

STATE OF KANSAS )  
WYANDOTTE COUNTY )) SS  
CITY OF KANSAS CITY, KS )

PLANNING & ZONING AND  
REGULAR SESSION  
FEBRUARY 28, 2019

The Unified Government Commission of Wyandotte County/Kansas City, Kansas, met in regular session Thursday, February 28, 2019, with ten members present: Bynum, Commissioner At-Large First District; Burroughs, Commissioner At-Large Second District; Townsend, Commissioner First District; McKiernan, Commissioner Second District; Murguia, Commissioner Third District; Johnson, Commissioner Fourth District; Kane, Commissioner Fifth District; Markley, Commissioner Sixth District; Philbrook, Commissioner Eighth District; and Alvey, Mayor/CEO, presiding. Commissioner Walters; Seventh District, was absent. The following officials were also in attendance: Doug Bach, County Administrator; Gordon Criswell and Melissa Sieben, Assistant County Administrators; Ken Moore, Chief Legal Counsel; Bridgette Cobbins, Unified Government Clerk; Robin Richardson, Director of Planning; Byron Toy and Zach Flanders; Planners; Janet Parker, Administrative Assistant; Emerick Cross; Commission Liaison; Misty Brown, Deputy Chief Counsel; Patrick Waters, Senior Attorney; James Bain, Assistant Counsel; Alan Howze, Knowledge Director; Justus Welker, Transportation Director; Don White, Assistant Fire Chief; Lideana Laboy, Traffic Engineer; and Captain Ronald Schumaker, Sergeant-at-Arms.

**MAYOR ALVEY** called the meeting to order.

**ROLL CALL:** McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend, Alvey.

**INVOCATION** was given by Mayor David Alvey.

**Mayor Alvey** said I'll ask the Clerk if there are any revisions to tonight's agenda. **Bridgette Cobbins, UG Clerk,** said yes, Mayor, we do have a revision. Item No. 2 on the Mayor's Agenda will be held over until Thursday, March 7<sup>th</sup>'s full commission meeting.

### **MAYOR'S AGENDA**

**ITEM NO. 1 – 19628...RECOGNITION: DAWN HERRON, TRANSPORTATION DEPARTMENT**

**Synopsis:** Recognition of Dawn Herron, Transportation Department, for providing warmth, shelter and safety for a family in their time of crisis on January 28, 2019.

**Justus Welker, Transportation Director,** said I would like to introduce you to Dawn Herron. Dawn's a transit operator for our Transit Department. We also have Assistant Chief Don White here tonight.

The morning of January 28<sup>th</sup>, Dawn just happened to be in the right place at the right time. She was providing paratransit service when she pulled up into a very serious house fire. Now, instead of driving by, Dawn chose to put herself in harm's way. She pulled up right there in harm's way. She was in the right place at the right time, as I mentioned. Several children had evacuated the house just in what they were wearing at the time, so there were a lot of kids who didn't have shoes on. They were in their pajamas. They came busting out of the house. Dawn opened the bus to them, provided safety and security for the kids, kept them warm and worked with the Fire Department on the site to make sure everybody else that needed safety and security had that.

As Dawn loaded the kids, she heard that their grandpa, I believe, was still in the house. Dawn was actually preparing herself mentally and physically to go into the house and help the grandpa. Fortunately, he was able to escape. He did have some injuries. We didn't know how serious at the time.

Dawn remained on the scene, made sure the kids were safe and secured and made sure everybody else was safe and secured. She worked with the Fire Department during that time. I just wanted to publicly recognize Dawn for the outstanding community service that she provided for our community.

As I mentioned, she could have driven by. She could have chosen to look the other way but she stopped. She put herself in harm's way and helped the community.

The Fire Chief wrote a letter of commendation for Dawn. We framed it for a commemorative of the event. Assistant Chief White is going to present that to Dawn.

**Don White, Assistant Fire Chief,** said I present this to you on behalf of the Fire Department. I want to thank you for being such a kind, good-hearted person and taking care of everybody that frightful morning. Thank you very much. **Mr. Welker** said we did the same. We wrote a letter

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of commendation also just describing the outstanding service that Dawn provided and choosing to do the right thing instead of looking the other way. Thank you very much, Dawn, for the service you provided.

**Action: Employee Recognized.**

**ITEM NO. 2 – 19632...APPOINTMENT/RESOLUTION: MUNICIPAL COURT JUDGE**

**Synopsis:** A resolution appointing the Municipal Court Judge for the remainder of Judge Brandy Nichols-Brajkovic's 4-year term, submitted by Ken Moore, Chief Counsel.

**Action: Per the blue sheet, this item was held over to the March 7, 2019 full Commission Meeting.**

**PLANNING AND ZONING CONSENT AGENDA**

**Ms. Cobbins** read the statement, required by law, governing the Planning and Zoning portion of the meeting.

**Ms. Cobbins** asked if any members of the Commission wished to disclose any contact with proponents or opponents on any item on the agenda. **Mayor Alvey** asked do any commissioners have any disclosures to reveal. **Commissioner Townsend** said I wish to disclose that I have had contact with proponents and opponents of Change of Zone Application #3159. **Commissioner Bynum** said we had communication regarding the ordinance amendment for the special use permit for the Small Box Discount Stores. **Commissioner Burroughs** said we all got letters. **Commissioner Bynum** said we all got that letter. **Mayor Alvey** said I have received communications by opponents of #SP-2018-97, also communications against Change of Zone #3159. **Commissioner McKiernan** said the same for me, Mayor.

**Ms. Cobbins** read the items on the Planning and Zoning Consent Agenda.

**Mayor Alvey** asked if any member of the Commission or anyone in attendance tonight wished to set-aside any item on the Planning and Zoning Consent Agenda. If an item is not set-aside, all

items on the Planning & Zoning Consent Agenda will be voted on by one vote to follow the recommendation of the Planning Commission. **Commissioner Philbrook** said I would like to pull C-2.

**Abrid Mas** said I'd like to set aside Item #3172. **Robin Richardson, Director of Planning**, said, Mayor, that's Item A-1. Item B-1 will need to come off as well. **Mayor Alvey** said Items A-1 and B-1 are connected. Those both come off. **Mr. Richardson** said correct.

**Action:** **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the Planning and Zoning Consent Agenda, excluding the set-asides.** Roll call was taken on the motion and there were nine "Ayes," McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

#### **CHANGE OF ZONE APPLICATIONS**

##### **ITEM NO. 1 – 19603...CHANGE OF ZONE APPLICATION #3172 – TITA LAGRIMAS WITH TRADEBE ENVIRONMENTAL SERVICES**

**Synopsis:** Change of zone from M-2 General Industrial District to M-3 Heavy Industrial District

And

##### **ITEM NO. 1 – 19604...SPECIAL USE PERMIT APPLICATION #SP-2018-97 – TITA LAGRIMAS WITH TRADEBE ENVIRONMENTAL SERVICES LLC**

**Synopsis:** Special use permit for a 10-day transfer facility for non-regulated, DOT hazardous materials and hazardous waste, containers will be transferred from one truck to another; no transported containers will be kept inside the building at 1620 South 45<sup>th</sup> Street, submitted by Robin Richardson, Director of Planning. The applicant requests to rezone this property from M-2 General Industrial District to MP-3 Planned Heavy Industrial District and obtain a special use permit to operate a hazardous waste transfer facility. A list of potential materials that would be handled by the facility are included in the attachments. The Planning Commission voted 9 to 0 to recommend denial of Special Use Permit Application #SP-2018-97, as it will not promote the public health, safety and welfare of the City of Kansas City, Kansas. The Planning Commission

voted 9 to 0 to recommend denial of Special Use Permit Application #SP-2018-97, as it will not promote the public health, safety and welfare of the City of Kansas City, Kansas.

**Robin Richardson, Director of Planning**, said this item is for a facility that has trucks that go around through the region and collect hazardous waste and boxes. They bring it back to this facility, transfer them from a small truck to a larger truck. The hazardous waste is kept in the larger truck trailer for a week and then it's taken somewhere else to be disposed of. It comes to you recommended for denial. This is because the current zoning district is M-2, which doesn't allow this type of facility. The zoning would have to go from M-2 to M-3, and it requires a special use permit. Both items, I believe, if Mr. Moore will confer, this can be taken under one vote because they're both—the special use permit and the change of zone are related. **Ken Moore, Chief Legal Counsel**, said that's correct. They can be handled as one vote, but I think the vote on A-1 pretty much controls. **Mr. Richardson** said that is correct.

**Abrid Mas, 1620 S. 45<sup>th</sup> St.**, said before I start, I'd like to say English is not my first language so if someone has any problem understanding me, I'll definitely repeat. We're asking the Board to reconsider the decision to deny the rezoning from M-2 to M-3. Tradebe is an environmental services company. We've been servicing the EFD area for more than five years without any problems. We're looking for a larger office in Kansas City. That's when we found this office on 45<sup>th</sup> Street. We want to expand in this city.

As he was saying, basically, our operation is pretty simple. We service universities, hospitals and research centers. We send teams of trained chemist to their facilities. We pack their discarded chemicals in drums. Those drums are transported according to DOT regulations to our 10-day facility here in Kansas City. They are transferred from a smaller truck to a larger truck; and every 10 days, this truck gets swapped out and sent to a recycling facility in Chicago.

There's no recycling. There's no opening of the drums. It's just a pure truck to truck operation that we do here in Kansas City. We are not allowed to store the drums inside the building. We're only allowed to store the drums inside the trailers, and that's basically what we've been doing for the last five years in Kansas City, without any major issue or problem. At this point, we'd like to ask you to reconsider the decision. We've been operating in over 20 states in the country in light industrial zonings. As a matter of fact, I received confirmation in Cincinnati

today to operate the same kind of operation, light industrial zoning. We haven't had any major issues in any of those states either. I'd like the Board to reconsider the decision.

**Mayor Alvey** opened the public hearing and asked is there anyone present who would like to speak in favor of the applications.

**Joanne Sandifer Hanson, 530 Terrace Trail East, Lake Quivira, KS**, said my brother Mickey Sandifer is also with me. We own the property. My parents have owned this property for many years. As you can see, we've had a lot of problems with getting renters. We've been trying to get some good renters in. We found Tradebe. Since Crystal Clean, which did a similar operation, had operated out of this building just a few—it's probably been about 8 or 10 years ago, it never even crossed our mind that there would be an issue, especially since there was no processing. There was nothing going on here. We have done a lot of research into their facility and realized that there had not been any incidents of any contamination or any problems whatsoever. We talked to them for quite some time. We've also been monitoring the building. Everything's been clean. Everything's been in tact. We drive by the buildings almost daily to make sure everything is done and everything has been intact. We haven't had any problems.

We did have our community meetings and some of the people came and asked questions but they didn't come to the Planning Commission saying that they had any issues with them being in the facility.

We are also asking you guys to please reconsider because they have been great tenants. They haven't had any history of anything. In light of the fact that in other cities they are considered light industrial because all they are is a transport station. I am asking—again, the M-3 rezoning would be just a temporary. It would not be permanent. It would be just for the length of their contract.

**Mickey Sandifer, 14201 Midland Dr., Shawnee, KS**, said I understand decisions you guys have to make and it's a toughy. I know when we're making those kinds of decisions, the staff sometimes gives us the worse scenarios of what can happen and what's going to happen. In 99% of the cases, that doesn't happen.

We've had a really hard time trying to keep tenants with some of the crime rates and some of the different issues that we've had around that area. I know we've talked to you about some of it, Mayor. We finally have a good slated tenant and they're fantastic people. We have long-term contracts. We're asking for a special use permit that could be pulled at any time. If there are any issues and there hasn't been any issues. We're kind of at the mercy of the court here. As my sister was saying, we let them in here because we didn't think it was a big concern. The realtor that had brought them up didn't mention anything like this to us. They've been fantastic.

We would ask that you might reconsider if that's at all possible and give it six months and check it and bring it back up for another six if that's what it takes. **Mayor Alvey** said we can't. **Mr. Sandifer** said we've had to do that before. There's never been any real issues. We ask that you give them a chance.

**Mr. Richardson** said, Mayor, I just will make one correction. The zoning is permanent. Once we publish the M-3 zoning, it's published and it would have to go through a rezoning process to change. The special use permit is the temporary part of it. The zoning will stay M-3 once it's published, unless somebody takes an action to remove it to M-2. **Mayor Alvey** said, Rob, the change of zoning applies to the entire industrial park or just a portion of it. **Mr. Richardson** said just the parcel on your screen there with a green dot, just this lot. **Mayor Alvey** said not that this would make a difference, but in other locations or municipalities, would this be a light industrial zoning. **Mr. Richardson** said I'm not familiar with any zoning codes in that great amount of detail. It would seem odd that a hazardous waste transfer station could be in anything but a heavy industrial zone, but a lot of cities do a lot of different things. If you're in a great big city, it might be different than what it is here.

**Mayor Alvey** asked is there anyone in opposition who would like to come forward and speak. Actually, you folks are in opposition to the petition because it's recommended for denial so really, I'm asking is there anyone in support for the petition to deny. There were none.

**Mayor Alvey** closed the public hearing.

**Commissioner Kane** said to the operator, if you have a spill, what equipment do you have in your warehouse to contain the spill. If you couldn't contain the spill, what would be your next plan of action. **Mr. Mas** said our chemists and all of the employees in our facility are trained to respond to spills. We have a spill kit that includes basically oil dry absorbents, absorbent pads. What we do, especially when we have a drum that is leaking, the first action we take is immediately overpad the drum which basically means put that drum into a larger drum. That prevents that from spilling. If there's a major spill, then all we can do is call the emergency department.

**Commissioner Kane** said that's a pretty good answer, except there's a group HAZMAT that specializes in that. **Mr. Mas** said correct. Yes. **Commissioner Kane** asked is that the one you're talking about. **Mr. Mas** said yes. Absolutely. We actually work with two companies here that are specialized in responding to HAZMAT situations. **Commissioner Kane** said for the Commission, that's what you're supposed to do. My former life, working in the safety department, we couldn't control it. We had to call somebody else. That's a great answer. **Mr. Mas** said just for clarification, we deal with both hazardous and nonhazardous waste as well. Actually, the majority of our waste is not hazardous.

**Commissioner Markley** said for those who are familiar with this area, it's not residential. I mean, I'm just going to say it, it's not. It is a little industrial area along the highway. It's not a place where people are going to build a house. I guess my feeling is somebody is doing this business. We keep saying we want business in our community. Somebody is doing this work. I feel like this is—if he were living in a house in a neighborhood, I would be concerned; but you can see from the picture, it is more of an industrial area anyway. The closest house, I think, would be like way over on Metropolitan.

I kind of feel like we should give him a chance. If he doesn't have any issues, continues to run a clean shop, we don't have any concerns. It sounds like he knows how to handle concerns if they do come up, but I think we should—staff, I don't know how we can do this, but we should find a way where we can get that information of what happens in the interim period and give him a year to show us that he can keep a clean shop and make it work. If he comes back in a year and we have that clean record, then I would feel comfortable.

**Action:** Commissioner Markley made a motion, seconded by Commissioner Kane, to approve Change of Zone Application #3172 and Special Use Permit Application #SP-2018-97.

**Commissioner Philbrook** said yes, I agree, Commissioner, that yes, we tell businesses we want them to come in here. I think they ought to be given a chance.

I also have a little question about—it sounded like we weren't really too sure about the zoning change. Did we really need it or not need it for this particular type of facility? I think with that in mind, having to work something out for them, I think we need to look at that zoning issue again a little closer. If that could be part of our recommendation too because I don't know if it is, Angela. I don't know what you were thinking.

**Mr. Richardson** said the zoning is required for a hazardous waste transfer facility to be M-3. The M-3 will be there forever. If this tenant leaves, any other M-3 use can come in without a special use permit unless it's one of the ones that require a special use permit, but their special use—as I understood the motion, it was to approve the zoning and then approve the special use permit for one year. **Commissioner Markley** said that is correct.

**Commissioner Bynum** said I was trying to understand the need for the special use permit piece of this action. **Mr. Richardson** said the hazardous waste transfer facility requires a special use permit and M-3 zoning. It requires both. **Commissioner Bynum** said I see, the zoning and the special use. **Mr. Richardson** said like a salvage yard requires M-3 zoning and a special use permit.

**Commissioner Bynum** said tell us some examples of other industries should this one leave that could come in under M-3 zoning without needing a special use permit. **Mr. Richardson** said I will read the list if you give me just a moment. M-3 allows whatever is in M-2 and M-1. It allows billboards, large assembly, railroad equipment, heavy contracting, motor vehicle, bridge companies, industrial production equipment, concrete products, larger telecommunication towers, crematories, dead animal processing, extended dead storage of motor vehicles, grain elevators, hazardous waste disposal (that's with a special use permit), manufacturing of industrial chemicals,

pesticides, agricultural chemicals, paints and related products, metal smelting, refining and large scale warehousing. That's the heavier industrial stuff that goes from M-2 to M-3.

**Mayor Alvey** asked would any of those also require a special use permit. **Mr. Richardson** said I need to get to a different portion of the Code for that so if you give me one more second. **Mayor Alvey** said sure. **Mr. Richardson** said sorry, the Code does not go backwards on a mobile device very well. Crematory would require another special use permit. The outdoor advertising sign would require—the billboard would require more. Some of the manufacturing processes and waste processes require additional special use permits. **Mayor Alvey** would a dead animal facility. **Mr. Richardson** said I'm not all the way through the list yet. Salvage yards, as we said, hazardous wastes, transfer storage processing and disposal, solid waste transfer process and disposal. That's all the ones that are in the other list. **Mayor Alvey** said we don't know whether—**Mr. Richardson** said dead animals do not require a special use permit. We have one of those in Armourdale and there's no special use permit for it.

**Commissioner Burroughs** said the question I would have is what type of security do you have on your vehicle storage. Is it backed into the warehouse wall to where the doors can't be opened? Is it locked? Is it monitored? Any kind of alarm system to notify if there's been anyone messing with the vehicle. **Mr. Mas** said that's a very good point. Yes, the trailers are backed against the building so the door is facing the building. You cannot access the trailer from the outside. We use dog seals, meaning you cannot access the trailer from the outside. We also use what we call a fifth wheel, which basically prevents the trailer from being moved. We have security cameras in the area that we get notifications in case there is some motion detected. We, as managers, can decide whether we should call 911 or not. **Commissioner Burroughs** said well, I appreciate the security.

What about MSDS? Are they readily available or emergency responders? **Mr. Mas** said we have MSDS and MSDS inside the office at all times and outside as well next to the trailer, so they're available. You don't have to access the office to get those MSDS. We keep track of everything that's inside the trailer on a daily basis. Everything is inspected three times a day, and we keep logs of all those inspections.

**Mayor Alvey** said there is a motion on the floor. Let's be clear that this motion would overturn the recommendation from the Planning & Zoning Commission and would allow then the special use permit and the change of zone from M-2 to M-3. Is that correct? **Ken Moore, Chief Legal Counsel**, said that is correct, and that motion will take eight votes. **Mayor Alvey** said it would take eight votes. **Commissioner Philbrook** said eight no votes because—**Mr. Moore** said the motion is to allow. **Commissioner Philbrook** said okay. I just want to make sure. **Mr. Moore** said aye to allow. **Mayor Alvey** said aye to allow the special use permit and the change of zone. Is that correct? It's recommended for denial. **Mr. Richardson** said it takes eight ayes to approve.

Roll call was taken on the motion and there were nine "Ayes," McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 2 – 19605...CHANGE OF ZONE APPLICATION #3176 – BRECK A. RICKETTS**

**Synopsis:** Change of zone from R-1 Single Family District to A-G Agriculture District to keep hay and have a farm winery at 500 North 86<sup>th</sup> Street, submitted by Robin Richardson, Director of Planning. The request is to use the property for agricultural purposes including hay production and a farm winery. The Planning Commission voted 9 to 0 to recommend approval of Change of Zone Application #3176, subject to:

Urban Planning and Land Use Comments:

1. Are you planning to construct any buildings on the property? If so, please provide building plans and a site plan showing the location of buildings and their uses, proposed drives and parking areas, and proposed utility connections, including sewer.
2. How will any waste and byproducts of the wine making process be dealt with?
3. Please provide additional information about the proposed farm winery. Will there be a building for the winery? Will there be employees? Where will employees and customers park? What are the proposed hours of the farm winery? Are you planning to have customers come to the site for the farm winery? Please note that any live entertainment associated with the farm winery creates additional requirements for parking and a special use permit.

*Applicant Response:* I am requesting a zone change from R1 to AG for the purpose of the growing of wine grapes. A storage building would need to be built for the purpose of housing supplies, tools, and other items required for the production and picking of a grapes. AG zoning is required for the purpose of outbuildings without the presence of a main house. If after a successful establishment of grape vineyard (in 3 to 4 years), I would like to be able to host a "Roadside farm winery". This also requires the land to be zoned AG. Again, another reason to

rezone to AG. Farm wineries require a special permit to be operational, and at that time, plans and descriptions will be submitted.

I am planning on planting the vines at a 7-foot vine to vine spacing with 10 feet between rows. This will provide 6 feet of grass in between each row. This will allow for 4-foot beds and plenty of room in between for machinery. I will till the surface about 1 foot deep and augment with sand to help with starting root growth. The soil is type 7955 Knox Silt loam Class 3, NCCPI of 84.2, and the clay content should be very conducive to holding water for the deep root system that should develop.

In this process to start and promote the rootstock, there are various steps and procedures during the first 3-4 years. This includes first staking the vines, then providing some protections while the plant is small. Irrigation is critical also during the first few years. Next is the trellis system that has to be installed in about the 2nd or 3rd year, depending on plant height. After that, then supplies are required for the protection of grapes from deer, birds and other animals that like the rut. All of these components and multi-use apparatus will need to be stored on site in a small barn. This will be a shed that would suffice for storage of supplies and processing. This is the main reason I am requesting a zone change to AG. The minimum shed size would be 12' x 12' and maximum of about 30' x 50', and most likely a 12' x 20'. Up to this point, a special permit for farm wineries is not needed. If and only if this works out, I would like to in the future, entertain the possibility of providing a roadside farm winery. Pursuant to K.S.A. 41-308a,b, the land must be zoned AG to allow farm wineries, and this is the other reason I am requesting the AG zone change. My definition of a farm winery is something I would do in my spare time, on some weekends, and by appointment only. This is my retirement project. This will not in any way be a retail or commercial winery. It would be a simple roadside affair. This would produce traffic in the amount of a few cars on average a week at most. I do not plan on building a house or fermenting site there. This will be a glorified garden.

#### Public Works:

1. Items that require plan revision or additional documentation before engineering can recommend approval: none.
2. Items that are conditions of approval (stipulations):
  - a. The UG Public Works highly recommends a hydrologist or qualified dam engineer to carry out risk assessment to determine the hazard potential of the dam prior to construction. This may be needed as the potential overflow path when the dam is over capacity will flow to the east where there are nearby residential houses. Further discussion with staff may be required.
  - b. The proposed pond shall require UG Public Works and Kansas Division of Water Resources approval prior to construction permit acquisition.
3. Comments that are not critical to engineering's recommendations for this specific submittal, but may be helpful in preparing future documents: none.

#### Conservation District Comments:

1. There are three major soil types identified: Ladoga silt loam, 3 to 8 percent slopes, armster clay loam, 8 to 12 percent slopes and Knox silt loam, 7 to 12 percent slopes. These soil types are considered highly erodible when the surface is denuded of a protective cover.

2. In our review of the site, a discussion on construction of a pond for a water supply for irrigation of the grape vines was held. Initial review of the site revealed concerns suggesting the landowner should contact the Kansas Department of Water Resources before any disturbance of the land.
3. The bedrock in the area that will need to be avoided. The amount of fill and source of fill that will be needed to build the dam. Proximity to homes and roadways could create concerns.
4. The pond design should follow NRCS criteria, this includes any water from spillway or pipe enters the drainage way before leaving his property. He will need to contact Kansas Department of Water Resources to check on classification and he will need a Water Usage Permit to irrigate from it.
5. Shrink swell potential has been identified as a limiting factor for the development of dwellings. Shrinking and swelling can cause damage to buildings, roads and other structures and to plant roots. Special design commonly is needed.

**Action:**            **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve Change of Zone #3176, subject to the stipulations.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

### **ITEM NO. 3 – 19606...CHANGE OF ZONE APPLICATION #3179 – JOHN PETERSON**

**Synopsis:** Change of zone from C-1 Limited Business District to C-3 Commercial District for storage of equipment in conjunction with window cleaning business (Fish Window Cleaning) at 3214 Strong Avenue, submitted by Robin Richardson, Director of Planning. Storage of equipment includes such as ladders: power-washers, a water-fed pole system that pumps purified water, mops, squeegees, buckets and towels. In addition, there will be office space for the business. The Planning Commission voted 9 to 0 to recommend approval of Change of Zone Application #3179, subject to:

#### Urban Planning and Land Use Comments:

1. Subject to approval, this shall be a planned district (CP-3)
2. Subject to approval, a \$50.00 ordinance publication fee must be submitted to the Urban, Planning and Land Use Department following the Unified Government Board of Commissioners meeting.
3. Please provide more photos of the existing conditions
  - Exterior of building, from all sides
  - Parking lot

4. Any outside storage of equipment shall be screened from view from off the premises. Such outside storage shall be limited to areas directly adjacent to the main building, not including more than 20 percent of the area of the main building and not in a required yard.

- Will there be any outside storage?

*Applicant's Response:* No

5. Trees are required to be provided at not less than one per 7,000 square feet of site area. One tree is required.

*Applicant's Response:* Yes, if a place can be found.

6. Will customers come to the office portion? If yes, how frequently and in what volume?

*Applicant's Response:* No

7. Will the four work vehicles remain parked on-site overnight?

*Applicant's Response:* Will occasionally be parked there.

Public Works Comments: none.

**Action:** Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve Change of Zone Application #3179 to CP-3 Planned Commercial District, subject to the stipulations. Roll call was taken on the motion and there were nine "Ayes," McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

### **SPECIAL USE PERMIT APPLICATIONS**

#### **ITEM NO. 1 – 19603...CHANGE OF ZONE APPLICATION #3172 – TITA LAGRIMAS WITH TRADEBE ENVIRONMENTAL SERVICES**

**Synopsis:** Change of zone from M-2 General Industrial District to M-3 Heavy Industrial District.

**Action:** Item previously heard with Change of Zone #3172.

#### **ITEM NO. 2 – 19607...SPECIAL USE PERMIT APPLICATION #SP-2019-1 – RACHEL A. MCMEACHIN**

**Synopsis:** Home occupation special use permit for a live/workspace for aerial classes at 556 Lowell Avenue, submitted by Robin Richardson, Director of Planning. The applicant wants to teach yoga and aerial acrobatics classes five times per week in her home, which has been converted from a church at 556 Lowell Avenue. The Planning Commission voted 9 to 0 to recommend approval of Special Use Permit Application #SP-2019-1, subject to:

Urban Planning and Land Use Comments:

1. Subject to approval, this special use permit shall be valid for two years.
2. Per Business Licensing: If approved, applicant will need to file and maintain a current occupation tax application.
3. You stated in your narrative letter that classes are held on Monday through Thursday from 5:30 p.m. – 8:00 p.m. and Saturday from 10:00 a.m. to 2:30 p.m. ranging between 60 – 90 minutes. Are classes offered every week, two weeks a month, every week for six months, or something else?

*Applicant Response:* The classes are on-going, so they happen every week except holidays.

4. Do clients carpool to your residence? It appears that while available, on-street parking in the neighborhood is at a premium.

*Applicant Response:* Some students carpool in the case of siblings, parents and children or partners coming to class together. Some students already live in the neighborhood and walk to the studio. The rest I believe come solo.

*Staff Response:* Any advertising that you do, please indicate that on-street parking may be available along the property on the north and west sides of the street. Adding a residential driveway on your property may be possible, however you will need to obtain a driveway permit from the Public Works Department at (913) 573-5400.

Public Works Comments: none.

UPDATE – February 11, 2019:

The applicant, Ms. Rachel McMeachin, has provided an updated operational plan. Ms. McMeachin has clarified that classes that are offered are a mixture of ground or aerial fitness, movement and circus-based skills (ex. yoga, aerial yoga, lyra and trapeze - all aerial), stretch/flexibility (ground), handstands, and occasional special workshops.

As a resident and owner, hosting birthday parties, baby showers, bridal showers, book clubs are typical of most other residences in the city.

During the third event, held on June 30, 2018, it appears that city codes were violated based on the event descriptions.

Staff's concern, in addition to the event on June 30, 2018, where striptease was advertised are the larger, typically ticketed events that increase the amount of traffic and parking demand in the neighborhood. Shuttling to the site from a pre-determined parking lot may be the best way to handle parking demand in the neighborhood.

Should this petition be approved, staff stipulates the following:

1. This special use permit shall be valid for one year.
2. The applicant will need to file and maintain a current occupation tax application with the Business Licensing Department.
3. City codes shall be followed noting that no striptease or similar activities involving nudity shall occur.
4. Classes are held on Monday through Thursday from 5:30 p.m. – 8:00 p.m. and Saturday from 10:00 a.m. to 2:30 p.m., ranging between 60 – 90 minutes.

**February 28, 2019**

5. 9:00 p.m. shall be the cutoff for all ticketed events as this residence is in the middle of a single-family neighborhood.
6. If there are events (i.e. larger classes, gatherings, ticketed events, etc.) that will exceed the ten parking spaces that border the perimeter of north side of Lowell Avenue and west side of South 6th Street, a pre-determined location for parking shall be listed on the advertisement/notice that gives instructions to attendees about shuttling to the property. This may lessen the impact on parking for neighborhood residents.
7. All doors and windows shall be closed when classes and/or events are occurring.

**Action:**           **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve Special Use Permit Application #SP-2019-1 for one year, subject to the stipulations.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

### **ITEM NO. 3 – 19608...SPECIAL USE PERMIT APPLICATION #SP-2019-4 – LANCE PIERCE**

**Synopsis:** Special use permit for a short-term rental/Airbnb at 4028 Booth Street, submitted by Robin Richardson, Director of Planning. This is not the applicant’s primary residence. The Planning Commission voted 9 to 0 to recommend approval of Special Use Permit Application #SP-2019-4, subject to:

#### Urban Planning and Land Use Comments:

1. How long has the business been in operation?  
*Applicant Response:* Karat Investment Group has been in existence since 1/27/2016.
2. Were neighbors consulted prior to opening the business? *Applicant Response:* Yes, a meeting with the neighbors was held on 1/27/2019.
3. Do you have a business license?  
*Applicant Response:* Karat Investment Group is licensed in the state of Missouri, however a business license with the Unified Government of Wyandotte County will be acquired prior to operation.
4. Have you paid appropriate lodging taxes?  
*Applicant Response:* Yes.
5. How many rooms are rented?  
*Applicant Response:* There are four bedrooms that may be rented.
6. What is the maximum number of people that will be staying at any one time?  
*Applicant Response:* 12.
7. What is the maximum number of vehicles and where will they park?  
*Applicant Response:* Four cars may park off street in the driveway.
8. How often are guests in the residence?

*Applicant Response:* That will totally depend upon the market, however, the rooms will be available at all times for rent.

9. Do you have a rental license from the Unified Government for the facility?

*Applicant Response:* All appropriate licenses will be obtained prior to operation.

10. Describe in detail the area(s) rented for Airbnb/other rental operations. Include bedrooms, bathrooms common areas, etc.

*Applicant Response:* There are two units on the property. Each unit consist of a fully furnished living room including television, dining room, kitchen, two bedrooms and a bathroom with combination bath/shower and double vanity.

11. As this is not your primary residence, where are you located?

*Applicant Response:* My primary residence is located in Kansas City, Missouri, near KU Medical Center.

12. How often do you visit the property?

*Applicant Response:* The property will be visited several times a week.

13. Who is responsible for issues that may arise when guests are in the unit, if neighbors have concerns, or to clean and prepare the house between guests?

*Applicant Response:* Karat Investment Group has full-time staff that provide guest and neighbors with 24-hour service for any issues that may arise. Additionally, there is staff dedicated to cleaning properties in-between guests.

14. Have you provided your surrounding neighbors with your contact information should they have concerns?

*Applicant Response:* Yes.

15. Describe how you will maintain a safe environment including:

- a. Working smoke detectors in each bedroom plus each level of the unit/house.
- b. GFCI outlets are required in bathrooms.
- c. Double keyed locks are not allowed.
- d. Copper cannot be used for gas supply lines.
- e. Windows must be operable, not blocked or boarded.
- f. Handrails are required at sets of four or more stairs/risers.
- g. Hot water tank and furnace must be vented properly and operational.
- h. Electric panel and circuits must be safe.

*Applicant Response:* Maintaining a safe environment is of utmost importance, and all of the above-mentioned safety features will be in the home for all guest.

16. The property owner proposes to have both units as separate rentals. In order for the property to remain as a legal non-conforming unit, the owner must have a valid rental license for both units.

17. Any approval would be for one year.

#### Public Works Comments:

1. Items that require plan revision or additional documentation before engineering can recommend approval: none.
2. Items that are conditions of approval (stipulations):
  1. Vehicles shall not be parked on the sidewalk or use part of the right-of-way for parking.
  2. Applicant should be aware that on-street parking is restricted on Booth Street.

3. Comments that are not critical to engineering's recommendations for this specific submittal, but may be helpful in preparing future documents: none.

Stipulations of Approval:

1. Host will maintain a safe environment described above.
2. Host will obtain a business license with the City.
3. Approval will be for one year.

**Action:** Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve Special Use Permit Application #SP-2019-4 for one year, subject to the stipulations. Roll call was taken on the motion and there were nine "Ayes," McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 4 – 19595... SPECIAL USE PERMIT APPLICATION #SP-2019-5 – WILLIAM HARRIS, SR. WITH HARRIS TRUCKING**

**Synopsis:** Renewal of a special use permit (#SP-2016-77 – expired 10/27/2018) for the temporary use of land for a trucking business at 8819 Lowell Avenue, submitted by Robin Richardson, Director of Planning. The applicant is requesting to continue parking company equipment on the property in conjunction with operating a truck business. The Planning Commission voted 8 to 0 to recommend approval of Special Use Permit Application #SP-2019-5, subject to:

Urban Planning and Land Use Comments:

1. If approved, special use permit is valid for a period of two years.
2. Do you plan on making any changes to your current hours of operation?  
*Response:* The hours of operation are:  
 Monday through Friday – 6:00 a.m. to 6:00 p.m.  
 Saturday – 6:00 a.m. to 12:00 p.m.  
 Sunday – Closed
3. In your application for your special use permit in 2014, you stated that you planned on working for another five years and then retiring. Do you plan on still adhering to this timeline, or do you anticipate continuing this operation for a longer period?  
*Response:* We would like to work for five more years at least.
4. As an approved stipulation from your past special use permits, please submit maintenance receipts for your equipment from the past two years.  
*Response:* Please see attached.

Public Works Comments: none.

**Action:** Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve Special Use Permit Application #SP-2019-5 for two years, subject to the stipulations. Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 5 – 19596...SPECIAL USE PERMIT APPLICATION #SP-2019-6 – DARTEA LLC/BILL’S 32 WEST**

**Synopsis:** Renewal of a special use permit (#SP-2013-57 – expired 12/5/2018) for live entertainment in conjunction with Bill’s 32 West at 6500 Kaw Drive, #A, submitted by Robin Richardson, Director of Planning. The Planning Commission voted 9 to 0 to recommend approval of Special Use Permit Application #SP-2019-6, subject to:

Urban Planning and Land Use Comments:

1. The applicant is seeking a five-year approval.  
*Response:* Yes, this is correct.  
*Staff Response:* Five years is recommended.
2. What days and times does live entertainment typically occur?  
*Response:* Live entertainment typically occurs Thursday through Saturday from 9 p.m. to close.
3. How many people, on average, do you have on nights where there is live entertainment?  
*Response:* 25 to 30 people.
4. Please describe any calls to the police from this location.  
*Response:* We have not had to call the police in years.

Public Works Comments: none.

**Action:** Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve Special Use Permit Application #SP-2019-6 for five years, subject to the stipulations. Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 6 – 19602...SPECIAL USE PERMIT APPLICATION #SP-2019-7 – ELVIN AND SHARON GRIFFIN**

**Synopsis:** Renewal of a special use permit (#SP-2016-93 – expired 12/1/2018) for a kennel for five dogs at 7922 Yecker Avenue, submitted by Robin Richardson, Director of Planning. The Planning Commission voted 8 to 0 to recommend approval of Special Use Permit Application #SP-2019-7, subject to:

Urban Planning and Land Use Comments:

1. If approved, special use permit is valid for a period of two years.  
*Response:* Yes, we are aware of it being a two-year permit. This is actually a renewal from two years ago as we still have our same five dogs. If we are still over the limit of three dogs in two years, we will again request approval for the special use permit
2. Are the dogs left outside during the day/night for any extended period?  
*Response:* No, our dogs are not left outside day or night for any extended period of time. Our five dogs are all basically indoor dogs. They go out in the morning for a short time while we are getting ready for work/the day. They are outside sometimes during the day as Elvin is now retired and home some during the day. They then go out off and on during the evening when home from work or on weekends. However, our five dogs are never left outside when we are not home and they are never left out overnight. Also, we are very conscious of our dogs barking, and we notice them barking, we correct them or bring them back inside. Our neighbors are aware that if there is a problem with them barking or any other issue for that matter, to please let us know and we will be more than willing to address and fix the issue. It has always been our intention to be friendly and get along with our neighbors.
3. Have there been any complaints from neighbors about the dogs?  
*Response:* No, we are not aware of any complaints from our neighbors in the last two years. In fact, our neighbors at 2818 N. 79<sup>th</sup>, that had concerns with us prior to the last special permit, told us at the neighborhood meeting held, that they had no issues and were supportive of us continuing to keep our dogs.
4. Do any of these dogs subject to this permit have any history in violating any Ch. 7 ordinances? (e.g. running at large, excessive noise, bite injury etc.)  
*Response:* There has been one issue with our little chihuahua biting a workman who was working inside our home in the summer. Please see additional comments and explanation under Animal Control Comments below. There has never been any issue of our dogs running at large as they are either indoors or in our fenced backyard. We are not aware of any problems with excessive noise or other problems with our dogs.
5. Please provide all current vaccination records for all five dogs.  
*Response:* Please see attached records.

Animal Control Comments:

1. Regarding SP-2019-7: I wanted to let you know that a Chihuahua bit someone at 7922 Yecker Avenue on 6/30/2018. This is the note in our database: Hector Lopez was working inside the house at 7922 Yecker Ave. when a tri-color Chihuahua bit him on his right calf. The bite left

puncture wounds. Hector was treated at Leawood, KS Urgent Care at 913-428-8000. No one was home or answered the door when I went by the owners' address today. Left notice. -939 There is no indication that the owner of the dog ever made contact with Animal Services regarding the bite.

*Response:* This is not correct information. Elvin was home at the time our little Chihuahua nipped Hector on his calf when he came around the corner and surprised him. Elvin was not really aware it had even broke skin. We received notice from Animal Control on our door on Saturday, June 30, 2018, when we came home that afternoon/evening. On Monday morning, July 2, 2019, Sharon called Animal Services as requested and spoke with the officer answering the phone about what arrangements needed to be made to have their dog quarantined. The officer informed Sharon it could either be at Animal Services or their veterinarian. Sharon made arrangements for the Chihuahua to be quarantined at Bethel Animal Hospital at 7100 Leavenworth Rd., Kansas City, Kansas. The dog was quarantined at Bethel Animal Hospital from 07/02/2018 through 07/09/2018 for observation as required. Sharon was told by either Animal Control or Bethel Animal Hospital that Animal Control would contact the veterinarian to verify it took place.

Please see attached documentation showing Gino, our Chihuahua mix was quarantined or observation as required. Also, Elvin went to Animal Services on Friday, January 25, 2019, and gave them verification showing the animal had been quarantined as required, and the person made note of it and indicated they would also contact the City/Urban Planning to get this corrected on their part.

Public Works Comments: none.

**Action:** Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve Special Use Permit Application #SP-2019-7 for two years, subject to the stipulations. Roll call was taken on the motion and there were nine "Ayes," McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 7 – 19610...SPECIAL USE PERMIT APPLICATION #SP-2019-9 – SYLVIA E. JOHNSON WITH CAJUNATION**

**Synopsis:** Special use permit for the temporary use of land to park a food truck at the residence at 11014 Independence Boulevard, submitted by Robin Richardson, Director of Planning. The Planning Commission voted 9 to 0 to recommend approval of Special Use Permit Application #SP-2019-9, subject to:

Urban Planning and Land Use Comments:

1. This petition was brought to staff by Code Enforcement action who cited the applicant and owner, Ms. Jennings, for keeping a food truck on the property. As of December 28, 2018, per Code Enforcement, the applicant has corrected the violation and the case is now closed.  
*Applicant Response:* Correct.
2. The food truck must be parked in the driveway and not on the public street or in the right-of-way.  
*Applicant Response:* The truck will be parked in the driveway on the third car garage side.  
*Staff Response:* If you vacate North 111<sup>th</sup> Street, you may park the truck in the vacated street as one-half of the street will become the west property line of 11014 Independence Boulevard.
3. A business license must be obtained for this business.  
*Applicant Response:* Yes. We have a business license.
4. How long do you intend on parking the food truck at the residence?  
*Applicant Response:* We plan on parking the truck here until we find a commercial kitchen closer to our location. We do not feel it is safe outside at the kitchen we use.
5. How do you plan to mitigate the visual impact of the truck being parked in the driveway? What landscaping measures will be in place to screen the truck from your neighbors and Independence Boulevard?  
*Applicant Response:* We have a tree that blocks that side of the driveway.
6. How many days per week does the food truck leave the property?  
*Applicant Response:* We plan on using the truck every day, but if not, it will be parked here on three or four times a week.
7. How many times per day does the food truck come to and from the property?  
*Applicant Response:* Once, when we leave and then we return home.
8. What are the hours of operation of the truck?
  - a. What times will the truck leave and return to the property?  
*Applicant Response:* We could work mornings and evenings, so it just depends on the day.  
*Staff Response:* To minimize the impact on the immediate neighbors, the truck may not leave before 7:00 a.m.
9. Do you intend for this to be a permanent situation, or are you working to find a commercial property to serve as a permanent location to park the food truck?  
*Applicant Response:* Permanent, unless we find a different commercial kitchen.

Public Works Comments: None.

Staff Conclusion:

The applicant has addressed staff's comments except the exact time the truck will leave the morning and return in the evening. It is important that the neighbors have a timeframe to ensure the truck will not become a nuisance for them. An important distinction from other commercial vehicles is that the applicant stated that once the truck is parked for the evening, it will not leave again until the next morning, so one trip per day.

Subject to approval, the applicant shall adhere to the following stipulations:

1. This special use permit shall be valid for two years.

2. To minimize the impact on the immediate neighbors, the food truck may not leave before 7:00 a.m.

3. The truck shall be parked in the driveway in front of the third car garage door.

If an application to vacate North 111<sup>th</sup> Street is approved (by the Unified Government Board of Commissioners), the applicant may park the truck in the vacated street as one-half of the street will become the west property line of 11014 Independence Boulevard.

**Action:**        **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve Special Use Permit #SP-2019-9 for two years, subject to the stipulations.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

### **ORDINANCE AMENDMENTS**

#### **ITEM NO. 1 – 19611...ORDINANCE AMENDMENT: VENDING MACHINES**

**Synopsis:** Consideration of revisions to Sections 27-340 and 27-612(10) concerning vending machines as accessory uses in non-residential zoning districts in the Kansas City, Kansas Code of Ordinances, submitted by Robin Richardson, Director of Planning. The Planning Commission voted 9 to 0 to recommend approval of this ordinance amendment.

**Action:**        **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the ordinance amendments.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

#### **ITEM NO. 2 – 19612...ORDINANCE AMENDMENT: CONSIDERATION OF AMENDMENTS REQUIRING A SPECIAL USE PERMIT FOR SMALL BOX VARIETY STORES**

**Synopsis:** Consideration of certain amendments to Section 27-340, Planning and Development of Kansas City, Kansas Code of Ordinances, generally concerning definitions and a new provision to Section 27-593(a) Planning and Development of Kansas City, Kansas Code of Ordinances, requiring a special use permit for small box variety stores, submitted by Robin Richardson,

Director of Planning. The Planning Commission voted 9 to 0 to recommend approval of this ordinance amendment.

## Small Box Variety Stores

Unified Government Board of Commissioners  
February 28, 2019

### Original “Dollar Store” Ordinance

- **Ordinance O-13-16** was approved on February 25, 2016.
- The Ordinance required that any future dollar stores receive an SUP and required at least 10,000 feet between stores.
- “Dollar store” was defined as “a store with a wide variety of new merchandise for sale for five dollars or less, limited fresh produce, and buildings of less than 15,000 square feet. Examples include but are not limited to Family Dollar, Dollar General, Dollar Tree, 99 Cent Deals, Five Below, dime stores, or 5 & dime stores.”

**Patrick Waters, Senior Attorney**, said almost three years ago this week, this Commission considered and approved an ordinance that related to what was termed dollar stores. That ordinance required that future dollar stores receive a special use permit and required at least a \$10,000-foot separation distance between those stores. The definition for dollar store at the time is up there on the screen.

**February 28, 2019**

### Concerns expressed at February 25, 2016 meeting

- These stores are not providing healthy food. They have too much snack food and canned food.
- If you allow neighborhoods to become saturated with poor quality food it becomes more difficult to bring in higher quality food.
- Residents in our urban areas only have bad food options - they need good food options.
- Feels like these stores are taking advantage of people because they have nowhere else to go.
- The properties are not clean, not up to Code.

At the time, the Commission expressed a lot of concern about the lack of healthy food options available at these stores. On the screen here is a sampling of some of the comments that were made that night, including that these stores were not providing healthy food. They have too much snack food and can food. If you allow these neighborhoods to become saturated with poor quality food, it becomes more difficult to bring in higher quality food. If there's only bad food options in many neighbors, our residents need good food options.

Some felt like these stores were taking advantage of people because they didn't have anywhere else to go. There were also some comments about the upkeep of the property and that they weren't up to code.

### New ordinance

- Focuses on increasing access to fresh food.
- Supported by new evidence not available at the 2016 meeting.
  - *KCK Healthy Food Assessment* (Oct. 2017)
  - *City of New Orleans Small Box Retail Diversity Study* (Nov. 2018)

The reason we're back before you tonight is twofold. Number one, a couple of months ago we received a legal opinion from attorneys representing Colby Capital, which develops many Dollar General stores. They are (inaudible) in their opinion that the previous ordinance was unconstitutional because it favored instate businesses versus out-of-state businesses. This led us

to review the ordinance and when we did, we discovered that due to a drafting error, the chicken ordinance that was passed later that fall accidentally replaced this ordinance. It was actually not on the books. It is not on the books today.

Instead of simply resubmitting the same language from 2016, we kind of had a clean slate here so we decided to conduct some research and see if the ordinance could be strengthened and improved; and to see if there were any new studies which would further support the Commission's previous findings on this subject. It's clear from watching the Commission's comments at the 2016 meeting that the real focus was on the access to fresh, healthy food. That was the number one concern. In drafting this new ordinance, we took that into account.

### KCK Healthy Food Assessment Recommendations

- Increase city-wide access to healthy food choices.
- Increase availability of healthy food choices in neighborhood stores.
- Avoid concentrations of unhealthy food retailers.
- Create public incentives and tax credits for healthy food retail.
- Require small retailers, corner stores, convenience stores and others to provide healthy and fresh food choices.

Additionally, since that time, two new major studies have been conducted, which we attached links to, which would support these findings. One is the KCK Healthy Food Assessment. The second was just completed. The City of New Orleans completed a very comprehensive study of what they termed to be small box variety stores.

With respect to the healthy food assessment, you can see some of the recommendations that they made on the screen: increasing access to healthy foods, increasing availability of healthy foods, and avoiding concentrations of unhealthy food retailers. They also talk about providing tax credits and even going as far as requiring searching food choices.

This ordinance does not solve all these issues. It does not address all these issues but definitely for the first three, I think, are definitely relevant to this ordinance and we feel like it conforms to that study.

I would also note that regulations based on health, safety, and welfare of our residents are clearly within the Commission's authority and are most likely to be upheld and withstand any legal challenge.

### New ordinance

- *Small box variety store* means a store of 15,000 square feet or less which sells at retail an assortment of physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods. Small box variety stores do not include retail stores that:
  - (1) dedicate at least 15% of shelf space to fresh or fresh frozen food;
  - (2) dedicate less than 2% of shelf space to food of any kind;
  - (3) contain a prescription pharmacy, or
  - (4) offer for sale gasoline or diesel fuel.

That takes us to the new ordinance. It's based largely on the new ordinance passed by New Orleans. They used the term small box variety store. What's interesting here is that they define it not simply by what they sell, but by what they don't sell. Specifically, it excludes businesses that dedicate at least 15% of their shelf space to fresh or fresh frozen food. It excludes businesses that dedicate less than 2% of shelf space to food of any kind. If you're a business that simply has a coke machine or a candy counter, that excludes those types of businesses. It also excludes pharmacies and gas stations because the findings were that those types of businesses do not displace or inhibit the growth of full-service grocery stores.

That's really kind of the key finding of that study was that there is a certain type of store that sells just enough food to inhibit the growth of new grocery stores in those areas but not enough fresh, healthy food to meet the needs of the residents.

**Action:**        **Commissioner Philbrook made a motion, seconded by Commissioner Murguia, to hold this back for consideration so we can have more time to study it. Several of us can understand exactly what this means and how the impact will be. We can bring it back to the full Planning & Zoning Committee meeting, the next full commission meeting in a month or our next one.**

**Mayor Alvey** opened the public hearing and asked if anyone would like to come in support of this to please come forward at this time. No one appeared.

**Mayor Alvey** asked if anyone would like to come in opposition of this to please come forward.

**Pete Peterson, 748 Ann, KCK**, said there's a motion and a second on the floor. Rather than have me go through my whole thing and presentation, if you want to reconsider it, that's fine with us. We'll come back. That is my understanding, I believe. **Mayor Alvey** said yes, it is.

**Commissioner Kane** said when we come back with this information—I drove all up and down Johnson County the last couple of days to see how many were around there and we've never compared it to New Orleans or whatever. We've always tried to do it at a municipality close to our same size. I would sure like to know what surrounding municipalities have even if we have to drive and see how many are in certain locations up north or across the river. I don't want to do anything where we're going to get sued. I want to make sure what we do is correct. I'd like as much information as possible so we can make an educated decision on this because I'm thinking there could be a lawsuit if we go about this the wrong way.

**Commissioner Bynum** said I just want to understand the new ordinance, the bullet points. The small box variety stores do not include retail stores that dedicate at least 15% of shelf space to fresh or frozen food—do not include. **Mr. Waters** said what this allows is, it allows them a way to exempt themselves from this ordinance. What it says is, if a store would currently meet the definition, a small box variety store but they increase their fresh and frozen food supply to at least 15%, it would not fall under that provision and it would not have to have a special use permit.

**Commissioner Bynum** asked are we saying that it would meet all four bullet points or one of the four. **Mr. Waters** said no, it's any of the four. If the store meets any of the four bullet points, they are exempt from the SUP requirement and the distance requirement.

**Commissioner Bynum** said part of the reason I asked that is because there's a store very near me that I would say probably fits in this small box store category that we're trying to capture. It strikes me that it's got more than 2% shelf space food of any kind. It would meet the definition of being

exempted out of this ordinance is why I'm asking. **Mr. Richardson** said this ordinance would not apply to any existing stores. This is just for new stores.

**Commissioner McKiernan** said thank you for clarifying that, Mr. Richardson, because really what—I understand there's a rationale behind why this was brought forward. What I'd ask the Commission to do is to thoughtfully consider possible unintended negative consequences that might come about as a result of this ordinance so that we just really thoroughly consider any unintended, negative consequences.

**Commissioner Johnson** said I'm not nearly as articulate as my fellow colleague here, but I'll just say this. I don't want any more dollar stores in my district. I don't want any more dollar stores in the northeast. We've got enough.

**Commissioner Burroughs** said in reading some of the material that was presented in reference to the new ordinance, I'm just curious as to what kind of incentives we might have as a governing body to determine just what it is we want to provide as far as fresh food facilities that would meet the needs of a local community. This is a diverse community, and I'm sure those needs are just as diverse throughout our community.

I'd like to see some kind of incentive, some kind of opportunity for a local community to have input but also, we're known as a food hub basically with a number of grocers. To not have an opportunity to have them partner for them not partnering, I've grown concern that in light of the failed project we had on 10<sup>th</sup> Street by the previous administration, I think there's room for improvement on possible incentives that we could put together as a local community, as a local board, to determine what needs are met, what needs are needed, and what we can do to meet those needs of the community. I'm pleased we're sending this back for some study. I would hope that staff would come forward with some ideas from other communities that have dealt with this small store issue.

**Commissioner Murguia** said I would also like to request that we have a very short special session because there are a number of new commissioners that were not here when the changes to this ordinance was originally brought forward. My recollection versus what staff's recollection of what

the emphasis was on, there was an emphasis on the healthy food option but there was also another very large piece of that which I don't want to get into tonight. Maybe if there's just a short special session to bring this Commission up to speed about what some of the concerns were with the dollar stores.

Before we move forward with something that seems to be—I had concerns about dollar stores, but they were not as healthy food related as they were related to other things. If we could have just a short session. It seems like we're sending it back anyway just to give staff better direction just so that they're not spending a lot of time in bringing something forward again that we're not in favor of. If we could do that.

**Commissioner Townsend** said I wasn't going to make a comment but in listening to my fellow commissioners, if we are not going to act on this tonight in the way we expected, one thing that I would not want to see in the interim is some application come through for what we might consider one of these. I'll go along with us being more educated about it, but these things do have a detrimental impact or have. In the interim, I sure would not want to see an application come through. I'll just leave it at that.

**Mayor Alvey** said it would seem to me that really, that's not under our control. We don't have the authority to stop someone following their rights under the law to pursue an application as it is described in the law. **Commissioner Townsend** said you may be right Mayor—**Mayor Alvey** said yes, you just don't want to see it. **Commissioner Townsend** said I'm voicing what—I'm not going as far as what Commissioner Johnson said because I am a counsel but I have just stated my opinion on it.

**Commissioner Burroughs** said these are smallbox specialty stores. I would hope that we would lose the moniker of dollar store or whatever it may be because I think it's putting a false title on some of these stores. These are smallbox specialty stores. It's like calling every soda pop of dark color a Coke. I think they all get classified into the same thing. I would be careful, Mayor, as we move forward as a Commission to call these dollar stores or \$0.99 stores. I think we're labeling smallbox specialty stores and lumping them all together.

**Commissioner Philbrook** said in our efforts to get more educated, so to speak, about this particular issue, I agree with Commissioner. I think we do need to have some type of a conversation among the commissioners to hash out some of these things and get some of these questions answered for us. Maybe we can send some questions to Planning & Zoning and have them come back with some answers for us as well as a conversation around this before we move forward with it.

**Ken Moore, Chief Counsel**, said, Mayor, I guess I'd just like to clarify what the motion is. I thought the initial motion was to hold it over to the next meeting. **Commissioner Philbrook** said it was. **Mr. Moore** said it seems like we've evolved into sending it back to Planning. If we're sending it back to Planning, there has to be some direction to the Planning Commission as to what the Commission would like versus just holding it over for this Commission to act at a later date.

**Commissioner Philbrook** said I've got a question for you. Can we, between the other commissioner and myself, pull that first one and put a new one forward to do exactly what you said? **Mayor Alvey** asked which is. **Commissioner Philbrook** said which would be for Planning & Zoning to answer some questions for us and put together a conversation at a special session. **Mr. Richardson** said I don't know that needs to go back to Planning Commission for that. **Commissioner Philbrook** said no. I don't think we—do we have to go back to Planning? **Mr. Moore** said no. **Commissioner Philbrook** said okay.

**Mayor Alvey** said if we would keep the table and allow us then to set up a special session and have the conversation that the Commission would like, it would come back up for consideration when. **Mr. Richardson** said March 28<sup>th</sup>. **Mayor Alvey** said March 28<sup>th</sup>. **Commissioner Philbrook** asked do we have time to do that?

**Doug Bach, County Administrator**, said I would probably offer, Mayor, that if we're not able to get a special session—we do have special sessions scheduled through all our commission meetings through March; however, we can work on seeing whether we can put it in. If we cannot, we can consider this and table it for another month and figure it out.

**Mayor Alvey** said we have a motion to table and we have a second which means that we will try to set up a time to have a special session.

**Action:** Commissioner Philbrook made a motion, seconded by Commissioner Murguia, to hold until March 28, 2019. Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**MISCELLANEOUS ORDINANCES (Final action on previously approved items)**

**ITEM NO. 1 – 18107...ORDINANCE: REZONING PROPERTY**

**Synopsis:** An ordinance rezoning property at 4240 and 4240R North 55th Street and 4400 and 4800 North 47th Street (#3153) from A-G Agriculture and R-1 Single Family Districts to MP-3 Planned Heavy Industrial District, submitted by Robin Richardson, Director of Planning.

**Action:** **ORDINANCE NO. O-6-19**, “An ordinance rezoning property hereinafter described located at approximately 4240 and 4240R North 55<sup>th</sup> Street and 4400 and 4800 North 47<sup>th</sup> Street in Kansas City, Kansas, by changing the same from its present zoning of A-G Agriculture and R-1 Single Family Districts to MP-3 Planned Heavy Industrial District.” **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the ordinance.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 2 – 1821...ORDINANCE: REZONING PROPERTY**

**Synopsis:** An ordinance rezoning property at 607 to 611 North 6th Street (#3154) from CP-2 Planned General Business District to TND Traditional Neighborhood Design District, submitted by Robin Richardson, Director of Planning.

**Action:** **ORDINANCE NO. O-7-19**, “An ordinance rezoning property hereinafter described located at approximately 607 to 611 North 6<sup>th</sup> Street in Kansas City, Kansas, by changing the same from its present zoning of CP-2 Planned General Business District to TND Traditional Neighborhood Design District.” **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the ordinance.** Roll call was taken on the motion and there were nine

“Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 3 – 18327...ORDINANCE: REZONING PROPERTY**

**Synopsis:** An ordinance rezoning property at 10700 Lathrop Avenue (#3155) from A-G Agriculture District to TND Traditional Neighborhood Design District, submitted by Robin Richardson, Director of Planning.

**Action:** **ORDINANCE NO. O-8-19**, “An ordinance rezoning property hereinafter described located at approximately 10700 Lathrop Avenue in Kansas City, Kansas, by changing the same from its present zoning of A-G Agriculture District to TND Traditional Neighborhood Design District.” **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the ordinance.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 4 – 19569...ORDINANCE: REZONING PROPERTY**

**Synopsis:** An ordinance rezoning property at 13820 Donahoo Road (#3177) from A-G Agriculture (WYCO) District to A-G Agriculture (City) District, submitted by Robin Richardson, Director of Planning.

**Action:** **ORDINANCE NO. O-9-19**, “An ordinance rezoning property hereinafter described located at approximately 13820 Donahoo Road in Kansas City, Kansas, by changing the same from its present zoning of A-G Agriculture (WYCO) District to A-G Agriculture (City) District.” **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the ordinance.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 5 – 18379...ORDINANCE: VACATING PROPERTY**

**Synopsis:** An ordinance vacating an alley (#A-2018-5) between 444 Shawnee Road, 411 Stine Avenue, 1417 South 5th Street and 448 Shawnee Road, submitted by Robin Richardson, Director of Planning.

**Action:** **ORDINANCE NO. O-10-19**, “An ordinance vacating a tract of land being a part of a publicly dedicated alley, to be vacated, located between 444 Shawnee Road, 411 Stine Avenue, 1417 South 5<sup>th</sup> Street and 448 Shawnee Road, Kansas City, Kansas.” **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the ordinance.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

#### **ITEM NO. 6 – 18532...ORDINANCE: VACATING PROPERTY**

**Synopsis:** An ordinance vacating right-of-way (#R/W-2018-6) at 3777 Lloyd Street, submitted by Robin Richardson, Director of Planning.

**Action:** **ORDINANCE NO. O-11-19**, “An ordinance vacating (Lloyd street to be vacated) a strip of land previously dedicated for street right of way in the plat of Rolling Mill 2<sup>nd</sup> addition to Rosedale, located at 3777 Lloyd St, Kansas City, Wyandotte County.” **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the ordinance.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

### **PLANNING AND ZONING NON-CONSENT AGENDA**

#### **CHANGE OF ZONE APPLICATION**

#### **ITEM NO. 1 – 19627...CHANGE OF ZONE APPLICATION #3159 – BRYAN RUOFF WITH 3F30 ARCHITECTS**

**Synopsis:** Change of zone from C-1 Limited Business District to C-2 General Business District for X-Press Mart convenience store with fueling pumps at 3801 Leavenworth Road, submitted by Robin Richardson, Director of Planning. The applicant, on behalf of the owner, has filed a change

of zone from C-1 Limited Business District to CP-2 Planned General Business District, a plat to create one commercial lot and a final plan review to build a 4,000 square foot convenience store, eight pump gas station and two retail tenant spaces totaling 2,346 square foot at 3801 Leavenworth Road on 1.54 acres. (Final Plat and Final Plan Review were approved by the City Planning Commission on January 14, 2019.) The Planning Commission voted 5 to 2 to recommend approval of Change of Zone Application #3159 to CP-2 Planned General Business District, subject to: the staff stipulations and the additional stipulations, minus losing the one pump island, and the staff and applicant working towards a compromise with regard to any changes to the driveway, height of the fence, landscaping, etc.

#### Urban Planning and Land Use Comments:

##### General Planning:

1. Subject to approval, a \$50.00 ordinance publication fee must be submitted to the Urban Planning and Land Use Department following the Unified Government Board of Commissioners meeting.  
*Applicant Response:* Acknowledged.
2. Based on the floor plan, the contents in the retail store indicate a proposed liquor store. A special use permit is required and must be approved prior to opening that specific component of the store.  
*Applicant Response:* The use of the speculative spaces(s) is not determined at this time.

##### Building Architecture:

1. Sec. 27-576(c)(2) In order to break up the monotonous appearance of long facades, a building wall no more than 45 feet in length should be divided into increments of no more than 45 feet through articulation of the facade. This can be achieved through combinations of at least three of the following techniques:
  - a. Divisions or breaks in materials;
  - b. Building offsets (projections, recesses, niches);
  - c. Window bays;
  - d. Separate entrances and entry treatment; or
  - e. Variation in rooflines.

There appears to be no building articulation in the building; there is a significant lack of depth. Faux windows or inset window displays can be added on the façade to promote products for sale, without being considered signage on the side and rear façades, which will aid in breaking up the building.

The building needs greater architectural detail. The façade needs to have projections, variation in materials and integral colors.

Different building materials and architectural elements shall be included in revisions and subsequently incorporated into the final development plans. Please look at the other gas stations in the city that meet our Commercial Design Guidelines such as the Sinclair in Prescott Plaza (18<sup>th</sup> Street and Interstate 70), Phillips 66 at 103<sup>rd</sup> Street and Leavenworth Road, and QuikTrip at 78<sup>th</sup> Street and Interstate 70.

While you do not need to match these stores, elements and materials used in their construction need to be integrated into these plans.

*Applicant Response:* See Elevations, Sheets A102.0 and A102.1, 3-D Renderings. Note this is similar to the Xpress Mart Store at 1800 Steele Road. However, with the larger scale and newer project, an added masonry color has been added and the roofline has been enhanced. There is also space on this project to add some reasonable wall insets to the front and back elevations.

2. Sec. 27-576(e)(2) Exterior building materials shall not include the following:

f. EIFS at the ground level or comprising more than 15 percent of any façade.

*Applicant Response:* Acknowledged. The elevations reflect traditional stucco with the exception of the option for an EIFS at the Cornice Detail.

3. Masonry columns shall wrap the entire column underneath the gas canopy.

*Applicant Response:* Acknowledged. The plans show the columns wrapped in masonry.

4. Downspouts shall be internalized.

*Applicant Response:* Acknowledged. None are shown in the elevations or at the canopy.

#### Landscaping and Screening:

1. Sec. 27-577(a)(5) - Landscaping shall exceed the typical code requirements by at least 75 percent.

a. The district requirement is one tree per 7,000 square feet of site area. The property is .922 acre, so 10 trees are required per code.

b. All deciduous trees shall be at least 2½” caliper when planted. All evergreens must be at least 6’ in height when planted. All shrubs must be planted at a minimum of 5 gallons.

c. Landscaping shall be irrigated.

*Applicant Response:* Acknowledged. Current Landscape Plan is believed to meet the ordinance. The design team will continue to work with staff if there are minor changes required.

2. Sec. 27-577(b)(2) Landscape berms and/or continuous rows of shrubs are required to screen parking from adjacent developments or public streets. Shrubs used in this area must not exceed a maximum height of 30 inches at maturity. Please add note on landscape plan and revise as necessary.

*Applicant Response:* Acknowledged.

3. Sec. 27-577(b)(3) In general, formal, stand-alone trees are encouraged to be planted in landscape zones along major streets and medians. These trees should be planted as follows:

a. One tree with a minimum caliper of two inches (ornamental) evergreen trees must be planted at least six feet tall (when planted) provided for every 30 feet of street easement or frontage.

- b. Street trees should be planted no closer than 55 feet and no more than 65 feet apart.  
Groupings of ornamental trees and shrubs should be placed in between the street trees.

*Applicant Response:* Acknowledged. See Landscape Plan.

4. Sec. 27-577(d)(1) At least 75 percent of the length of building foundations facing public streets, the exterior of the development or common spaces must be planted with ornamental plant material such as ornamental trees, flowering shrubs, perennials, and groundcovers.

*Applicant Response:* Acknowledged.

5. Utility connections (including transformer boxes) shall be screened with landscaping or an architecturally designed screenwall. All utilities mounted on the wall shall be painted to match the building. All rooftop mechanical equipment shall be screened from public view on all sides by a parapet.

*Applicant Response:* Acknowledged. Parapet is 6' high. Landscaping will be integrated at electrical service entrance.

6. The BPU transformer pad shall be completely screened on all sides with 6-foot junipers setback 10 feet from the door opening and 3 feet from the remaining three sides of the pad. Additionally, the transformer doors shall face away from the public street.

*Applicant Response:* Acknowledged.

7. Sec. 27-575(g)(3) All trash receptacles shall be enclosed with a screening wall or fence constructed of the same materials as the primary structure. The screen must be a minimum of six feet in height on all sides and designed with the gate facing away from streets or adjacent land uses. All screening materials must be well maintained at all times.

*Applicant Response:* See site plan and renderings.

8. All lighting shall have 90-degree cutoff fixtures. Any lighting that is physically mounted to the building shall be decorative and have 90-degree cutoffs, as not to cast light on adjacent properties and public right-of-way. Light shall not exceed one footcandle as measured from said property line. Wall pack lighting is not permitted.

The photometric plan does not comply with our code, as the proposed lighting exceeds to one footcandle maximum at the property line along the north, south and east property lines. Please revise accordingly.

*Applicant Response:* Acknowledged. A photometrics plan has been provided.

*Staff Response:* The applicant provided a photometric (lighting) plan; however, along portions of the south property line, the lighting exceeds one footcandle. During the building permit review process, the photometric plan shall be revised, which may require changing the location of lights on the canopy and/or building to ensure that the exterior light does not exceed one footcandle at the property line.

Signage: Shall comply with the sign code.

*Applicant Response:* Acknowledged.

Public Works Comments:

1. Items that require plan revision or additional documentation before engineering can recommend approval:
  1. Engineering comments are listed as stipulations below.
2. Items that are conditions of approval (stipulations):
  - a. In future, if the adjacent property to the south on North 38<sup>th</sup> Street is developed to a commercial property, it may be necessary to have a shared access drive between the XPress Mart convenience store and the new development. There is no room for additional driveway entrances south of the existing driveway entrance on the residential property and the undeveloped lot south of the existing residential property. Further discussion with staff may be required.
  - b. The drainage easement for the proposed public storm sewer within the site shall be in accordance with UG standards and criteria.
  - c. The drainage easements documents shall be approved by UG staff, then recorded with the Wyandotte County Register of Deeds. A copy of the recorded easements with book and page number shall be submitted to staff prior to final engineering approval and construction permit acquisition
  - d. This project includes public sanitary sewer improvements for the proposed force main. The public sanitary sewer improvement plans shall meet the UG standards and criteria and shall be a separate plan set with a separate cover sheet with applicable information, i.e., vicinity map, sheet index, benchmark, utility contacts, floodplain note, etc. The public sanitary sewer improvement plans shall include erosion control. This set of plans is required and shall be reviewed and approved by UG staff prior to construction permit acquisition.
  - e. Please coordinate with Dave Clark - (913-573-5721), UG Public Works, regarding crossing of Leavenworth Road for the proposed public sewer extension.
  - f. The proposed grinder pump for the project shall be privately owned and maintained as it is being used for a commercial property. The UG warranty program in place for grinder pumps connected to low pressure sewer systems is strictly for residential businesses.
  - g. Construction plans shall meet UG standards and criteria and shall be reviewed and approved by UG prior to construction permit acquisition.
3. Comments that are not critical to engineering's recommendations for this specific submittal, but may be helpful in preparing future documents: none.

Staff Conclusion:

The applicant has revised the landscape plan to screen the site from the residence bordering the south property line adjacent to North 38<sup>th</sup> Street. The operator has two other gas station/convenience stores in Kansas, City, Kansas located at 1800 Steele Road and 3317 Brown Avenue. Both are clean, well-maintained and screened from residences that border the development.

The Traffic Impact Study (TIS), approved by the Kansas Department of Transportation (KDOT) finds that no additional improvements to 38<sup>th</sup> Street or Leavenworth Road are required to accommodate the proposed development.

In addition to the aforementioned comments, subject to approval, staff stipulates the following:

1. Trash pick-up shall be restricted between the hours of 7:00 AM to 7:00 PM.
2. Prior to the issuance of a Temporary Certificate of Occupancy (TCO), a certified light engineer shall provide a report to the Urban Planning and Land Use Department verifying that the site lighting does not exceed one footcandle in the air at the property line around the perimeter of the property, more specifically, along the south property line abutting the single-family home.
  - a. All building and canopy lighting shall have 90-degree cutoff fixtures and possibly a shield underneath the canopy to not cast light horizontally away from the fixture.

**Mayor Alvey** said as the Clerk stated earlier a valid protest petition has been filed.

**Robin Richardson, Director of Planning**, said the crux of the issue with this case was a property just south of the subject site and whether that person would be able to live comfortably in that house after this development was made. Since that time, the applicant has agreed to purchase that home and the person who submitted the protest petition in opposition to this case, I believe, is here to speak in favor of the case this evening. I think Mr. Ruoff is here this evening. He can probably say that better than I did. Hopefully, we've resolved all the issues and this can move forward.

**Bryan Ruoff, 7501 NW Tiffany Springs Parkway, Kansas City, MO, 3F30 Architects**, said I think everyone here is somewhat familiar with this project. I will give you a really quick synopsis of where we have come from and where we're going. We submitted an application in December 2017. In the process of talking to the neighborhood association, it was suggested that maybe we turn the building to fast east, which meant that we'd have to acquire property. We started that process in May. We came to an agreement with the homeowner that was immediately adjacent in June and purchased his property. We went through a full redesign with the engineering staff. We redid the traffic report. We did all the civil engineering. We moved everything. We meet all the ordinances with the building that faces east. In that process there was some discussion on the next property over, but it wasn't needed for the development. In the last few months, that property has been somewhat of a holdup for the obvious reasons, so we've been negotiating and we've been working with them. We went through the Planning Commission as I said and without much issue but the real estate part has been ongoing.

Before, during and since the last Commission meeting where we held it off a month, we have finalized. We have a real estate contract. We have a rather large escrow. We have a closing

date. All of that has been established. I think it's a win/win situation right now for everyone but it's all depending on this meeting. If we don't pass, we don't need the property. If we do pass, you see where we are with that. We're kind of stuck on where we are tonight. Beyond that, I don't think there's anything that we haven't dealt with with staff. We meet ordinance. I don't think there's any issues outstanding that aren't conditions on the approval. We're past all that, I believe.

The only thing I would like to add to this is because we're purchasing this property as part of this deal, we would like to, somewhere in this process, get permission to staff for us to remove the retaining wall, the fence and the landscaping to the south of this property because there's not another residential property on the other side of that. It'd still be zoned residential. In order to save the cost of all that development cost to go into the real estate purchase, we'd like permission somewhere in this process. I can suggest the verbiage for that.

Right now, we're under a condition with the Planning Commission to work with staff to adjust the drive, the landscaping and everything on that south edge. That all is going away with this. We'd like permission to eliminate all that costs on the south end of the property because it doesn't really benefit anybody.

**Mr. Richardson** said, Mayor, I think we would agree with that. There was a lot of screening and retaining wall at the southern end of their project that's really not needed once that house is being—they're going to buy the house and demolish it. That is needed. The next thing, there's the 635 ramp. I think that's an acceptable solution. We'll work out all the details of that through the Development Review Committee. That would be a change which would require eight votes but because there's a protest petition, even though I think the circulator is going to speak in favor of this project, it still requires nine votes. If that would be part of the motion to approve the project with the modification of this other landscape, then we can move forward with that administratively.

**Mayor Alvey** opened the public hearing and asked if anyone would like to speak in favor.

**John Cameron, 11223 W. 64<sup>th</sup> Terr., Shawnee, KS,** said I am a real estate broker with First Real Estate Equity. I represent the property owner to the south, Ms. Christine Allen. We have come to terms. At this point, we support the rezoning and have taken the additional step, although maybe

not legally binding, we have circulated a petition among those who signed the original petition, except for one that I could not reach, all have signed that petition. I have that here tonight. I have a notarized statement very similar to the original protest petition.

I think we also agree that with the purchase of Ms. Allen's home, the retaining wall and additional screening will not be necessary.

**Louetta Braswell, 5202 Parkview Avenue, KCK**, said I am here as the Director of the Leavenworth Road Association. Our Board has been with and supportive of this project from day one. We see them as a great asset after all the renovation on Leavenworth Road. We see this as a project that will bring in more revenue and more businesses on all the other corners there at 38<sup>th</sup> & Leavenworth Road, and we say it with pride.

**Mayor Alvey** asked is there anyone present who would like to speak in opposition. No one appeared in opposition.

**Mayor Alvey** closed the public hearing.

**Mayor Alvey** asked if the petitioner wanted to make any closing comments. **Mr. Ruoff** said I think everybody understands where we're at. We do need a certain amount of votes. I would like to encourage everybody to think that process through. It obviously is a win/win situation. I do think it's going to be good for that corner. It's right on the interstate. I think it's going to help with some of that. We also have KDOT coming through with Leavenworth construction so there is a little bit of a sense of urgency on our part to get coordinated with them. We have to run a sewer line across the road, so there's a little bit of a time issue in here and that sort of thing. Other than that, I would request your support on this.

**Commissioner Townsend** said I'm happy that the parties involved were able to come to a resolution that satisfied both parties. While I'd like to see new development come into the district, I never really want to see it at the expense of a long-term and valued resident. Since the parties have been able to come to an agreement, I would move to approve this application, the

recommendation of the Planning Commission with the amendment referred to tonight for the removal of the screening and retaining wall.

**Action: Commissioner Townsend made a motion, seconded by Commissioner Philbrook, to approve Change of Zone Application #3159 subject to the stipulations, and approving the removal of the screening and retaining wall.**

**Commissioner Bynum** said just two quick things. I am also really happy to have the resolution of the issue with the homeowner. That's delightful. I just wanted to say to Mr. Jamal, apparently, you wrote me a letter several weeks ago, but there's been some odd thing with my mail here at city hall and I got a stack of it this tall today. I wanted to apologize to you. Had I received that letter back when you sent it, I would have responded to you; but unfortunately, I saw that letter today. Nonetheless, I'm happy with the project.

**Commissioner Murguia** said I just have a quick question. Mr. Jamal, do you have other stores in Wyandotte County, other gas stations?

**Jamal Furok, 18023 Melrose Dr., Bucyrus, KS** said I have one store in your district, 1800 Steel Road. That's the most recent store I built. I think a commissioner has visited my store and everybody in the neighborhood loves the store. This store that we have designed is exactly alike except it's much bigger, much larger. I think each and every one of you will be very happy to see the development we have done. We have developed about 12 other stores. We settle for nothing but a wow experience. That's what we call it when you walk in the door. We want to hear you say wow! I will tell you this, you will hear that we've got a couple of more projects coming up. We appreciate you giving us your time. We really appreciate Ms. Christine and John working on both parties' behalf to come to an agreement. I think this will be a great asset for the neighborhood and the community.

**Commissioner Murguia** said, Jamal, I just wanted to say his store in my district is absolutely beautiful. It's very clean. I've heard nothing but rave reviews about it. I just can't say enough good things. I've talked to you on the phone several times. Every time I've called him, he's called me back or spoke to me immediately. He's been very responsive to constituents'

concerns. It truly is the best run gas station I've ever encountered in Wyandotte County or elsewhere.

**Mr. Furok** said I'm not one of the owners that stays home and enjoys life. I have a passion to be in my stores, and you will probably see my car in one of these stores late at night. I'm in the stores. I'm not home at 4 o'clock. Actually, I'm at the stores until at least about 11 o'clock every night.

Brian, my architect, he has known me since 2001. We both work late nights, and sometimes he will pick up the phone and call me knowing that I'm still in the stores. That's what keeps us going. All the guys that are working for me, they have been there forever.

The glorious thing about my company and my team is we don't hire anybody from outside. We groom everybody from inside and they climb up the ladder. Every GM that we have in our stores, they were moved up from within the company. We don't even hire anybody from outside to bring in because we want them to know what is expected in the stores. Just like the commissioner said, we take pride in our stores. This is our home. We spend more time in these stores than at home. When you pull up to our lot, we want to make sure that you think it is a nice place. I can't say we are QuikTrip, but I will tell you this, where QuikTrip doesn't want to go, I am there. I am in the neighborhoods. I am your QuikTrip.

Roll call was taken on the motion and there were nine "Ayes," McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

## **SPECIAL USE PERMIT APPLICATION**

### **ITEM NO. 1 – 19609...SPECIAL USE PERMIT APPLICATION #SP-2019-8 – REBECCA AND SCOTT JOHNSON WITH SCOJO'S RECYCLING INC.**

**Synopsis:** Special use permit for an office and shop and to temporarily store up to three vehicles that are waiting to be recycled at the scrapyards (salvage operation) (SCOJO's Recycling, LLC) at 521, 523 and 525 South 11<sup>th</sup> Street, submitted by Robin Richardson, Director of Planning. The Planning Commission voted 8 to 1 to recommend approval of Special Use Permit Application #SP-2019-8 for one year.

**Robin Richardson, Director of Planning**, said this is kind of a new operation. They're buying vehicles and basically taking a couple of the valuable pieces off of them and then taking them to the scrapyards. They don't have to take any fluids out of them. They don't have to take gas tanks out of them. They want to be able to keep three of them at this property. They'll be doing property improvements and screening for that. The Planning Commission did vote 8 to 1 in favor of this. As you can see, there's only one property between them and the railyard. It's a very heavily industrialized area.

**Scott Johnson, 20103 Nall Avenue, Stillwell, KS**, said I have a passion for recycling metal. We started up Scojo's Recycling. It's basically on pricing and automotive recycling business where we purchase defunct vehicles with bad engines, transmissions or wrecked vehicles, and then we remove a few of the valuable parts or components and deliver it straight to the scrapyards. We basically just need a place to put it right before it goes to the scrapyards. We have worked with the Urban Planning & Land Use Department, and we've met all the requirements to obtain a special use permit and approve the aesthetics of the property.

We'll have an 8-foot-tall full security and privacy fence around the entire property so nothing can be seen from outside of the property. We've already replaced all of the windows and painted the building and improved the aesthetics of the entire property. That's what we're doing.

**Mayor Alvey** opened the public hearing and asked is there anyone present who would like to speak in opposition. No one appeared in opposition.

**Mayor Alvey** closed the public hearing.

**Commissioner McKiernan** said, sir, Mr. Rodriguez is going to be your closest neighbor. Right? He came to the neighborhood meeting and it sounds like, from what I read, he got all of his questions answered and he did not come to the Planning & Zoning Commission meeting. Is that correct? **Mr. Johnson** said correct. **Commissioner McKiernan** said so he was satisfied with the answers he got at the neighborhood meeting. **Mr. Johnson** said yes. **Commissioner McKiernan** said fantastic. Given the fact that this is already zoned M-3, that this use is consistent with the zoning and with other properties in the area, that you have pledged to make physical improvements

and safety improvements, effectively make it a safer neighborhood. I would move that we approve as voted by the Planning Commission.

**Action:**        **Commissioner McKiernan made a motion, seconded by Commissioner Murguia, to approve Special Use Permit Application #SP-2019-8 for one year.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

### **REGULAR CONSENT AGENDA**

**Mayor Alvey** asked does any member of the Commission or anyone in attendance tonight wish to set-aside any item on the regular Consent Agenda. If an item is not set aside, all items on the Consent Agenda will be voted on by one vote.

**Action:**        **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the Consent Agenda.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

### **ITEM NO. 1 – 19265...ORDINANCE: SAFE ROUTES TO SCHOOL PHASE F**

**Synopsis:** An ordinance authorizing the Chief Counsel to commence legal proceedings to acquire property necessary for Safe Routes to School Phase F Project, CMIP 1613, submitted by James Bain, Assistant Counsel. The project consists of new sidewalks, replacement of existing sidewalk and corresponding pedestrian walkway improvements for William A. White Elementary/West Middle School along Welborn Lane from Georgia Avenue to N. 45<sup>th</sup> Street; Frances Willard Elementary School along Orville Avenue from N. 28<sup>th</sup> Street to N. 36<sup>th</sup> Street, including pedestrian walkway improvements at intersections. On November 8, 2018, the Commission unanimously adopted Resolution No. R-50-18 declaring the project to be a necessary and valid public improvement and authorizing a survey of land for said project.

**Action:**        **ORDINANCE NO. O-12-19,** “An ordinance condemning land for the construction, maintenance, operation, reconstruction, and improvements of

the Safe Routes to School, Phase F Project – CMIP 1613 all in Wyandotte County, Kansas; and directing the Chief Counsel to institute proceedings as provided by law to acquire said land in this ordinance described by condemnation proceedings.” **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve the ordinance.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 2 – 19631...PLAT: REPLAT OF THE ENCLAVE AT MISSION CLIFFS**

**Synopsis:** Plat of Replat of the Enclave at Mission Cliffs located along Lake Avenue and South Minnie Street, being developed by Pres LLC, submitted by Brent Thompson, County Surveyor, and Troy Shaw, County Engineer.

**Action:** **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve and authorize Mayor to sign said plat.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 3 – 19601...NOMINATION: BOARDS AND COMMISSIONS**

**Synopsis:** Nomination for Boards and Commissions:

Ms. Cherish Cho for the Planning Commission/Board of Zoning Appeals, 2/28/19 - 3/31/22, submitted by Commissioner Walters.

**Action:** **Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve.** Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

**ITEM NO. 4 – MINUTES**

**Synopsis:** Minutes from special session and regular session of January 31, 2019.

**Action:** Commissioner Kane made a motion, seconded by Commissioner McKiernan, to approve. Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

#### **ITEM NO. 5 – WEEKLY BUSINESS MATERIAL**

**Synopsis:** Weekly business material dated February 14 and 21, 2019.

**Action:** Commissioner Kane made a motion, seconded by Commissioner McKiernan, to receive and file. Roll call was taken on the motion and there were nine “Ayes,” McKiernan, Murguia, Johnson, Kane, Markley, Philbrook, Bynum, Burroughs, Townsend.

#### **STANDING COMMITTEES’ AGENDA**

No items

#### **ADMINISTRATOR’S AGENDA**

No items

#### **COMMISSIONERS' AGENDA**

No items

#### **LAND BANK BOARD OF TRUSTEES' AGENDA**

No items

#### **PUBLIC ANNOUNCEMENTS**

No items

**MAYOR ALVEY**

**ADJOURNED THE MEETING AT 8:16 P.M.**

**February 28, 2019**

**February 28, 2019**

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Bridgette D. Cobbins  
Unified Government Clerk

**tpl**

**February 28, 2019**