permit extension.

- (b) A right-of-way permit shall be valid only for the dates specified in the permit. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date. (Ord. 797, 2005)

12-224. OTHER OBLIGATIONS.

- (a) Obtaining a right-of-way permit under this Ordinance shall not relieve the permittee of its duty to obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, and to pay any fees required by any other City, County, State, or Federal rules, laws, or regulations. A permittee shall perform all work in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, and the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations and shall be responsible for all work done in the right-of-way pursuant to its permit, regardless by whom the work is done by.
- (b) Except in cases of an emergency or with approval of the City Superintendent, no right-of-way work may be done when conditions are unreasonable for such work.
- (c) A permittee shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. Private vehicles may not be parked within or next to the permit area. (Ord. 797, 2005)

12-225. DENIAL OF PERMIT.

- (a) The City Superintendent may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The City Superintendent, at his discretion, may consider all relevant factors including but not limited to:
 1. The extent to which the right-of-way space where the permit is sought is available;
 2. The competing demands for the particular space in the right-of-way;
 3. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;
 4. The applicability of any ordinance or other regulations that affect location of facilities in the right-of-way;
 5. The degree of compliance of the applicant with the terms and conditions of its franchise, this Ordinance, and other applicable ordinances and regulations;
 6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;

7. The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the construction in the right-of-way;
 8. Whether the applicant maintains a current registration with the City;
 9. Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the City Superintendent shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.
- (b) Notwithstanding the above provisions, the City Superintendent may in his discretion issue a right-of-way permit in any case where the permit is necessary to:
1. Prevent substantial economic hardship to a user of the applicant's service;
 2. Allow such user to materially improve the service provided by the applicant.
- (Ord.797, 2005)

12-226.REVOCATION OF PERMIT.

- (a) Permittees hold right-of-way permits issued pursuant to this Ordinance as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any right-of-way permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the right-of-way permit. A substantial breach shall include, but not be limited to the following:
1. The violation of any material provision of the right-of-way permit;
 2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 3. Any material misrepresentation of any fact in the permit application;
 4. The failure to maintain the required bond or insurance;
 5. The failure to complete the work in a timely manner;
 6. The failure to correct a condition indicated on an order issued pursuant to this Ordinance;
 7. Repeated traffic control violations; or
 8. Failure to repair facilities damaged in the right-of-way.
- (b) If the City Superintendent determines that the permittee has committed a substantial breach of any law or condition placed on the right-of-way permit, the City Superintendent shall make a written demand upon the permittee to remedy such violation. The demand shall state that the continued violation may be cause for revocation of the permit, or legal action if applicable. Further, a substantial breach, as stated above, will allow the City Superintendent, at his discretion, to place additional or revised conditions on the right-of-way permit, specifically related to the manner in which the breach is cured by the permittee. Within five (5) calendar days of receiving notification of the breach, permittee shall contact the City Superintendent with a plan for correction of the breach. Permittee's failure to contact the City Superintendent, permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit.
- (c) If a right-of-way permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the

costs of collection and reasonable attorney's fees incurred in connection with such revocation. (Ord. 797, 2005)

12-227.WORK REQUIREMENTS AND INSPECTIONS.

- (a) Any excavation, back filling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with direction and procedures provided by the City Superintendent.
- (b) The permittee shall use flowable fill as backfill on any street cut. This requirement may be waived or changed when appropriate in the discretion of the City Superintendent. In such event, the City Superintendent may require the permittee to employ a testing laboratory as approved by the City Superintendent, which shall certify the proper back-filling on any street cut. The permittee shall pay all costs associated with such testing.
- (c) The permittee shall notify the office of the City Superintendent upon completion of the authorized work permit.
- (d) The permittee will notify the City Superintendent to schedule an inspection at the start of back filling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection.
- (e) When any corrective actions required have been completed and inspected to the City Superintendent's satisfaction, the two (2) year maintenance period will begin.
- (f) In addition to the required scheduled inspections, the City Superintendent may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the permittee.
- (g) At the time of any inspection, the City Superintendent may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well being of the public. The City Superintendent may issue a stop work order and/or a citation to the permittee for any work, which does not conform to the applicable standards, conditions, code or terms of the permit. The stop work order or the citation shall state that failure to correct the violation will be cause for revocation of the permit. (Ord. 797, 2005)

12-228. APPEALS PROCESS.

- (a) Whenever a person shall deem themselves aggrieved by any decision or action taken by the City Superintendent, the person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action.
- (b) The persons shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal.
- (c) In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the City Superintendent.
- (d) In cases where compliance with such decision or action taken by the City Superintendent would cause undue hardship, the Governing Body may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The Governing Body shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.

- (e) Pending a decision of the Governing Body, the order of the City Superintendent shall be stayed, unless the City Superintendent determines that such action will pose a threat to public safety or the integrity of the public infrastructure.
- (f) If a person still deems themselves aggrieved after the appeal to the Governing Body, such person shall have thirty (30) days after the effective date of the Governing Body's final decision to institute an action in the District Court of Johnson County, Kansas. (Ord. 797, 2005)

12-229.INDEMNIFICATION.

- (a) A ROW-user shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the ROW-user, any agent, officer, director, or their respective officers, agents, employees, directors or representatives, while installing repairing or maintaining facilities in a public right-of-way. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the ROW-user from its duty to defend against liability or its duty to pay and judgment entered against the City, or its agents.
If a ROW-user and the 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 or federal law. This section is solely for the benefit of the City and ROW-user and does not create or grant any rights, contractual or otherwise, to any other person or entity. (Ord. 797, 2005)

12-230.FORCE MAJEURE.

- (a) Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other circumstances beyond the ROW-user's or the City's control that have a direct or substantial impact upon the matters regulated by said provisions. (Ord. 797, 2005)

12-231.FEDERAL, STATE AND CITY JURISDICTION.

- (a) This Ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this Ordinance to the contrary, the construction, operation and maintenance of the ROW-user's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The ROW user's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW-user to comply with any

applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this Ordinance. (Ord. 797, 2005)

12-232.SEVERABILITY.

- (a) If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof. (Ord. 797, 2005)

12-233.CITY'S FAILURE TO ENFORCE.

- (a) The City's failure to enforce or remedy any noncompliance of the terms and conditions of this Ordinance or of any permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided. (Ord. 797, 2005)

12-234.PENALTIES.

- (a) Any person or entity violating any provision of this chapter is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00). Every day that this chapter is violated shall constitute a separate offense.
- (b) The violation of any provision of this Ordinance is hereby deemed to be grounds for revocation of the permit and registration to operate within the City.
- (c) The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Ordinance. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent violation of this Ordinance. (Ord. 797, 2005)

12-235.RESERVATION OF RIGHTS.

- (a) In addition to any rights specifically reserved to the City by this Ordinance, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this Ordinance. The City shall have the right to waive any provision of this Ordinance or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City determines as follows: (1) that it is in the public interest to do so; and (2) that the enforcement of such provision will impose an undue hardship on the person. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.
- (b) Notwithstanding anything to the contrary set forth herein, the provisions of this Ordinance shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way. (Ord. 79, 2005)

12-236.REPEAL OF ALL OTHER ORDINANCES.

- (a) All other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be canceled, annulled, repealed and set aside. (Ord. 797, 2005)

Section 2. REPEAL

All prior ordinances in conflict herewith are hereby repealed.

Section 3. EFFECTIVE DATE

This ordinance shall take effect and be in force from and after its passage, approval and publication once in the City's official paper.

PASSED BY the City Council and signed by the Mayor on this 26TH day of September, 2024.

DONALD ROBERTS, Mayor

ATTEST:

ALEXANDRIA CLOWER, City Clerk

APPROVED AS TO FORM:

TODD A. LUCKMAN for
STUMBO HANSON, LLP—City Attorneys

MEMORANDUM

Date: September 26, 2024
To: City of Edgerton Governing Body
From: Zachary Moore, Development Services Director
Re: Status Update – 312 E. 5th Street, Edgerton, Kansas

On May 9, 2024 the Edgerton City Council passed Resolution 05-09-24B, which requires the owners of 312 E. 5th Street, Edgerton, Kansas to resolve the dangerous and unfit structure which exists on said property by either bringing the property within compliance with the City Code or by demolishing the structures on site. The City Council has extended the original deadline from June 10, 2024 to September 26, 2024 and a summary of action that has occurred related to the property is listed below.

- March 14, 2024 – Resolution 03-14-24A adopted, establishing a date for a public hearing
- May 9, 2024 – Resolution 05-09-24B adopted, deeming the structure to be dangerous or unsafe
- May 14, 2024 – City utility account set up in Property Owner’s name
- June 10, 2024 – Dilapidated trailer removed from property
- June 13, 2024 – Update provided to City Council, extension granted to June 27, 2024 (later extended to July 11, 2024)
- July 11, 2024 – Update provided to City Council, extension granted to August 22, 2024
- August 1, 2024 – Demolition of dilapidated shed began and completed first week of August
- August 22, 2024 – Update provided to City Council, extension granted to September 26
- September 9, 2024 – New section of chain link fence installed in northeast portion of yard

Since the property has been deemed dangerous and unsafe, the property owner has been collecting bids for different work including a demolition bid, repair bids, as well as bids to install a Bilco door system at the basement egress door on the east of the property.

Attached to this memo is an email from the property owner’s representative that staff received on September 20, 2024 with a status update, along with a timeline of activity that has occurred since September 6, 2024. Per the attached email, the property owner’s representative is of the opinion that the property owner will “more than likely choose to repair this Property.”

As of the writing of this report, staff has not received any permit applications for demolition or repair work. Any additional updates received after publication of this agenda packet will be shared by staff during the September 26th City Council meeting.




Zach Moore

From: Ashlee Yager <Ashlee.Yager@southlaw.com>
Sent: Friday, September 20, 2024 10:22 AM
To: Zach Moore
Cc: Amy Trentadue; Beth Linn; Todd Luckman
Subject: 312 E. 5th Street, Edgerton, KS | September 26, 2024, City Council Mtg. | SL 236031
Attachments: 312E 5TH ST EDGERTON KS 66021_September 2024 CHRONOLOGY.pdf

Good morning, Zach:

In short, there are still loose ends, and as we discussed at the last meeting, the final pieces that are out Lakeview's control are waiting to be place. However, based on the information available, **Lakeview will more than likely choose to repair this Property**. M&T does not believe that a demo will be Lakeview's choice. My client would like to continue to work with the City and kindly requests time to fill in these missing pieces to put a final project plan together. Additional information follows:

- 1) The foundation repair bid is outstanding, and M&T cannot work up the equity analysis without the foundation repair bid. As I'm sure you are aware and have been in contact with MSI, the City will not allow any contractor to do this work, and it is taking extra time to find the required licensed contractor to get to the Property and prepare the foundation repair bid. Feedback has been that the Edgerton licensed contractors are 6-10 weeks out to visit the property and repair this type of bid. It appears that MSI has identified 1-2 licensed contractors that state the contractor should be able to visit the property within the next week. We will see if this is completed. I have attached an excerpt of a Chronology prepared by MSI that helps to hopefully put things in perspective.
 - a. The structural engineer's report ("SER") was scheduled to be produced on 9/3, as we last discussed. **The SER was NOT received until 9/9/24.**
 - b. The same day the SER was received, teams were engaged to obtain the repair bids. The following day, 9/10/24, the first vendor declined.
 - c. In the two weeks since the SER was received, my client and its team(s) has worked diligently to secure a licensed contractor to prepare a repair bid so a final equity analysis can be developed.
 - d. As you can see from the Chronology, the majority of the licensed contractors have declined the work, have been non-responsive, or are booked 6-10 weeks out.
- 2) The basement egress doors are secured as previously provided and agreed. The Bilco door replacement(s) should arrive in around 4 weeks (production time can vary), which will then lead to the door(s) being fully replaced. Timeline based on the information available is early to mid-November for installation.

Image	SKU #	Additional Description		
	BR-1-36-58	36" X 58" Sloped Wall Basement Door Primer Finish - Bilco BR-1 With 6" extension With 12" Extension Recommendation: Door and a 6" extension and a 12" extension, but only if they can add some thickness of a few inches on each of the outer sides some how. Build some concrete out to make the side walls thicker <small>6" Extension Sloped Wall BR-1 \$90.10 - Custom Door - Final Sale -</small>		
Lead Time - Ready to ship in 3 - 4 Weeks (Lead time may vary based on time of order)				

Please let me know if you have any additional questions or if there is any additional information that we can provide at this time. Thank you.

Ashlee

Ashlee Yager, Senior Attorney - Litigation
 Admitted in MO & KS
SouthLaw, P.C., 13160 Foster, Suite 100, Overland Park, KS 66213
 913.663.7600 ext. 138
Offices in Missouri, Kansas, Nebraska, Iowa

To opt-out of future electronic communications, you may send an email to stop@southlaw.com

From: Zach Moore <zmoore@edgertonks.org>
Sent: Tuesday, September 17, 2024 1:46 PM
To: Ashlee Yager <Ashlee.Yager@southlaw.com>
Cc: Amy Trentadue <Amy.Trentadue@southlaw.com>; Beth Linn <blinn@edgertonks.org>; Todd Luckman <todd@stumbolaw.com>
Subject: RE: Trash Carts at 312 E. 5th Street (SL 236031) and 6.27.24 City Council Meeting

Thank you Ashlee.


Zachary Moore • Development Services Director
 City of Edgerton, KS
 404 East Nelson • Edgerton, KS 66021
 913.893.6231 • 913.787.3717 (cell)
www.edgertonks.org

From: Ashlee Yager <Ashlee.Yager@southlaw.com>
Sent: Tuesday, September 17, 2024 9:37 AM
To: Zach Moore <zmoore@edgertonks.org>
Cc: Amy Trentadue <Amy.Trentadue@southlaw.com>; Beth Linn <blinn@edgertonks.org>; Todd Luckman

<todd@stumbolaw.com>

Subject: RE: Trash Carts at 312 E. 5th Street (SL 236031) and 6.27.24 City Council Meeting

Good morning, Zach.

You are welcome. Thank you for the update.

At this time, the below update is the most recent information. I have asked my client for an update re: repair bids and equity analysis and provided a reminder that a decision to raze the structures or repair the structures needs to be made by the 9/26 City Council meeting.

I will relay information as available. Thank you.

Ashlee

Ashlee Yager, Senior Attorney - Litigation

Admitted in MO & KS

SouthLaw, P.C., 13160 Foster, Suite 100, Overland Park, KS 66213

913.663.7600 ext. 138

Offices in Missouri, Kansas, Nebraska, Iowa

To opt-out of future electronic communications, you may send an email to stop@southlaw.com

From: Zach Moore <zmoore@edgertonks.org>

Sent: Monday, September 16, 2024 10:48 PM

To: Ashlee Yager <Ashlee.Yager@southlaw.com>

Cc: Amy Trentadue <Amy.Trentadue@southlaw.com>; Beth Linn <blinn@edgertonks.org>; Todd Luckman <todd@stumbolaw.com>

Subject: RE: Trash Carts at 312 E. 5th Street (SL 236031) and 6.27.24 City Council Meeting

Thanks Ashlee. Yvette with MSI has been in contact with staff regarding both the basement egress doors and the fence. Do you have any additional update on the structural engineer reports on the structure itself? If so, please provide any information by Friday 9/20 for inclusion in the packet. Alternatively, any update provided after then won't be printed, but will be shared verbally at the City Council meeting on 9/26.

Please let me know if you have any questions.

Thanks,



Zachary Moore • Development Services Director

City of Edgerton, KS

404 East Nelson • Edgerton, KS 66021

913.893.6231 • 913.787.3717 (cell)

www.edgertonks.org

From: Ashlee Yager <Ashlee.Yager@southlaw.com>

Sent: Monday, September 16, 2024 3:44 PM

To: Zach Moore <zmoore@edgertonks.org>

Cc: Amy Trentadue <Amy.Trentadue@southlaw.com>; Beth Linn <blinn@edgertonks.org>; Todd Luckman <todd@stumbolaw.com>

Subject: RE: Trash Carts at 312 E. 5th Street (SL 236031) and 6.27.24 City Council Meeting

Good afternoon, Zach:

Happy Monday! Lakeview/M&T are in the process of obtaining repair bids to finalize and complete the equity analysis. Bids for the gate/fence and basement egress doors are submitted to HUD, again, for approval.

Thank you.

Ashlee

Ashlee Yager, Senior Attorney - Litigation

Admitted in MO & KS

SouthLaw, P.C., 13160 Foster, Suite 100, Overland Park, KS 66213

913.663.7600 ext. 138

Offices in Missouri, Kansas, Nebraska, Iowa

To opt-out of future electronic communications, you may send an email to stop@southlaw.com

SouthLaw, P.C. may be acting as a debt collector attempting to collect a debt and any information obtained will be used for that purpose. This e-mail and any attachments are intended only for use by the addressee and may contain information that is privileged and/or confidential. If you are not the intended recipient of this e-mail, any dissemination, distribution, or copying is prohibited. If you have received this e-mail in error, please notify me by return e-mail and delete this e-mail message and destroy any printed copies. The unintended delivery of this message to you should not be construed as a waiver of any attorney-client privilege. To opt-out of future electronic communications, you may send an email to stop@southlaw.com.

9/6/2024

- Payment for the engineer's services was processed, and the check was overnighted.

9/9/2024

- Received the structural engineer report and opened work order 8322953 for follow-up actions.

09/09/2024

- Violation notice and SER attached to obtain bids.
- Attaching photos the city provided; photos they took when they gained access to the property.
- Asking Nicole to onboard contractors from Edgerton, KS.
- Email sent to GA0898.

09/10/2024

- Vendor 1 declined.

09/11/2024 – No other vendors would accept the order due to the level of repairs required. Contacted Edgerton vendors who are licensed.

- Sam Inscore Construction| Referral | 913.980.6765| sinscore57@gmail.com.
- 8322155: 312E 5th St, Edgerton, KS 66021 - Email to Sam Inscore requesting a bid and cost estimate for installation of Bilco door and items outlined in the SER.

09/13/2024

- Working with a vendor who is outside the network.

09/16/2024

- MSI followed up with Sam Inscore, asking if he had reviewed the project and is interested in providing a bid. No answer.

09/18/2024

- MSI sent a follow-up email to Sam Inscore requesting bids for the foundation, stressing urgency due to client follow-up.
- Contacted Gordon Energy and Drainage, but they no longer do this type of work.
- Left voicemail for Spyderart Constructors regarding foundation repair and waterproofing. Their online scheduling platform shows no availability until October.
- Left voicemail for Custom Concrete & Foundations Specialist Inc.
- Online inquiry sent to R&R Construction Pros for foundation work at 312E 5th St, Edgerton, KS, based on the SER report.
- Contacted John Norris Foundation Repair, who indicated scheduling availability in about six weeks, but will try to expedite after MSI sent project details.
- Email sent to Norris Foundation outlining the foundation and exterior work needed at the Edgerton property.

- Received confirmation from Norris Foundation that the email was received, and they will review with their team.

09/19/2024

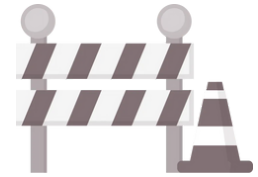
- Received callback from Nick with Construction Pros, left voicemail, tried to call back.
- Tried calling Level Mudjacking of Johnson County, but the number was disconnected.
- Left text message for Dickie Construction after voicemail box was full.
- Reached out to Grant Renne & Sons Foundation Repair, provided project details for review.
- Spoke with Grant Renne; they need to check if they cover the area. Documents provided for review.
- MSI followed up with an email to Grant Renne requesting confirmation of area coverage and project interest, along with additional recommendations for contractors.
- Contacted Glenn Marsee & Son, left voicemail and submitted an online inquiry.
- Received callback from Nick with Construction Pros, confirming they can review the project and provide a bid. Expecting a site visit by Tuesday, 09/24.
- Spoke with Dickie Construction (James), who will review documents and visit the property to inspect and bid, aiming for a site visit over the weekend.



Public Works Quarterly Update

April-August
2024

Departmental Programs



Road and Construction

8.1 linear miles

Gravel Roads Graded

68 tons

Hot Patch Laid

260 lane miles

Street Sweeping

13 yards

Concrete Curb Replaced

4500 linear feet

Ditch Line Digging

Patching Program

Public Works Crews are responsible for repairing potholes and fixing the asphalt surface in a timely manner, ensuring a safer road for both drivers and pedestrians. Summer is prime patching season for Edgerton roads. Quick repairs help preserve the overall longevity of the City's roads; however, sometimes full depth patches are required if water has penetrated into the base.

Signs and Signals

16

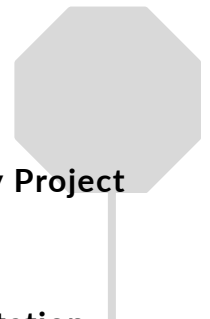
Work Orders



Retro-Reflectivity Project
100% Complete



Sign ID Implementation
50% Complete



Edgerton Public Works is committed to ensuring the safety and reliability of the infrastructure for residents, businesses and the traveling public. From summer events to snow clearing activities, Public Works aims to provide responsive services that meet the needs of the community.



Public Works Quarterly Update

April-August
2024

Tree and Debris Management

4.23 miles

ROW Trees Managed



1,500 cubic yards

Debris Removed

11,500 cubic yards

Debris Dropped Off

Other Duties

Utility Locates	10 Emergency Locates
Lead Service Line Inventory Inspections	499 Meter Wells/Service Lines Inspected
Jetting Program, Phases 2-5	4.63 Linear Miles of Sewer Jetting
Facility Maintenance	38 Work Orders
Vehicle and Equipment Maintenance	44 Work Orders - 8 UMs and ERs

After-Hours Service



19

Calls

9

After-Hours
Responses

4

Emergency Locates
After-Hours

Hazy Shade of Winter...

2024-2025 Snow Season Presentation

Dan Merkh
Public Works Director

1

WINTER HISTORY 2023-2024 SEASON

Dec. 24-28 • Light Snow • Training	January 18-19 • Light Snow • Windy Conditions
Jan. 8-9 • Long Duration Winter Storm • 9" Snow Totals	January 21-23 • Freezing Rain / Drizzle • Light Glaze of Ice Overnight
Jan. 11-12 • Light Snow/Sleet/Ice • Low Temperatures & Windy Conditions	February 16 • Snow • Road temps hovered near freezing with spotty slick spots
Jan. 13 • Light Snow • Extremely Low Temperatures & Windy	

2



WHEN DO WE BEGIN SNOW AND ICE CONTROL OPERATIONS?

- ▶ Crews work 12-hour shifts
- ▶ Treatment methods determined by the forecast
- ▶ Public Works Director makes the call to begin operations
- ▶ We monitor road conditions using:
 - ▶ Weather or Not
 - ▶ Pavement temperature sensors; and
 - ▶ Visual inspection by Public Works

3

TYPES OF RESPONSE

Forecast Dependent

- Proactive
 - Pretreatment based on forecast
 - Staff activation in advance of snowfall
- Reactive
 - Staff activation based on conditions

4

Snow Event Declaration

- Once two or more inches of snow has fallen, we can declare a "snow event"
- Municipal Code (Ch. 13, Art. 4, Sec. 406) requires all vehicles parked on City streets to be moved within two hours of a snow event declaration
 - The owners are responsible for any tow fees



5

NOTIFICATIONS

- ▶ Direct alerts through Notify JoCo and posted on edgertonks.org
- ▶ Social media posts when vehicles must be removed from the street
- ▶ Sheriff's Office tows vehicles that are not moved



6


HOW WE MANAGE SNOW & ICE

Vehicles

- Four 1-ton Trucks
- One single-axle dump truck
- One tandem axle dump truck
- One Motor Grader

Chemicals

- Salt
- Brine



7

WHAT TREATMENTS DO WE USE FOR SNOW AND ICE?





- ▶ Enhanced salt
 - ▶ Melts ice faster than other deicers
- ▶ Brine (calcium chloride)
 - ▶ Used for pre-treatment
 - ▶ Slows down the freezing by creating a barrier between the pavement and precipitation

8



9

Plowing Procedure




Roads are divided into 3 priorities

Plows are not diverted from their routes, except in cases of fire or police emergencies

10

Plowing Procedure



Priority 1

Major thoroughfares with higher traffic counts

Plows are not diverted from their routes, except in cases of fire or police emergencies

11

Plowing Procedure




Priority 2

Neighborhood Roads

Plows are not diverted from their routes, except in cases of fire or police emergencies

12

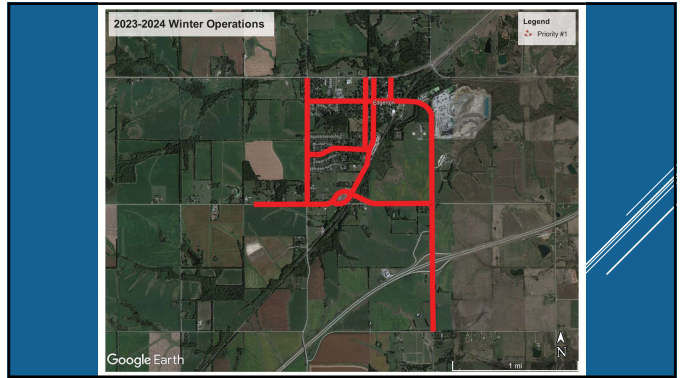
Plowing Procedure



Priority 3
Culd-de-sacs, dead ends & alleys

Plows are not diverted from their routes, except in cases of fire or police emergencies

13



14



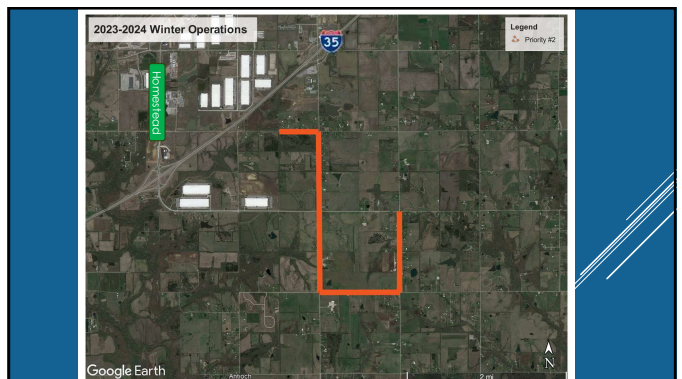
15



16



17



18



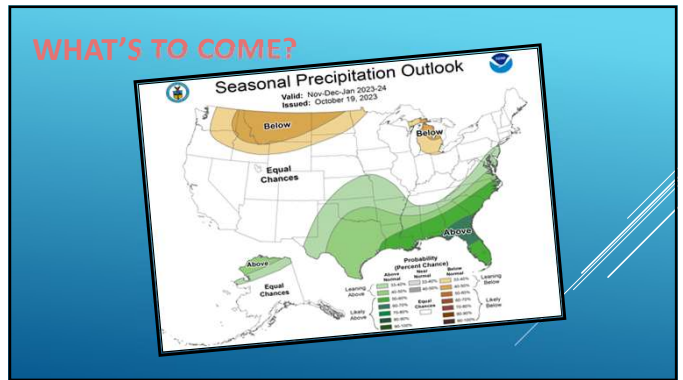
19



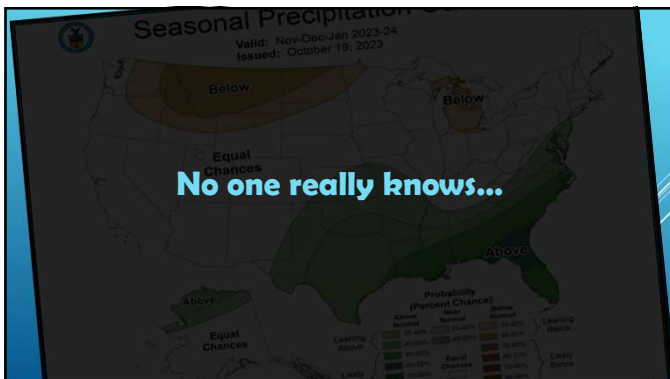
20



21



22



23