



# City of Arkansas City

## CITY COMMISSION MEETING AGENDA

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**Tuesday, September 06, 2022 at 5:30 PM – 118 W Central Ave, Arkansas City, KS**

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Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/725794629>

You can also dial in using your phone.

United States: +1 (571) 317-3122 - One-touch: tel:+15713173122,,725794629#

Access Code: 725-794-629

### I. Routine Business

1. Roll Call
2. Opening Prayer and Pledge of Allegiance
3. Additions or Deletions (**Voice Vote**)
4. Approval of the Agenda (**Voice Vote**)

### II. Awards and Proclamations

1. Proclaim September 11-17, 2022, as Direct Support Professionals Recognition Week in Arkansas City.

### III. Comments from the Audience for Items Not on the Agenda

*Per the Kansas Open Meetings Act, the City Commission is not required to entertain any comments from the public during any meeting.*

*The following rules **must** be strictly adhered to by all citizens wishing to speak during a virtual/hybrid meeting, **whether they are on the agenda or recognized by the Mayor during the meeting itself**:*

- Each speaker will state his or her name and address before making any comments.
- Each speaker will have three (3) minutes to present his or her comments.
- Comments or questions will be directed only to the City Commission.
- Debate or argument between parties in the audience will not be allowed. **"Logged in" citizens will remain muted during the meeting, unless recognized and called upon specifically by the Mayor.**
- Repeated reiterations by speakers will not be allowed.
- Violations of comment procedure will result in being directed to cease speaking or being muted.

### IV. Consent Agenda (Voice Vote)

*Note: All matters listed below on the Consent Agenda are considered under one motion and enacted by one motion.*

*There should be no separate discussion. If such discussion is desired, any item may be removed from the Consent Agenda and then considered separately under Section VII: New Business.*

1. Consent Agenda Item: Approve the August 16, 2022 regular meeting minutes as written.
2. Consent Agenda Item: Approve a Resolution authorizing a public meeting of the Governing Body to attend a Public Building Commission meeting at 5:15 p.m. Tuesday, September 20, 2022, in the Commission Room at City Hall, located at 118 W. Central Ave. in Arkansas City.

### V. Old Business

1. Hold a public hearing to receive public comment relating to the Revenue Neutral Rate.
  - 1a) Consider a Resolution to exceed the Revenue Neutral Rate. (**Roll Call Vote**)
2. Hold a public hearing to receive public comment regarding the proposed 2023 budget.
  - 2a) (Optional) Consider first reading of an Ordinance adopting the 2023 Budget for the City of Arkansas City. (**Roll Call Vote**)

## VI. New Business

### Ordinances for Consideration

1. Consider first reading of an Ordinance adopting by reference the Standard Traffic Ordinance for Kansas Cities, 49<sup>th</sup> Edition, prepared and published in book form in 2022 by the League of Kansas Municipalities. **(Roll Call Vote)**
2. Consider first reading of an Ordinance adopting by reference the Uniform Public Offense Code for Kansas Cities, 38<sup>th</sup> Edition, prepared and published in book form in 2022 by the League of Kansas Municipalities. **(Roll Call Vote)**
3. Consider first reading of an Ordinance amending Zoning Regulations Article 28 (Floodplain Management), and incorporating such regulations by reference. **(Roll Call Vote)**
4. Consider first reading of an Ordinance exempting the application of K.S.A. § 41-719(c) to allow the sale and consumption of alcoholic liquor at a designated area of Wilson Park during the Cowley Market Craft Show, from 10:00 a.m. to 4:00 p.m. on Saturday, September 24, 2022. **(Roll Call Vote)**

### Resolutions for Consideration

1. Consider a Resolution regarding the cleanup of the property located at 425 W Quincy Avenue, Arkansas City, Kansas, and providing for cooperation with the Kansas Department of Health and Environment in achieving said repair and cleanup. **(Voice Vote)**
2. Consider a Resolution authorizing the transfer of certain real estate at 212 N 3<sup>rd</sup> Street to George and Nisa Cummings. **(Voice Vote)**
3. Consider a Resolution authoring the City of Arkansas to enter into a Memorandum of Understanding with “a to be determined entity” composed of Consolidate Housing Services and Consolidated Development Partners, to acquire property and develop a residential housing development on the city owned lot bordered by N. 1st Street, N. 2nd Street, W. Birch Avenue, and W. Pine Avenue. **(Voice Vote)**

### Other Items for Consideration

1. Consider a motion authorizing the City of Arkansas City Commissioners to sign a letter concerning the 2023 Final IPPS Rule that could cause negative financial consequences to SCK Health. **(Voice Vote)**

## VII. City Manager's Report on Upcoming Activities

## VIII. Adjournment

*Office of the Mayor*  
  
**Arkansas City, Kansas**  
*Proclamation*

**WHEREAS**, the second full week of **September** has been designated as “National Direct Support Professionals Recognition Week” in order to annually celebrate and recognize professionals who provide support to millions of individuals with intellectual and developmental disabilities; and

**WHEREAS**, this celebration recognizes the dedication and vital role of Direct Support Professionals in enhancing the lives and protecting the well-being of individuals with disabilities of all ages; and

**WHEREAS**, the community plays a role in lifting up Direct Support Professionals as integral in supporting the needs of people with disabilities and their families through service systems across the United States; and

**WHEREAS**, the goals of this City, and its Equal Opportunity and Accessibility Advisory Board, properly give recognition to those who directly help people with disabilities to gain full access to housing, employment, and recreation activities that help to create productive and satisfying lives, and also to live as independently as possible.

**NOW, THEREFORE**, the Mayor of the City of Arkansas City, Kansas, does hereby proclaim **September 11-17, 2022**, as

**DIRECT SUPPORT PROFESSIONALS RECOGNITION WEEK**

in the City of Arkansas City, and call upon the citizens of Arkansas City to observe this week with appropriate programs and activities. Furthermore, encourages citizens of Arkansas City to seek information from those organizations with expertise in matters concerning professionals who support individuals with intellectual and developmental disabilities.

*In witness thereof I have hereunto set my hand and caused this seal to be affixed.*

\_\_\_\_\_  
 Name/Title: *Kanyon Gingher, Mayor*  
 Date: *September 6, 2022*



# City Commission Agenda Item

**Meeting Date:** September 6, 2022  
**From:** Lesley Shook, City Clerk  
**Item:** Approve August 16, 2022 Regular Meeting Minutes

**Purpose:** Consent Agenda Item: Approve the August 16, 2022 regular meeting minutes as written.

**Background:**

Each meeting, the City Commission reviews and approves the minutes of its prior meeting(s).

**Commission Options:**

- 1. Approve with consent agenda.
- 2. Remove item from consent agenda for further consideration.

**Approved for Agenda by:**

A handwritten signature in black ink, appearing to read "Randy Frazer", written over a horizontal line.

Randy Frazer, City Manager





# City of Arkansas City

## CITY COMMISSION MEETING MINUTES

Tuesday, August 16, 2022 at 5:30 PM – 118 W Central Ave, Arkansas City, KS

### Routine Business

1. Roll Call

#### **PRESENT**

Commissioner Charles Jennings  
Commissioner Scott Rogers  
Commissioner Diana Spielman  
Commissioner Jay Warren  
Mayor Kanyon Gingher

Also present: City Manager Randy Frazer, City Attorney Larry Schwartz, Police Chief Eric Burr, Deputy City Clerk Tiffany Parsons, Principal Planner Josh White, and Emergency Management Coordinator Bob Frazee.

2. Opening Prayer and Pledge of Allegiance were led by Ethan Mehalchick.
3. There were no additions or deletions to the agenda.
4. Approval of the Agenda

Motion made by Commissioner Spielman, Seconded by Commissioner Warren to approve the agenda as amended.

Voting Yea: Commissioner Jennings, Commissioner Rogers, Commissioner Spielman, Commissioner Warren, Mayor Gingher. Mayor Gingher declared the motion approved.

### Comments from the Audience for Items Not on the Agenda

Jose Garcia, 1002 S 1st, Arkansas City, addressed the commission regarding the zoning change on the property located at 405 S. 3rd Street. It was the consensus of the commission that Mr. Garcia address this concern with the Planning Commission.

### Consent Agenda

Note: All matters listed below on the Consent Agenda are considered under one motion and enacted by one motion. There should be no separate discussion. If such discussion is desired, any item may be removed from the Consent Agenda and then considered separately under Section VII: New Business.

Motion made by Commissioner Warren, Seconded by Commissioner Rogers to approve the consent agenda as presented.

1. Approve the August 2, 2022 regular meeting minutes and the August 2, 2022 special meeting minutes as written.

Voting Yea: Commissioner Jennings, Commissioner Rogers, Commissioner Spielman, Commissioner Warren, Mayor Gingher. Mayor declared the consent agenda approved.

## New Business

### Ordinances for Consideration

1. Deputy City Clerk Parsons presented for consideration first reading of an ordinance authorizing the rezoning of 405 S 3rd Street, from C-3 (General Commercial District) to R-1 (Low Density Residential District). Principal Planner Josh White briefly discussed the request for the rezone made by owner’s Jose and Corinna Garcia to convert former Alcohols Greenhouse building into a dwelling. Previously presented to the Planning Commission on Tuesday July 12<sup>th</sup>, to from a C-3 (General Commercial District) to a R-3 (High Residential District) resulted in the recommendation to rezone to a R-1 (Low Density Residential District) upon citizen concerns. Staff recommends moving forward with the rezone to a R-3 (High Residential District) to match the current zone of surrounding properties and overall density of the district. Zoning map of the property and surrounding district was presented to the commission. Dustin Schuetz, 2115 W Cedar Crest Ct., spoke before the commission in support of the rezone to R-3 (High Density Residential District).

Motion made by Commissioner Rogers, Seconded by Commissioner Warren to approve the Ordinance authorizing the rezone of 405 S 3rd Street, from C-3 (General Commercial District) to R-3 (High Density Residential District).

Roll Call Voting Yea: Commissioner Jennings, Commissioner Rogers, Commissioner Spielman, Commissioner Warren, Mayor Gingher. Mayor Gingher declared the motion approved and given **Ordinance No. 2022-08-4558.**

### Resolutions for Consideration

1. Deputy City Clerk Parsons presented for consideration a Resolution authorizing the City of Arkansas City to enter a contract with Utility, Inc., Decatur, GA, for twenty-seven (27) body worn cameras with an upfront fee not to exceed \$54,000 for 2022, and \$150,000 over 5-years. Police Chief Burr came before the commission highlighting the positive impact this body worn camera system would have on the department and community, then went on to review the bid comparison. Three bids were considered from Utility, Inc., Axon Enterprise, Inc., and Motorola Solutions. Burr noted that this purchase item is budgeted for this year, including a \$25,000 federal grant reimbursement recently acquired through American Rescue Plan Act. Previously budgeted funds made up the remainder for 2022. The proposed budget has already been requested for 2023.

Motion made by Commissioner Spielman, Seconded by Commissioner Rogers to approve contract with Utility, Inc., Decatur, GA, for twenty-seven (27) body worn cameras with an upfront fee not to exceed \$54,000 for 2022, and \$150,000 over 5-years.

Voting Yea: Commissioner Jennings, Commissioner Rogers, Commissioner Spielman, Commissioner Warren, Mayor Gingher. Mayor Gingher declared the motion approved and given **Resolution No. 2022-08-3496.**

- 2. Deputy City Clerk Parsons presented for consideration a Resolution authorizing the City of Ark. to purchase a tornado siren, that will replace the current siren located in the 500 block of South 6th Street, from Precision Communications, Aberdeen, MS, for an amount not to exceed \$19,640.39. Police Chief Burr and Emergency Management Coordinator Bob Frazee addressed this item to the commission. The three bids received were from Emergency Fire Equipment, CDL Eclectic and Precision Communications. Staff recommends the lowest bidder, Precision Communications. Frazee explained that the new siren is battery operated and includes a speaker which is an upgrade from the existing the 1977 siren. Dustin Schuetz, 2115 W Cedar Crest Ct., spoke before the commission addressing his concerns.

Motion made by Commissioner Warren, Seconded by Commissioner Spielman to authorize the City of Arkansas City to purchase a tornado siren, that will replace the current siren located in the 500 block of South 6th Street, from Precision Communications, Aberdeen, MS, for an amount not to exceed \$19,640.39.

Voting Yea: Commissioner Jennings, Commissioner Rogers, Commissioner Spielman, Commissioner Warren, Mayor Gingher. Mayor Gingher declared the motion approved and given **Resolution No. 2022-08-3497.**

Other Items for Consideration

- 3. Deputy City Clerk Parsons presented for consideration a selection of three (3) voting delegates and three (3) alternates to the 2022 League of Kansas Municipalities (LKM) Annual Business Meeting to be held on Monday, October 10, 2022.

City Manager Frazer mentioned that Commissioner Warren, Commissioner Jennings, and Mayor Gingher, along with himself, have signed up to attend the League of Kansas Municipalities (LKM) Annual Business Meeting.

Motion made by Commissioner Warren, Seconded by Commissioner Rogers to appoint Commissioner Warren, Commissioner Jennings, and Mayor Gingher as voting delegates, with City Manager Frazer, Commissioner Rogers, and Commissioner Spielman as alternates.

Voting Yea: Commissioner Jennings, Commissioner Rogers, Commissioner Spielman, Commissioner Warren, Mayor Gingher. Mayor Gingher declared the motion approved and given.

**Staff Report Presentations**

Department Reports

- 1. Review and discuss possible implementation of Special Use Vehicles Ordinance.

City Manager Frazer presented the item for discussion. Stating that the initial request from a citizen came about a year in a half to two years ago now. Chief Burr was asked to gather information from other municipalities that have adopted and implement Special Use Vehicle Ordinance.

Chief Burr presented an ordinance draft to the Commission based off the City of Andover’s policy as being the best option he found as they cover golf carts, UTV’s, ATV’s and micro utility vehicles. Burr spoke of his concerns for safety including lighting, in addition to being cautious of where in the city these vehicles should be allowed. State Statute prohibits these vehicles from being driven on a Kansas highway which includes Summit Street, however, Burr reiterated that crossing Summit Street would be acceptable. Burr stated that he would like to gain more community feedback. Commissioner Rogers

recommended setting up a work session and a public hearing to involve community members for further discussion.

Mayor Gingher opened the floor to the audience for discussion. Carl Bowman 6425 304<sup>th</sup> Rd, who started this discussion with the City Manager two years ago, is in favor of implementing a Special Use vehicle Ordinance but also believes they ATV's & UTV's are safe enough to be allowed on Summit Street. Susan Cochran who resides 6 miles East of Arkansas City, is in favor and would like to navigate through town to get groceries and other supplies. Paul Grantham who lives south of town and works all over the U.S., mentioned that many states allow utility vehicles with a one-time permit. Paul is in favor. Tim Marr, President of the local off-road club, stated that Oklahoma allows them on the highway being tagged and insured. Tim is also in favor. Wes Cochran is in favor and would also like to ride north and south on Summit Street to get to work. Several others spoke before the commission in favor.

City Manager Frazer provided the commission with the following reminders and updates:

- Fire Chief Parks Retired, Friday August 13<sup>th</sup> 2022, was his last day. Interviews for Fire Chief have been completed and a decision made shortly.
- Large main break at Kansas Ave. and 8<sup>th</sup> Street is complete and fixed.
- North Summit Street striping show begin tomorrow and finish by Thursday
- The August 17<sup>th</sup> KANPAC training has been rescheduled. City Manager Frazer will share the new date as soon as it is available.
- PEC would like to present the water master plan at the September 2nd work session.
- 2022 Kansas Housing Conference is August 30<sup>th</sup> – September 1<sup>st</sup> in Wichita, Kansas. City Manager Frazer will be attending.
- Kansas League of Municipalities (LKM) Annual Conference is October 8-10, 2022, in Overland Park, Kansas.

**Adjournment**

Motion made by Commissioner Warren, Seconded by Commissioner Spielman to adjourn the meeting.

Voting Yea: Commissioner Jennings, Commissioner Rogers, Commissioner Spielman, Commissioner Warren, Mayor Gingher

**THE CITY OF ARKANSAS CITY  
BOARD OF CITY COMMISSIONERS**

\_\_\_\_\_  
Kanyon Gingher, Mayor

**ATTEST:**

\_\_\_\_\_  
Tiffany Parsons, Deputy City Clerk

**Prepared by:**

\_\_\_\_\_  
Tiffany Parsons, Deputy City Clerk



# City Commission Agenda Item

**Meeting Date:** September 6, 2022  
**From:** Lesley Shook, City Clerk  
**Item:** Scheduling Public Building Commission Meeting

**Purpose:** Consent Agenda Item: Approve a Resolution authorizing a public meeting of the Governing Body to attend a Public Building Commission meeting at 5:15 p.m. Tuesday, September 20, 2022, in the Commission Room at City Hall, located at 118 W. Central Ave. in Arkansas City.

**Background:**

The **Public Building Commission** (PBC) is required to meet publicly at least once annually. This meeting traditionally has taken place on the third Tuesday of September, prior to the regular City Commission meeting.

There currently are eight (8) members on this Commission, five (5) of whom are the elected members of the Governing Body. Citizens currently on the PBC are **Angela Bruce, Mike Munson** and **Charles Tweedy**.

At this regular annual meeting, the PBC will convene and conduct any business necessary. The PBC also normally elects officers for the next calendar year during this meeting.

**Commission Options:**

1. Approve with consent agenda.
2. Remove from consent agenda for further consideration.

**Approved for Agenda by:**

A handwritten signature in black ink, appearing to read "Randy Frazer", written over a horizontal line.

Randy Frazer, City Manager

**A RESOLUTION AUTHORIZING A PUBLIC MEETING OF THE GOVERNING BODY TO ATTEND A PUBLIC BUILDING COMMISSION MEETING AT 5:15 P.M. TUESDAY, SEPTEMBER 20, 2022, IN THE COMMISSION ROOM AT CITY HALL.**

**WHEREAS**, all members of the Governing Body of the City of Arkansas City, Kansas, are members of the City’s Public Building Commission (PBC); and

**WHEREAS**, the Public Building Commission is required to meet at least once annually for regular business, which traditionally occurs on the third Tuesday in September, prior to a regular meeting of the Governing Body; and

**WHEREAS**, to comply with the Kansas Open Meetings Act, the Governing Body of the City of Arkansas City, Kansas, must designate this upcoming PBC meeting as a public meeting of the Governing Body and provide appropriate public notice.

**NOW, THEREFORE, IN CONSIDERATION OF THE AFORESTATED PREMISES, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE:** The Governing Body of the City of Arkansas City, Kansas, hereby establishes that it shall hold a public meeting at 5:15 p.m. on Tuesday, September 20, 2022, in the Commission Room at City Hall, 118 W. Central Ave., Arkansas City, Kansas, to attend a Public Building Commission meeting.

**SECTION TWO:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes City staff of the City of Arkansas City, Kansas, to take such further and other necessary actions that are required to effectuate the intent and purposes of this Legislative Enactment, and also to notify all persons requesting notice of such public meetings under the Kansas Open Meetings Act and K.A.R. 16-20-1.

**SECTION THREE:** This Resolution shall be in full force and effect from its date of passage by the Governing Body of the City of Arkansas City, Kansas.

**PASSED AND RESOLVED** by the Governing Body of the City of Arkansas City, Kansas, on this 6th day of September, 2022.

(Seal)

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution No. 2022-09-\_\_\_\_\_ of the City of Arkansas City, Kansas, adopted by the Governing Body thereof on September 6, 2022, as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Lesley Shook, City Clerk



# City Commission Agenda Item

Section V, Item 1.

**Meeting Date:** September 6, 2022  
**From:** Jennifer Waggoner, Finance Director/Treasurer  
**Item:** Public Hearing to Exceed the Revenue Neutral Rate (RNR) for the 2023 Budget year.

- Purpose:** 1) Hold a public hearing to receive public comment relating to the Revenue Neutral Rate.  
 1a) Consider a Resolution to exceed the Revenue Neutral Rate. **(Roll Call Vote)**

**Background:**

Senate Bill 13, passed in 2021 by the Kansas State Legislature, provides that by June 15<sup>th</sup> of every year, each county clerk shall calculate the revenue neutral rate (RNR) for each taxing subdivision in their respective county. If a taxing subdivision desires to levy a tax rate in excess of its RNR, it must first publish notice of a public hearing and notify, by July 20<sup>th</sup>, the county clerk of the taxing subdivision’s intent to exceed the RNR.

The RNR was provided to us by the Cowley County Clerk. The rate given was expressed in mills and would generate the same property tax revenue in dollars as levied in the 2021 tax year using the City’s 2022 assessed valuation. The City’s valuation increased from \$61,022,340 to \$70,041,940 or 14.8%. Per the RNR, the mill levy was set to decrease from 70.065 to 61.044 mills if we had not informed the County Clerk of our intention to exceed this RNR rate by July 20<sup>th</sup>. A Resolution of our Intent to Exceed the RNR was passed on July 5, 2022, and the Cowley County Clerk was subsequently notified on July 6<sup>th</sup>, 2022. We publicized the notification of a public hearing for exceeding the RNR on August 6, 2022 in the *Courier Traveler*, as well as on the City’s website.

Two budget work sessions have been held with the City Commission and all department heads. All sessions were open to the public. Each department has put forth their best analysis of what the City needs to include in the 2023 budget. Staff has worked diligently to cut costs and expenses, delay projects and maintenance where possible and extend the life of vehicles and equipment, while maintaining a level of service our citizens deserve and expect. Despite our best efforts, and due to record inflation and commodity costs, it is not possible to sustain the same services we have provided to our citizens at the current RNR rate. For this reason, staff recommends approving the Resolution to Exceed the Revenue Neutral Rate with a projected mill levy of 70.047.

**Commission Options:**

The Commission has the following options:

1. Hold the public hearing and then approve the Resolution to Exceed the RNR.
2. Hold the public hearing. Have further discussion on the RNR at the next regular commission meeting on September 20, 2022, at which time the Resolution would be approved.
3. Open the public hearing and then continue the public hearing to the next regular commission meeting on September 20, 2022 to allow for additional public input at which time the Resolution would be approved.
4. Disapprove the Resolution at which time the mill levy for the 2023 proposed budget cannot exceed 61.044 mills.

**Fiscal Impact:**

Amount: None

Fund: Department: Expense Code:

Included in budget       Grant       Bonds       Other (explain)

**Approved for Agenda by:**

  
 \_\_\_\_\_  
 Randy Frazer, City Manager

**A RESOLUTION OF THE CITY OF ARKANSAS CITY, KANSAS TO LEVY A PROPERTY TAX RATE EXCEEDING THE REVENUE NEUTRAL RATE;**

**WHEREAS**, the Revenue Neutral Rate for the City of Arkansas City was calculated as 61.044 mills by the Cowley County Clerk; and

**WHEREAS**, the budget proposed by the Governing Body of the City of Arkansas City will require the levy of a property tax rate exceeding the Revenue Neutral Rate; and

**WHEREAS**, the Governing Body held a hearing on September 6, 2022 allowing all interested taxpayers desiring to be heard an opportunity to give oral testimony; and

**WHEREAS**, the Governing Body of the City of Arkansas City, having heard testimony, still finds it necessary to exceed the Revenue Neutral Rate.

**NOW, THEREFORE, IN CONSIDERATION OF THE AFORESTATED PREMISES, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE:** The City of Arkansas City shall levy a property tax rate exceeding the Revenue Neutral Rate of 61.044 mills.

**SECTION TWO:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the Mayor and/or City staff of the City of Arkansas City, Kansas, to take such further and other necessary actions that are required to effectuate the intent and purposes of this Legislative Enactment.

**SECTION THREE:** This Resolution shall take effect and be in force immediately upon its adoption and shall remain in effect until future action is taken by the Governing Body.

**PASSED AND RESOLVED** by the Governing Body of the City of Arkansas City, Kansas, on this 6th day of September, 2022.

(Seal)

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution No. 2022-09-\_\_\_\_ of the City of Arkansas City, Kansas, adopted by the Governing Body thereof on September 6, 2022. as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Lesley Shook, City Clerk





# City Commission Agenda Item

**Meeting Date:** September 6, 2022  
**From:** Jennifer Waggoner, Finance Director/Treasurer  
**Item:** Public Hearing on Proposed 2023 Budget

**Purpose:** 1) Hold a public hearing to receive public comment regarding the proposed 2023 budget.  
 1a) (Optional) Consider first reading of an Ordinance adopting the 2023 Budget for the City of Arkansas City. **(Roll Call Vote)**

**Background:**  
 The final two steps of the budget process is to hold the public hearing and adopt the budget. September 20<sup>th</sup> is the final date to hold the public hearing and the budget must be adopted and certified to the County Clerk on or before October 1st.

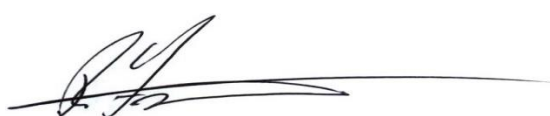
Two budget work sessions have been held with the City Commission and all department heads. All sessions were open to the public. Each department has put forth their best analysis of what the City needs to include in the 2023 budget. Staff has worked diligently to cut costs and expenses, create competitive wages, delay projects and maintenance where possible, and extend the life of vehicles and equipment while maintaining a level of service our citizens deserve and expect. Staff is requesting approval of a budget that holds our current mill levy essentially flat, from 70.065 to a projected 70.047, which will bring an estimated increase of \$630,755 in property tax revenue.

Kansas State Statute requires a public hearing be held at least 10 days after the publication of Notice of Hearing is published in the official City paper. The Notice of Hearing for the 2023 budget was published in the *Courier Traveler* on August 6, 2022, and subsequently placed on the City’s website. The public hearing is held to allow taxpayers an opportunity to be heard regarding the proposed budget. The publication sets the maximum amount of expenditures and amount of ad valorem tax to be levied. The adopted budget cannot be more than the published budget in any fund.

**Commission Options:**  
 The Commission has the following options:

1. Hold the public hearing and then approve the budget either as presented or as modified.
2. Hold the public hearing. Have further discussion on the budget at the next regular commission meeting on September 20, 2022 at which time the ordinance would be approved and the budget would be adopted.
3. Open the public hearing and then continue the public hearing to the next regular commission meeting on September 20, 2022 to allow for additional public input at which time the ordinance would be approved and the budget would be adopted.

**Fiscal Impact:**  
 Amount: None  
 Fund: Department: Expense Code:  
 Included in budget       Grant       Bonds       Other (explain)

**Approved for Agenda by:**  
  
 \_\_\_\_\_  
 Randy Frazer, City Manager

**ORDINANCE NO. 2022-09**

**APPROVING, ADOPTING, AND APPROPRIATING BY FUND THE BUDGET FOR THE CITY OF ARKANSAS CITY FOR THE YEAR BEGINNING JANUARY 1, 2023.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY:**

**SECTION ONE:** The proposed budget and financial statement as shown on the Standard State Budget Forms and subsequent to Notice of Hearing and Public Hearing is approved, adopted and appropriated by fund as the maximum amount to be expended for the budget year starting January 1, 2023; and

**SECTION TWO:** The governing body certifies that the amounts to be raised by Ad Valorem Property Tax Levies are within statutory or duly adopted Charter Ordinance Limitations.

<u>Funds</u>	<u>Adopted Budget of Expenditures</u>	<u>Amount of 2022 Tax to be Levied</u>
General	\$13,389,936	\$3,954,128
Debt Service	2,615,798	531,834
Library	457,400	420,249
Special Highway 21	1,289,108	
Special Recreation 20	57,041	
Tourism 23	200,398	
Special Alcohol 26	103,678	
Land Bank 31	11,211	
CID Sales Tax 57	70,000	
Stormwater 15	346,287	
Water 16	5,626,946	
Sewer 18	4,659,731	
Sanitation 19	1,933,112	
Healthcare Sales Tax 44	2,120,000	
Unpledged Healthcare Sales Tax 45	441,285	
	<hr/>	<hr/>
Total All Funds	<u>\$33,321,931</u>	<u>\$4,906,211</u>

**SECTION THREE:** The City Clerk shall cause this Ordinance to be published one time in the official City newspaper, and said Ordinance shall be in effect upon publication.

**PASSED AND APPROVED** by the Governing Body of the City of Arkansas City, Kansas, this 6th day of September, 2022.

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

**CERTIFICATE**

I, hereby certify that the above and foregoing is a true and correct copy of the Ordinance No. 2022-09-\_\_\_\_ of the City of Arkansas City, Kansas adopted by the governing body on September 6, 2022.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Lesley Shook, City Clerk

**CERTIFICATE**

To the Clerk of Cowley County, State of Kansas

We, the undersigned, officers of

**City of Arkansas City**

- certify that: (1) the hearing mentioned in the attached publication was held;  
 (2) after the Budget Hearing this budget was duly approved and adopted as the maximum expenditures for the various funds for the year 2023; and  
 (3) the Amounts(s) of 2022 Ad Valorem Tax are within statutory limitations.

			2023 Adopted Budget		
		Page No.	Budget Authority for Expenditures	Amount of 2022 Ad Valorem Tax	Final Tax Rate (County Clerk's Use Only)
<b>Table of Contents:</b>					
Allocation of MVT, RVT, 16/20M Veh Tax		2			
Schedule of Transfers		3			
Statement of Indebtedness		4			
Statement of Lease-Purchases		5			
Computation to Determine State Library Grant		6			
<b>Fund</b>	<b>K.S.A.</b>				
General	12-101a	7	13,389,936	3,954,128	
Debt Service	10-113	8	2,615,798	531,834	
Library	12-1220	8	457,400	420,249	
Special Highway 21		9	1,289,108		
Special Recreation 20		9	57,041		
Tourism 23		10	200,398		
Special Alcohol 26		10	103,678		
Land Bank 31		11	11,211		
CID Sales Tax 57		11	70,000		
Stormwater 15		12	346,287		
Water 16		12	5,626,946		
Sewer 18		13	4,659,731		
Sanitation 19		13	1,933,112		
Healthcare Sales Tax 44		14	2,120,000		
Unpledged Healthcare Sales Tax 45		14	441,285		
Non-Budgeted Funds-A		15			
<b>Totals</b>		xxxxxx	33,321,931	4,906,211	
Budget Hearing Notice					County Clerk's Use Only
Combined Rate and Budget Hearing Notice		16			
RNR Hearing Notice					
Neighborhood Revitalization					Nov 1, 2022 Total Assessed Valuation

Revenue Neutral Rate 61.044

Assisted by: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Attest: \_\_\_\_\_, 2022

County Clerk

Governing Body

**CPA Summary**

City of Arkansas City

2023

Allocation of MV, RV, 16/20M, Commercial Vehicle, and Watercraft Tax Estimates

Budgeted Fund for 2022	Ad Valorem Levy Tax Year 2021	Allocation for Year 2023				
		MVT	RVT	16/20M Veh	Comm Veh	Watercraft
General	3,361,897	448,423	4,102	1,772	6,211	0
Debt Service	548,523	73,164	669	289	1,013	0
Library	365,036	48,690	445	192	674	0
TOTAL	4,275,456	570,277	5,216	2,253	7,898	0

County Treas Motor Vehicle Estimate 570,277  
County Treas Recreational Vehicle Estimate 5,216  
County Treas 16/20M Vehicle Estimate 2,253  
County Treas Commercial Vehicle Tax Estimate 7,898  
County Treas Watercraft Tax Estimate 0

Motor Vehicle Factor 0.13338  
Recreational Vehicle Factor 0.00122  
16/20M Vehicle Factor 0.00053  
Commercial Vehicle Factor 0.00185  
Watercraft Factor 0.00000



**STATEMENT OF INDEBTEDNESS**

Type of Debt	Date of Issue	Date of Retirement	Interest Rate %	Amount Issued	Beginning Amount Outstanding Jan 1, 2022	Date Due		Amount Due 2022		Amount Due 2023	
						Interest	Principal	Interest	Principal	Interest	Principal
General Obligation:											
GO 2020	10/13/2020	8/1/2036	1.5 - 3.0	21,840,000	20,205,000	2/1, 8/1	2/1, 8/1	470,925	1,595,000	422,625	1,650,000
GO 2022 Strother Field	5/3/2022	9/1/2037	3.59	4,470,000	0	3/1, 9/1	9/1	0	0	213,072	180,000
<b>Total G.O. Bonds</b>					<b>20,205,000</b>			<b>470,925</b>	<b>1,595,000</b>	<b>635,697</b>	<b>1,830,000</b>
Revenue Bonds:											
2019 PBC Bond	7/23/2019	9/1/2044	3.0 - 5.0	17,630,000	16,855,000	3/1, 9/1	9/1	626,163	440,000	608,563	460,000
<b>Total Revenue Bonds</b>					<b>16,855,000</b>			<b>626,163</b>	<b>440,000</b>	<b>608,563</b>	<b>460,000</b>
Other:											
KDHE Loan - Sewer	12/9/2021	3/1/2043	1.31	9,500,000	9,500,000	3/1, 9/1	3/1, 9/1	0	0	62,225	208,517
<b>Total Other</b>					<b>9,500,000</b>			<b>0</b>	<b>0</b>	<b>62,225</b>	<b>208,517</b>
<b>Total Indebtedness</b>					<b>46,560,000</b>			<b>1,097,088</b>	<b>2,035,000</b>	<b>1,306,485</b>	<b>2,498,517</b>

City of Arkansas City

2023

**STATEMENT OF CONDITIONAL LEASE-PURCHASE AND CERTIFICATE OF PARTICIPATION\***

Item Purchased	Contract Date	Term of Contract (Months)	Interest Rate %	Total Amount Financed (Beginning Principal)	Principal Balance As Beginning of 2022	Payments Due 2022	Payments Due 2023
2013 Fire Truck (Pumper)	7/1/2013	120	2.82	587,667	97,598	66,909	32,989
2019 Fire Truck (Tanker)	2/1/2019	120	3.55	620,500	449,198	73,108	73,108
2021 Ravo Street Sweeper	3/16/2022	36	1.87	127,500	0	0	44,099
<b>Totals</b>					<b>546,796</b>	<b>140,017</b>	<b>150,196</b>

**\*\*\*If leasing/renting with no intent to purchase, do not list--such transactions are not lease-purchases.**

**WORKSHEET FOR STATE GRANT-IN-AID TO PUBLIC LIBRARIES AND  
REGIONAL LIBRARY SYSTEMS**

**Budgeted Year: 2023**

Library found in: City of Arkansas City  
Cowley County

As provided in KSA 79-2553 *et seq.*, two tests are used to determine eligibility for State Library Grant. If the grant is approved, then the municipality's library will be paid the grant on February 15 of each year.

First test:

	Current Year <u>2022</u>	Proposed Year <u>2023</u>
Ad Valorem	\$356,275	\$420,249
Delinquent Tax	\$12,000	\$12,000
Motor Vehicle Tax	\$50,386	\$48,690
Recreational Vehicle Tax	\$447	\$445
16/20M Vehicle Tax	\$1,175	\$192
LAVTR	\$0	\$0
	<u>\$0</u>	<u>\$0</u>
<b>TOTAL TAXES</b>	<b>\$420,283</b>	<b>\$481,576</b>
Difference in Total Taxes:	\$61,293	
Qualify for grant:	Qualify	

Second test:

Assessed Valuation	\$61,022,340	\$70,041,940
Did Assessed Valuation Decrease?	No	
Levy Rate	5.983	6.000
Difference in Levy Rate:	0.017	
Qualify for grant:	Qualify	

Overall does the municipality qualify for a grant? **Qualify**

If the municipality would not have qualified for a grant, please see the below narrative for assistance from the State Library.



**FUND PAGE FOR FUNDS WITH A TAX LEVY**

Adopted Budget <b>General</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	2,036,661	1,754,667	1,808,936
Receipts:			
Ad Valorem Tax	3,233,585	3,281,211	xxxxxxxxxxxxxxxxxxxx
Delinquent Tax	173,392	120,000	115,000
Motor Vehicle Tax	431,262	450,000	448,423
Recreational Vehicle Tax	3,981	4,361	4,102
16/20M Vehicle Tax	7,674	8,000	1,772
Commercial Vehicle Tax	0	0	6,211
Watercraft Tax	0	0	0
Gross Earning (Intangible) Tax	0	0	0
LAVTR	0	0	0
City and County Revenue Sharing	0	0	0
Special Assessments	44,629	39,000	38,236
Local Alcoholic Liquor	12,918	9,600	14,128
Compensating Use Tax	368,502	400,000	340,000
Local Sales Tax	1,836,649	1,860,000	1,750,000
Franchise Tax	1,220,180	1,195,000	1,134,000
Licenses & Permits	75,613	202,000	96,000
Grants	103,403	75,075	42,576
Cemetery Permits/Deeds	25,195	19,500	19,500
Rural Fire Contracts	386,596	420,000	390,000
County Ambulance Fees	195,130	195,000	180,000
Other Ambulance Fees	536,298	550,000	550,000
Fines, Forfeitures, Penalties	380,767	335,150	323,400
Fleet Management Equity	0	17,345	10,000
Interest	3,593	6,000	6,000
Sale of Assets	113,508	865	69,000
Rental Income	45,528	35,900	41,200
Donations	10,982	15,300	5,000
Reimbursed Expenses	183,072	134,600	85,000
Transfers:			
Transfer from Water	250,000	400,000	500,000
Transfer from Sewer	300,000	550,000	625,000
Transfer from Sanitation	0	200,000	200,000
Lease Proceeds			825,000
Neighborhood Revitalization Rebate	-86,855	-95,000	-100,000
Miscellaneous	10,720	96,325	
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>9,866,322</b>	<b>10,525,232</b>	<b>7,719,547</b>
<b>Resources Available:</b>	<b>11,902,983</b>	<b>12,279,899</b>	<b>9,528,483</b>

City of Arkansas City

**FUND PAGE - GENERAL**

Adopted Budget General	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
<b>Resources Available:</b>	11,902,983	12,279,899	9,528,483
Expenditures:			
General & Administration	1,251,824	1,396,285	1,498,225
Court & Legal	244,322	234,404	236,599
Fire/EMS Department	3,212,517	3,160,818	4,569,449
Police Department	3,069,979	3,062,181	3,691,772
Neighborhood Services	328,495	413,937	458,084
Parks & Facilities	986,571	1,093,926	1,211,332
Streets	755,775	802,776	898,193
Northwest Community Center	60,627	70,328	78,187
Senior Center	238,206	236,308	298,095
Subtotal detail (Should agree with detail)	10,148,316	10,470,963	12,939,936
Emergency Reserve	0	0	450,000
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>10,148,316</b>	<b>10,470,963</b>	<b>13,389,936</b>
Unencumbered Cash Balance Dec 31	1,754,667	1,808,936	xxxxxxxxxxxxxxxxxxxxxx
2021/2022/2023 Budget Authority Amount	10,702,736	11,711,410	13,389,936
Non-Appropriated Balance			
Total Expenditure/Non-Appr Balance			13,389,936
Tax Required			3,861,453
Delinquent Comp Rate: 2.4%			92,675
Amount of 2022 Ad Valorem Tax			3,954,128

**CPA Summary**

City of Arkansas City

2023

Adopted Budget <b>General Fund - Detail Page 1</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Expenditures:			
<b>General &amp; Administration</b>			
Salaries	799,645	895,240	1,020,745
Contractual	403,933	434,595	398,080
Commodities	33,607	45,150	44,900
Capital Outlay	14,639	21,300	34,500
Debt Service	0	0	0
<b>Total</b>	<b>1,251,824</b>	<b>1,396,285</b>	<b>1,498,225</b>
<b>Court &amp; Legal</b>			
Salaries	87,902	75,854	83,449
Contractual	151,122	151,900	150,300
Commodities	2,192	3,150	2,850
Capital Outlay	3,106	3,500	0
<b>Total</b>	<b>244,322</b>	<b>234,404</b>	<b>236,599</b>
<b>Fire/EMS Department</b>			
Salaries	2,287,797	2,514,068	2,989,086
Contractual	116,726	148,000	160,700
Commodities	207,553	241,750	266,100
Capital Outlay	460,424	111,500	1,014,000
Debt Service	140,017	145,500	139,563
<b>Total</b>	<b>3,212,517</b>	<b>3,160,818</b>	<b>4,569,449</b>
<b>Police Department</b>			
Salaries	2,631,713	2,671,521	3,219,772
Contractual	131,743	123,700	133,000
Commodities	117,838	131,000	131,000
Capital Outlay	188,685	128,860	147,000
Debt Service	0	7,100	61,000
<b>Total</b>	<b>3,069,979</b>	<b>3,062,181</b>	<b>3,691,772</b>
<b>Neighborhood Services</b>			
Salaries	247,614	286,147	310,644
Contractual	46,864	33,660	37,960
Commodities	32,280	47,230	65,680
Capital Outlay	1,737	39,900	28,000
Debt Service	0	7,000	15,800
<b>Total</b>	<b>328,495</b>	<b>413,937</b>	<b>458,084</b>
<b>Page 1 - Total</b>	<b>8,107,137</b>	<b>8,267,625</b>	<b>10,454,129</b>

City of Arkansas City

2023

Adopted Budget General Fund - Detail Page 2	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
<b>Expenditures:</b>			
<b>Parks &amp; Facilities</b>			
Salaries	570,101	621,225	710,332
Contractual	146,172	171,933	201,700
Commodities	129,963	196,212	213,300
Capital Outlay	140,335	94,556	48,500
Debt Service	0	10,000	37,500
<b>Total</b>	<b>986,571</b>	<b>1,093,926</b>	<b>1,211,332</b>
<b>Streets</b>			
Salaries	429,674	445,426	509,343
Contractual	269,041	282,800	308,800
Commodities	55,910	72,550	76,550
Capital Outlay	1,150	2,000	3,500
	0	0	0
<b>Total</b>	<b>755,775</b>	<b>802,776</b>	<b>898,193</b>
<b>Northwest Community Center</b>			
Salaries	47,759	51,528	55,887
Contractual	8,995	11,800	14,300
Commodities	3,440	6,500	7,500
Capital Outlay	433	500	500
	0	0	0
<b>Total</b>	<b>60,627</b>	<b>70,328</b>	<b>78,187</b>
<b>Senior Center</b>			
Salaries	194,817	183,108	244,495
Contractual	27,118	33,000	35,500
Commodities	16,271	19,000	17,100
Capital Outlay	0	1,200	1,000
	0	0	0
<b>Total</b>	<b>238,206</b>	<b>236,308</b>	<b>298,095</b>
<b>Page 2 -Total</b>	<b>2,041,179</b>	<b>2,203,338</b>	<b>2,407,620</b>
<b>Page 1 -Total</b>	<b>8,107,137</b>	<b>8,267,625</b>	<b>10,454,129</b>
<b>Grand Total</b>	<b>10,148,316</b>	<b>10,470,963</b>	<b>12,861,749</b>

(Note: Should agree with general sub-totals.)

**FUND PAGE FOR FUNDS WITH A TAX LEVY**

Adopted Budget <b>Debt Service</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	254,022	113,108	130,221
Receipts:			
Ad Valorem Tax	302,885	535,358	xxxxxxxxxxxxxxxxxxxxxxx
Delinquent Tax	40,013	35,000	30,000
Motor Vehicle Tax	89,003	46,048	73,164
Recreational Vehicle Tax	822	408	669
16/20M Vehicle Tax	1,579	1,074	289
Commercial Vehicle Tax	0	0	1,013
Watercraft Tax	0	0	0
Transfer from Water	0	1,490,250	1,493,000
Bond Proceeds	0	4,455,000	0
Paid Direct to City - Strother Field	0	0	393,073
Neighborhood Revitalization Rebate	-8,136	-25,000	-25,000
Miscellaneous			
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>426,166</b>	<b>6,538,138</b>	<b>1,966,208</b>
<b>Resources Available:</b>	<b>680,188</b>	<b>6,651,246</b>	<b>2,096,429</b>
Expenditures:			
Debt Service Principal	515,000	1,595,000	1,830,000
Debt Service Interest	52,080	470,925	635,698
Agency Fees	0	100	100
Emergency Reserve	0	0	150,000
Transfer to CIP	0	4,455,000	0
Cash Basis Reserve (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>567,080</b>	<b>6,521,025</b>	<b>2,615,798</b>
Unencumbered Cash Balance Dec 31	113,108	130,221	xxxxxxxxxxxxxxxxxxxxxxx
2021/2022/2023 Budget Authority Amount:	673,385	2,166,025	2,615,798
		Non-Appropriated Balance	
		Total Expenditure/Non-Appr Balance	2,615,798
		Tax Required	519,369
		Delinquent Comp Rate: 2.4%	12,465
		Amount of 2022 Ad Valorem Tax	531,834

See Tab C

Adopted Budget <b>Library</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	0	0	0
Receipts:			
Ad Valorem Tax	331,457	356,275	xxxxxxxxxxxxxxxxxxxxxxx
Delinquent Tax	20,041	12,000	12,000
Motor Vehicle Tax	48,796	50,386	48,690
Recreational Vehicle Tax	451	447	445
16/20M Vehicle Tax	868	1,175	192
Commercial Vehicle Tax	0	0	674
Watercraft Tax	0	0	0
Interest on Idle Funds			
Neighborhood Revitalization Rebate	-8,903	-15,000	-15,000
Miscellaneous			
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>392,710</b>	<b>405,283</b>	<b>47,001</b>
<b>Resources Available:</b>	<b>392,710</b>	<b>405,283</b>	<b>47,001</b>
Expenditures:			
Appropriations to Library Board	392,710	405,283	457,400
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>392,710</b>	<b>405,283</b>	<b>457,400</b>
Unencumbered Cash Balance Dec 31	0	0	xxxxxxxxxxxxxxxxxxxxxxx
2021/2022/2023 Budget Authority Amount:	409,950	401,700	457,400
		Non-Appropriated Balance	
		Total Expenditure/Non-Appr Balance	457,400
		Tax Required	410,399
		Delinquent Comp Rate: 2.4%	9,850
		Amount of 2022 Ad Valorem Tax	420,249

See Tab C

CPA Summary

**FUND PAGE FOR FUNDS WITH NO TAX LEVY**

Adopted Budget <b>Special Highway 21</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	785,482	777,885	593,685
Receipts:			
State of Kansas Gas Tax	337,818	319,520	324,440
County Transfers Gas	56,468	48,010	48,750
Grants	128,786	834,645	450,000
Reimbursed Expense	20,192	0	0
Lease Proceeds	0	127,500	0
Miscellaneous	33,150	0	0
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>576,414</b>	<b>1,329,675</b>	<b>823,190</b>
<b>Resources Available:</b>	<b>1,361,896</b>	<b>2,107,560</b>	<b>1,416,875</b>
Expenditures:			
Contractual Services	140,107	35,000	40,000
Commodities	201,561	201,000	204,000
Capital Outlay	242,343	1,277,875	1,001,008
Debt Service	0	0	44,100
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>584,011</b>	<b>1,513,875</b>	<b>1,289,108</b>
Unencumbered Cash Balance Dec 31	777,885	593,685	127,767
2021/2022/2023 Budget Authority Amount:	1,357,500	1,991,000	1,289,108

Adopted Budget

<b>Special Recreation 20</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	35,614	35,913	42,913
Receipts:			
Local Liquor Enforcement Tax	12,918	14,000	14,128
Interest on Idle Funds			
Miscellaneous			
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>12,918</b>	<b>14,000</b>	<b>14,128</b>
<b>Resources Available:</b>	<b>48,532</b>	<b>49,913</b>	<b>57,041</b>
Expenditures:			
Contractual Services	9,119	0	0
Commodities	3,500	7,000	3,500
Capital Outlay	0	0	53,541
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>12,619</b>	<b>7,000</b>	<b>57,041</b>
Unencumbered Cash Balance Dec 31	35,913	42,913	0
2021/2022/2023 Budget Authority Amount:	46,068	42,214	57,041

<b>CPA Summary</b>
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City of Arkansas City

2023

**FUND PAGE FOR FUNDS WITH NO TAX LEVY**

Adopted Budget <b>Tourism 23</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	28,280	36,408	50,398
Receipts:			
Transient Guest Tax	127,489	130,000	140,000
Contributions/Donations	5,004	9,990	10,000
Interest on Idle Funds			
Miscellaneous			
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>132,493</b>	<b>139,990</b>	<b>150,000</b>
<b>Resources Available:</b>	<b>160,773</b>	<b>176,398</b>	<b>200,398</b>
Expenditures:			
Contractual Services	124,365	126,000	200,398
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>124,365</b>	<b>126,000</b>	<b>200,398</b>
Unencumbered Cash Balance Dec 31	36,408	50,398	0
2021/2022/2023 Budget Authority Amount:	139,145	154,135	200,398

Adopted Budget

<b>Special Alcohol 26</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	93,482	94,225	89,550
Receipts:			
Local Liquor Enforcement Tax	12,919	14,000	14,128
Donations	700	825	0
Interest on Idle Funds			
Miscellaneous			
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>13,619</b>	<b>14,825</b>	<b>14,128</b>
<b>Resources Available:</b>	<b>107,101</b>	<b>109,050</b>	<b>103,678</b>
Expenditures:			
Contractual Services	1,000	4,500	4,500
Commodities	11,876	15,000	99,178
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>12,876</b>	<b>19,500</b>	<b>103,678</b>
Unencumbered Cash Balance Dec 31	94,225	89,550	0
2021/2022/2023 Budget Authority Amount:	90,524	111,282	103,678

<b>CPA Summary</b>
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City of Arkansas City

2023

**FUND PAGE FOR FUNDS WITH NO TAX LEVY**

Adopted Budget <b>Land Bank 31</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	986	8,786	7,711
Receipts:			
Sale of Property	8,000	0	3,500
Interest on Idle Funds			
Miscellaneous			
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>8,000</b>	<b>0</b>	<b>3,500</b>
<b>Resources Available:</b>	<b>8,986</b>	<b>8,786</b>	<b>11,211</b>
Expenditures:			
Contractual Services	200	65	0
Capital Outlay	0	1,010	11,211
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>200</b>	<b>1,075</b>	<b>11,211</b>
Unencumbered Cash Balance Dec 31	8,786	7,711	0
2021/2022/2023 Budget Authority Amount:	3,500	4,486	11,211

Adopted Budget

<b>CID Sales Tax 57</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	0	0	0
Receipts:			
Sales Tax	63,750	65,000	70,000
Interest on Idle Funds			
Miscellaneous			
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>63,750</b>	<b>65,000</b>	<b>70,000</b>
<b>Resources Available:</b>	<b>63,750</b>	<b>65,000</b>	<b>70,000</b>
Expenditures:			
Contractual Services	63,750	65,000	70,000
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>63,750</b>	<b>65,000</b>	<b>70,000</b>
Unencumbered Cash Balance Dec 31	0	0	0
2021/2022/2023 Budget Authority Amount:	65,000	65,000	70,000

<b>CPA Summary</b>
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**FUND PAGE FOR FUNDS WITH NO TAX LEVY**

Adopted Budget	Prior Year	Current Year	Proposed Budget
<b>Stormwater 15</b>	Actual for 2021	Estimate for 2022	Year for 2023
Unencumbered Cash Balance Jan 1	291,651	374,859	347,819
Receipts:			
Charges for Service	188,905	190,000	188,000
Penalties	1,923	1,900	1,800
Grants	0	0	0
Transfer from Sewer Fund	50,000	50,000	50,000
Interest on Idle Funds	253	500	500
Miscellaneous	6	0	0
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>241,087</b>	<b>242,400</b>	<b>240,300</b>
<b>Resources Available:</b>	<b>532,738</b>	<b>617,259</b>	<b>588,119</b>
Expenditures:			
Personnel Services	131,372	145,940	198,687
Contractual Services	1,670	12,000	12,000
Commodities	24,837	21,600	21,600
Capital Outlay	0	39,900	24,000
Capital Improvements	0	50,000	90,000
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>157,879</b>	<b>269,440</b>	<b>346,287</b>
Unencumbered Cash Balance Dec 31	374,859	347,819	241,832
2021/2022/2023 Budget Authority Amount:	306,139	342,577	346,287

Adopted Budget

	Prior Year	Current Year	Proposed Budget
<b>Water 16</b>	Actual for 2021	Estimate for 2022	Year for 2023
Unencumbered Cash Balance Jan 1	4,077,294	3,010,973	3,739,467
Receipts:			
Water Receipts	4,524,363	4,800,000	4,800,000
Connection Fees	73,552	65,000	66,000
Penalties	27,529	25,000	25,000
Reimbursed Expense	2,193	450	0
Interest on Idle Funds	3,759	4,200	3,500
Fleet Management Equity	0	0	30,000
Miscellaneous	44,032	33,763	45,000
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>4,675,428</b>	<b>4,928,413</b>	<b>4,969,500</b>
<b>Resources Available:</b>	<b>8,752,722</b>	<b>7,939,386</b>	<b>8,708,967</b>
Expenditures:			
Personnel Services	752,415	812,969	922,946
Contractual Services	751,451	738,500	782,300
Commodities	702,069	634,200	747,200
Capital Outlay	2,080,826	82,500	1,114,500
Operating Transfers:			
Transfer to General Fund	250,000	400,000	500,000
Transfer to Debt Service Fund	0	1,490,250	1,493,000
Debt Service Principal	1,120,000	0	0
Debt Service Interest	364,665	0	0
Prior Year Cancelled Encumbrances	-279,677	0	0
Fleet Management Lease	0	14,500	40,000
Cash Forward (2023 column)			
Miscellaneous	0	27,000	27,000
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>5,741,749</b>	<b>4,199,919</b>	<b>5,626,946</b>
Unencumbered Cash Balance Dec 31	3,010,973	3,739,467	3,082,021
2021/2022/2023 Budget Authority Amount:	6,510,616	4,221,530	5,626,946

<b>CPA Summary</b>
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**FUND PAGE FOR FUNDS WITH NO TAX LEVY**

Adopted Budget <b>Sewer 18</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	3,920,208	3,398,382	3,357,526
Receipts:			
Wastewater Receipts	2,026,383	2,200,000	2,350,000
Penalties	20,520	20,000	20,000
Reimbursed Expense	0	500	0
Loan Proceeds	0	9,100,000	2,000,000
Interest on Idle Funds	4,048	6,500	6,500
Federal Grants	890,398	890,400	0
Fleet Management Equity	0	0	15,000
Miscellaneous	27,016	35,000	10,000
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>2,968,365</b>	<b>12,252,400</b>	<b>4,401,500</b>
<b>Resources Available:</b>	<b>6,888,573</b>	<b>15,650,782</b>	<b>7,759,026</b>
Expenditures:			
Personnel Services	499,850	560,996	642,829
Contractual Services	263,946	247,710	280,210
Commodities	153,884	223,650	232,650
Capital Outlay	2,268,391	22,500	40,500
Operating Transfers:			
Transfer to General Fund	300,000	550,000	625,000
Transfer to Stormwater Fund	50,000	50,000	50,000
Fleet Management Lease	0	8,400	7,800
Capital Improvements	0	10,630,000	2,510,000
Prior Year Cancelled Encumbrances	-45,880	0	0
Debt Service	0	0	270,742
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>3,490,191</b>	<b>12,293,256</b>	<b>4,659,731</b>
Unencumbered Cash Balance Dec 31	3,398,382	3,357,526	3,099,295
2021/2022/2023 Budget Authority Amount:	14,169,544	15,112,810	4,659,731

Adopted Budget

<b>Sanitation 19</b>	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
Unencumbered Cash Balance Jan 1	1,086,036	1,439,710	1,332,626
Receipts:			
Sanitation Fees	1,491,895	1,500,000	1,500,000
Service Fees	15,494	10,000	5,000
Penalties	13,779	13,000	13,000
Sale of Assets	29,755	700	0
Interest on Idle Funds	1,057	2,000	2,000
Miscellaneous	5,306	450	0
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>1,557,286</b>	<b>1,526,150</b>	<b>1,520,000</b>
<b>Resources Available:</b>	<b>2,643,322</b>	<b>2,965,860</b>	<b>2,852,626</b>
Expenditures:			
Personnel Services	665,549	698,834	743,412
Contractual Services	359,922	435,150	472,150
Commodities	163,441	183,750	188,550
Capital Outlay	14,700	115,500	329,000
Operating Transfers:			
Transfer to General Fund	0	200,000	200,000
Capital Improvements	0	0	0
Cash Forward (2023 column)	0	0	0
Miscellaneous	0	0	0
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>1,203,612</b>	<b>1,633,234</b>	<b>1,933,112</b>
Unencumbered Cash Balance Dec 31	1,439,710	1,332,626	919,514
2021/2022/2023 Budget Authority Amount:	1,495,989	1,620,877	1,933,112

**See Tab C**

<b>CPA Summary</b>
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City of Arkansas City

2023

**FUND PAGE FOR FUNDS WITH NO TAX LEVY**

Adopted Budget	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
<b>Healthcare Sales Tax 44</b>			
Unencumbered Cash Balance Jan 1	0	0	0
Receipts:			
Healthcare Sales Tax (95%)	1,744,817	1,750,000	1,800,000
Compensating Use Tax	147,400	189,000	320,000
Interest on Idle Funds	0	0	0
Miscellaneous	0	0	0
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>1,892,217</b>	<b>1,939,000</b>	<b>2,120,000</b>
<b>Resources Available:</b>	<b>1,892,217</b>	<b>1,939,000</b>	<b>2,120,000</b>
Expenditures:			
Principal	425,000	0	0
Interest	638,913	0	0
Appropriations to Trustee	828,304	1,939,000	2,120,000
Cash Forward (2023 column)			
Miscellaneous			
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>1,892,217</b>	<b>1,939,000</b>	<b>2,120,000</b>
Unencumbered Cash Balance Dec 31	0	0	0
2021/2022/2023 Budget Authority Amount:	1,946,000	1,939,000	2,120,000

Adopted Budget

Adopted Budget	Prior Year Actual for 2021	Current Year Estimate for 2022	Proposed Budget Year for 2023
<b>Unpledged Healthcare Sales Tax 45</b>			
Unencumbered Cash Balance Jan 1	189,526	211,885	261,085
Receipts:			
Healthcare Sales Tax (5%)	91,833	100,000	100,000
Compensating Use Tax	221,101	180,000	80,000
Interest on Idle Funds	129	200	200
Miscellaneous	0	0	0
Does miscellaneous exceed 10% Total Rec			
<b>Total Receipts</b>	<b>313,063</b>	<b>280,200</b>	<b>180,200</b>
<b>Resources Available:</b>	<b>502,589</b>	<b>492,085</b>	<b>441,285</b>
Expenditures:			
Appropriations to Hospital	287,704	231,000	441,285
Cash Forward (2023 column)			
Miscellaneous	3,000		
Does miscellaneous exceed 10% Total Exp			
<b>Total Expenditures</b>	<b>290,704</b>	<b>231,000</b>	<b>441,285</b>
Unencumbered Cash Balance Dec 31	211,885	261,085	0
2021/2022/2023 Budget Authority Amount:	507,706	336,520	441,285

**CPA Summary**

City of Arkansas City

**NON-BUDGETED FUNDS (A)**  
*(Only the actual budget year for 2021 is reported)*

2023

Non-Budgeted Funds-A

(1) Fund Name:                      (2) Fund Name:                      (3) Fund Name:                      (4) Fund Name:                      (5) Fund Name:

<b>Equipment Reserve 54</b>		<b>Capital Improvement 68</b>		<b>Special Law Enf Trust Fund 29</b>						
Unencumbered		Unencumbered		Unencumbered		Unencumbered		Unencumbered		<b>Total</b>
Cash Balance Jan 1	200,946	Cash Balance Jan 1	1,470,323	Cash Balance Jan 1	11,144	Cash Balance Jan 1		Cash Balance Jan 1		1,682,413

Receipts:		Receipts:		Receipts:		Receipts:		Receipts:		
		Interest	1,284	Donations	611					
		Donations	299,788							
		Reimbursed Expense	300,000							
<b>Total Receipts</b>	<b>0</b>	<b>Total Receipts</b>	<b>601,072</b>	<b>Total Receipts</b>	<b>611</b>	<b>Total Receipts</b>	<b>0</b>	<b>Total Receipts</b>	<b>0</b>	<b>601,683</b>
<b>Resources Available:</b>	<b>200,946</b>	<b>Resources Available:</b>	<b>2,071,395</b>	<b>Resources Available:</b>	<b>11,755</b>	<b>Resources Available:</b>	<b>0</b>	<b>Resources Available:</b>	<b>0</b>	<b>2,284,096</b>

Expenditures:		Expenditures:		Expenditures:		Expenditures:		Expenditures:		
		Commodities	917	Contractual Services	8,215					
		Capital Outlay	576,917							
		Prior Year Cancelled Encumbrances	-285,992							
<b>Total Expenditures</b>	<b>0</b>	<b>Total Expenditures</b>	<b>291,842</b>	<b>Total Expenditures</b>	<b>8,215</b>	<b>Total Expenditures</b>	<b>0</b>	<b>Total Expenditures</b>	<b>0</b>	<b>300,057</b>
<b>Cash Balance Dec 31</b>	<b>200,946</b>	<b>Cash Balance Dec 31</b>	<b>1,779,553</b>	<b>Cash Balance Dec 31</b>	<b>3,540</b>	<b>Cash Balance Dec 31</b>	<b>0</b>	<b>Cash Balance Dec 31</b>	<b>0</b>	<b>1,984,039</b> **
										<b>1,984,039</b> **

\*\*Note: These two block figures should agree.

**CPA Summary**





# City Commission Agenda Item

**Meeting Date:** September 6, 2022  
**From:** Larry Schwartz, City Attorney  
**Item:** Standard Traffic Ordinance for Kansas Cities, 49<sup>th</sup> Edition

**Purpose:** Consider first reading of an Ordinance adopting by reference the Standard Traffic Ordinance for Kansas Cities, 49<sup>th</sup> Edition, prepared and published in book form in 2022 by the League of Kansas Municipalities. **(Roll Call Vote)**

**Background:**

Each year, the City of Arkansas City adopts the most recent version of the Standard Traffic Ordinance (STO) prepared by the League of Kansas Municipalities. The STO is a model traffic code based upon Kansas state law, and its adoption allows for the prosecution of most traffic violations in Arkansas City municipal court. New editions are prepared annually in order to respond to the changes made to the traffic laws each legislative session.

The following sections were modified in the 49<sup>th</sup> edition of the STO published in 2022.

**Changes:**

- 10.1 Funeral Procession
- 30 Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties
- 30.1 Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties
- 30.5 Commercial Driver’s License; Diversion Agreements Not Allowed
- 119 Parades and Processions
- 126.1.1 Display of License Plate
- 135 Electric-Assisted Bicycles, Traffic Law Application

**Commission Options:**

- 1. Approve the Ordinance on first reading so City Law mirrors State Law.

**Fiscal Impact:**

Amount:

Fund: Department: Expense Code:

Included in budget       Grant       Bonds       Other (explain)

**Approved for Agenda by:**

  
\_\_\_\_\_  
Randy Frazer, City Manager

**ORDINANCE NO. 2022-09-**

**AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF ARKANSAS CITY, KANSAS; INCORPORATING BY REFERENCE THE “STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES,” 49<sup>TH</sup> EDITION, WITH CERTAIN CHANGES AND ADDITIONS; AMENDING THE CITY OF ARKANSAS CITY MUNICIPAL CODE TO SO REFLECT; RATIFYING AND CONFIRMING CITY OF ARKANSAS CITY MUNICIPAL CODE WHICH MODIFIES PROVISIONS OF THE “STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES,” 49<sup>TH</sup> EDITION; AND REPEALING ORDINANCE NUMBER 2021-09-4541.**

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

**Section 1. INCORPORATING STANDARD TRAFFIC ORDINANCE.**

There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Arkansas City Kansas, that certain standard traffic ordinances known as the “Standard Traffic Ordinance for Kansas Cities,” 49<sup>th</sup> Edition, prepared and published in book form in 2022 by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. The police department, municipal judge and all administrative departments of the city charged with enforcements of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

**Section 2. TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.**

(a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. § 8-2118.

(b) All traffic violations which are included within this ordinance, and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

**Section 3: AMENDMENTS TO MUNICIPAL CODE**

(a) Section 58-18 of the Arkansas City Municipal Code is hereby amended to read as follows (new provisions in italics):

**58-18 Adopted by Reference.**

(a) The Standard Traffic Ordinance for Kansas Cities, 49<sup>th</sup> Edition (hereafter “Standard Traffic Ordinance”), is incorporated by reference under provisions of K.S.A. 12-3009 through 12-3012, and 12-3301 and 12-3302, and all acts amendatory thereof or supplemental thereto, which Standard Traffic Ordinance is so incorporated in its entirety in this Chapter by reference and made a part hereof as if fully set forth herein, provided and specifically deleting therefrom sections of the Standard Traffic Ordinance which have been replaced by local City provisions as hereinafter recited or provided for.

(b) No fewer than one copy of said Standard Traffic Ordinance shall be marked or stamped “Official Copy as Adopted by Ordinance No. \_\_\_\_\_” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

**Section 4: DEVIATIONS FROM STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, 49<sup>th</sup> EDITION**

The City of Arkansas City Municipal Code provides additions, exceptions and modifications to certain sections of the Standard Traffic Ordinance for Kansas Cities, 49<sup>th</sup> Edition, which are hereby ratified and confirmed. As described in City of Arkansas City Municipal Code: the Standard Traffic Ordinance is supplemented and amended by Municipal Code Sections 58-20, 58-21, 58-22, 58-24, 58-27, 58-58, 58-59, 58-77, 58-78, 58-79, 58-102, 58-103, 58-104; Standard Traffic Ordinance Section 33 is supplanted by Municipal Code Section 58-19; Standard Traffic Ordinance Section 116 is supplanted by Municipal Code Section 58-23; and Standard Traffic Ordinance Section 114.2 is supplanted by Municipal Code Section 58-26.

**Section 5: REPEAL**

To the extent any provision(s) of Ordinance number **2021-09-4541** conflicts with or is otherwise specifically supplanted by this Ordinance, those provisions of Ordinance number **2021-09-4541** are hereby repealed.

**Section 6: EFFECTIVE DATE**

The City Clerk shall make proper publication of this Ordinance, or a summary thereof, in the official City newspaper, and shall take effect and be in force from and after said publication. That the Mayor, City Clerk, and/or City Administration of the City of Arkansas City, Cowley County, Kansas, are authorized and directed to execute any and all documents necessary to consummate the Legislative purposes and intents as expressed herein and if executed by the Mayor (or other person authorized by law to act in the event of the absence or inability of the Mayor to act), the City Clerk is directed to attest to and affix the Official Seal of the City thereon.

**PASSED AND ORDAINED** by the Governing Body of the City of Arkansas City, Kansas, on this 6<sup>th</sup> day of September, 2022.

(Seal)

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Ordinance No. 2022-09-\_\_\_\_ of the City of Arkansas City, Kansas adopted by the governing body on September 6, 2022 as the same appears of record in my office.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Lesley Shook, City Clerk



## LEGAL FORUM

# 2022 Changes to the Standard Traffic Ordinance and Uniform Public Offense Code

By Nicole Proulx Aiken, Deputy General Counsel, League of Kansas Municipalities

The Legislature made several changes to statutes affecting the STO and UPOC this session. This article provides a list of those changes.

## Changes to the STO

### Section 1 Definitions.

The following definitions were amended: All-Terrain Vehicle (SB 101), Electric-Assisted Bicycle (SB 101), Electric-Assisted Scooter (SB 101), Motor Vehicle (SB 101), Motorcycle (SB 101), and Motorized Bicycle (SB 101).

### Section 10.1. Funeral Processions and Sec. 119. Parades and Processions.

The Legislature did not make changes to any statutes affecting funeral processions or parades. The League, however, added chief “of police or designee” to these sections to provide more flexibility for reviewing them.

### Section 30. Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties.

HB 2377, Section 4, amends the penalties for driving under the influence; allows courts to waive any portion of a fine, except for the \$250 required to be remitted to the state treasurer, if the individual completes a court-ordered education or treatment; clarifies that amending or dismissing a charge is permitted if there is not sufficient admissible evidence to support a conviction beyond a reasonable doubt; and modifies the definition for “imprisonment.”

### Section 30.1. Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties.

HB 2377, Section 9, amends the penalties for driving a commercial motor vehicle under the influence; allows courts to waive any portion of a fine, except for the \$250 required to be remitted to the state treasurer, if the individual completes a court-ordered education or treatment; clarifies that amending or dismissing a charge is permitted if there is not sufficient admissible evidence to support a conviction beyond a reasonable doubt; and modifies the definition for “imprisonment.”

### Section 30.5. Commercial Driver’s Licenses; Diversion Agreements Not Allowed.

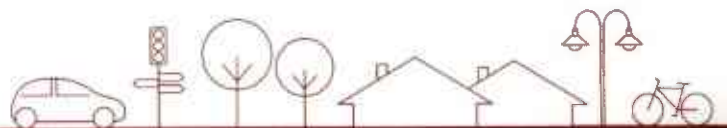
HB 2377, Section 10, prohibits prosecuting attorneys from masking, deferring imposition of judgment, or giving an individual a diversion “that would prevent a commercial learner’s permit or commercial driver’s license holder’s conviction from appearing on the CDLIS driver record of a local traffic law that occurred in any type of motor vehicle.” This prohibition does not apply to parking, vehicle weight, or other vehicle defect violations.

### Section 126.1.1. Display of License Plate.

Subsection (e) requiring law enforcement officers to issue a warning for certain violations expired on January 1, 2022, and has been deleted.

### Section 135. Electric-Assisted Bicycles, Traffic Law Application.

SB 101, Section 9, amends the state statute on electric-assisted bicycles. The amendments clarify electric-assisted bicycles are allowed on streets, highways, etc. The bill provides that individuals do not need a driver’s license or vehicle liability insurance to ride an electric-assisted bicycle. The bill also exempts electric-assisted bicycles from the motor vehicle definition. The League amended the STO to mirror state law but, under K.S.A. 8-1592b(f)(2), a city may adopt an ordinance further restricting and governing the operation of electric-assisted bicycles on streets, highways, roadways, sidewalks, sidewalk areas, bicycle or multi-use paths, or trail or trail networks.



- (a) Notwithstanding any provision of state law, city ordinance or county resolution relating to traffic control devices or right of-way provisions, pedestrians and operators of all vehicles, except as provided in subsection (b), funeral escorts may reasonably direct vehicle and pedestrian traffic to allow funeral processions to pass through intersections and disregard traffic control devices. When the funeral lead vehicle is directed by a funeral escort to lawfully enter an intersection, the remaining vehicles in the funeral procession may follow such funeral lead vehicle through the intersection regardless of any traffic control devices or right-of-way provisions prescribed by state law, city ordinance or county resolution.
  
- (b) Funeral processions shall have the right-of-way at intersections regardless of traffic control devices, subject to the following conditions and exceptions:
  - (1) Operators of vehicles in a funeral procession shall yield the right of-way to an approaching authorized emergency vehicle, and amendments thereto, using an audible signal meeting the requirements of Sec. 174, and amendments thereto, or a visual signal meeting the requirements of Sec. 160, and amendments thereto;
  - (2) operators of vehicles in a funeral procession shall yield the right of-way when directed by a police officer;
  - (3) operators of vehicles in a funeral procession shall exercise due care when participating in a funeral procession and avoid colliding with any other vehicle or pedestrian in accordance Sec. 66, and amendments thereto; and
  - (4) (4) an operator of a vehicle in a funeral procession shall not have the right-of-way at an intersection, if the vehicle is more than 300 feet behind the immediately preceding vehicle in the funeral procession.
  
- (c) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.

- (d) In accordance with Sec. 47, and a Section , Item 1. p, any state law, city ordinance or court order that motor vehicles shall be operated to allow sufficient space, enabling any other vehicle to enter and occupy such space without danger, shall not be applicable to funeral processions.
- (e) Each vehicle that is a part of a funeral procession shall have such vehicle's headlights, either high beam or low beam, and tail lights lighted and may also use flashing hazard lights if the vehicle is so equipped.
- (f) No funeral procession shall occupy, march or proceed along any highway until the city police department has been notified by the person or persons in charge thereof and until the chief of police or designee shall have made provision for such purpose together with a law enforcement or non-law enforcement funeral escort if he or she deems such escort necessary. (K.S.A. 8-2002(a)(3)); K.S.A. 8-1350:1352).

#### **Article 4. Traffic Signs, Signals and Markings**

**Sec. 11. Manual and Specifications for Traffic Control Devices.** All traffic control devices shall conform to the state manual and specifications. (K.S.A. 8-2005)

**Sec. 12. Obedience to and Required Traffic-Control Devices; Presumption of Legality.**

- (a) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto, placed in accordance with the provisions of this ordinance, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this ordinance.
- (b) No provision of this ordinance for which official traffic-control devices are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic-control devices are required, such section shall be effective even though no devices are erected or in place.

**Sec. 30. Driving Under the Influence of  
or Drugs; Penalties.**

Section , Item 1.

- (a) Driving under the influence is operating or attempting to operate any vehicle within this city while:
- (1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in Section 1 of this ordinance, is .08 or more;
  - (2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle, is .08 or more;
  - (3) Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
  - (4) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or
  - (5) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.
- (b) (1) Driving under the influence is:
- (A) An ordinance violation. On a first conviction of a violation of this section, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$750 nor more than \$1,000.
  - (B) On a second conviction of a violation of this section the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The following conditions shall apply to such sentence:
    - (i) As a condition of any probation granted under this subsection, the person shall serve at least 120 hours of confinement. The hours of confinement shall include at least 48 hours of imprisonment and otherwise may be served by a combination

of: Imprisonment; a work release program; or a house arrest program pursuant to K.S.A. 2021 Supp. 21-6609, and amendments thereto; and

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(ii) (a) if the person is placed into a work release program or placed under a house arrest program for any portion of the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum sentence is met. If the person is placed into a work release program or placed under a house arrest program for more than the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum of 120 hours of confinement is completed, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and (b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's next work day. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence;

- (2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

- (c) Any person 18 years of age or older Section , Item 1. of this section who had one or more children under the age of 18 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.
- (d) If a person is charged with a violation of subsection (a)(4) or (a)(5), the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.
- (e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
- (f) (1) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.
- (2) The court may, in its discretion, waive any portion of a fine imposed pursuant to this section, except the \$250 required to be remitted to the state treasurer pursuant to K.S.A. 12-4120(a) upon a showing that the person successfully completed court-ordered education or treatment.

- (g) The court shall electronically report every conviction of a violation of this section and every diversion entered into in lieu of further criminal proceedings, including a complaint alleging a violation of this section to the division including any finding regarding the alcohol concentration in the offender's blood or breath. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state. Section , Item 1.
- (h) For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:
- (1) Convictions for a violation of this section, K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;
  - (2) Any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:
    - (A) Driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto, or section 30.1 of this ordinance;
    - (B) Operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
    - (C) Involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a) (3) or (a)(5), and amendments thereto;
    - (D) Aggravated battery as described in K.S.A. 21-5413(b)(3) or (b)(4), and amendments thereto; and
    - (E) Aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;



(3) **Conviction** includes:

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- (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging an offense described in subsection (h)(2); and
  - (B) Conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another jurisdiction that would constitute an offense that is comparable to the offense described in subsection (h)(1) or (h)(2);
- (4) Multiple convictions of any crime described in subsection (h)(1) or (h)(2) arising from the same arrest shall only be counted as one conviction;
- (5) It is irrelevant whether an offense occurred before or after conviction for a previous offense; and
- (6) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, only once during the person's lifetime.
- (i) For the purposes of determining whether an offense is comparable, the following shall be considered:
- (1) The name of the out-of-jurisdiction offense;
  - (2) The elements of the out-of-jurisdiction offense;
  - (3) Whether the out-of-jurisdiction offense prohibits similar conduct prohibited by the closest approximate Kansas offense.
- (j) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.
- (k) Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.
- (l) Upon the filing of a complaint, citation, or notice to appear alleging a person has violated the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the:



- (1) Division a record of all prior convictions against such person for any violation of motor vehicle laws of this state; and Section , Item 1.
- (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (m) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.*, or K.S.A 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining. This subsection shall not be construed to prohibit an amendment or dismissal of any charge where the admissible evidence is not sufficient to support a conviction beyond a reasonable doubt of such charge.
- (n) The alternatives set out in subsection (a) may be pleaded in the alternative, and the city may, but shall not be required to, elect one or more of such alternatives prior to submission of the case to the fact finder.
- (o) As used in this section:
- (1) **Imprisonment** includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.
- (2) **Drug** includes toxic vapors as such term is defined in K.S.A. 21-5712, and amendments thereto. (K.S.A. 8-1567)

**Ref.:** For persons under 21 years of age, see also K.S.A. 8-1567a.

**{Editor's Note:** Since 2007 the Kansas Legislature has acted to give municipal courts jurisdiction over the felony level offences of Third, Fourth, and Subsequent Driving Under the Influence (DUI), K.S.A. 8-1567(l)(1) and (l)(3). However, K.S.A. 8-1567(m) (2) appears to remove this authority from municipal courts. Because of this apparent conflict, and concerns about sentencing issues and cost, the Editor has determined that Third, Fourth, and Subsequent Driving Under the Influence (DUI) would not be included in this Code. Should a city wish to implement these provisions concerning prosecuting felony level DUI in municipal court, a separate ordinance will need to be adopted.}

**Sec. 30.1. Driving Commercial Motor  
Influence of Intoxicating Liquor or Drugs**

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- (a) Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle, as defined in Section 1, within this city while:
- (1) The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, is .04 or more;
  - (2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more; or
  - (3) Committing a violation of subsection (a) of Section 30 of this ordinance, or the ordinance of a city or resolution of a county which prohibits any of the acts prohibited thereunder or is otherwise comparable.
- (b) (1) Driving a commercial motor vehicle under the influence is:
- (A) An ordinance violation. On a first conviction, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion, 100 hours of public service, and fined not less than \$750 nor more than \$1,000.
  - (B) On a second conviction, the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The following conditions shall apply to such sentence:
    - (i) As a condition of any probation granted under this subsection, the person shall serve at least 120 hours of confinement. The hours of confinement shall include at least 48 hours of imprisonment and otherwise may be served by a combination of: Imprisonment; a work release program, if such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program pursuant to K.S.A. 2021 Supp. 21-6609, and amendments thereto; and

- (ii) (a) if the person is in a work release program or a house arrest program for any portion of the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum sentence is met. If the person is placed into a work release program or placed under a house arrest program for more than the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum of 120 hours of confinement is completed, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and
- (b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's next work day. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence;
- (2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.
- (c) Any person 18 years of age or older convicted of a violation of this section who had one or more children under the age of 18 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

- (d) If a person is charged with a violation of Section 29(1)(a) (5), as incorporated in this section, the fact that the person has been entitled to use the drug under Section , Item 1. or shall not constitute a defense against the charge.
- (e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
- (f) (1) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.
- (2) The court may, in its discretion, waive any portion of a fine imposed pursuant to this section, except the \$250 required to be remitted to the state treasurer pursuant to K.S.A. 12-4120(a) upon a showing that the person successfully completed court-ordered education or treatment.
- (g) The court shall electronically report every conviction of a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the:
- (1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and
- (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (h) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall:
- (1) Disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2,142, and amendments thereto; and
- (2) suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014 and amendments thereto.

- (i) The court is authorized to order that the offender pay restitution to any victim who suffered a violation for which the person was convicted. Section , Item 1.
- (j) Upon the filing of a complaint, citation or notice to appear alleging a violation of this section, and prior to conviction thereof, a city attorney shall request and shall receive from the: (A) Division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (k) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section. This subsection shall not be construed to prohibit an amendment or dismissal of any charge where the admissible evidence is not sufficient to support a conviction beyond a reasonable doubt on such charge.
- (l) The alternatives set out in subsection (a) may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.
- (m) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:
- (1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county that prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the

person's lifetime in determining the sentence to be imposed within the limits of Section , Item 1. to second, third, fourth or subsequent offense;

- (2) Any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:
- (A) This section or K.S.A. 8-2,144, and amendments thereto;
  - (B) Operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
  - (C) Involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a)(3) or (a)(5), and amendments thereto;
  - (D) Aggravated battery as described in K.S.A. 21-5413(b)(3) or (b)(4), and amendments thereto; and
  - (E) Aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;
- (3) **Conviction** includes:
- (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (m)(2);
  - (B) Conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another jurisdiction that would constitute an offense that is comparable to the offense described in subsection (m)(1) or (m)(2);
- (4) It is irrelevant whether an offense occurred before or after conviction for a previous offense; and
- (5) Multiple convictions of any crime described in subsection (m)(1) or (m)(2) arising from the same arrest shall only be counted as one conviction.

(n) For the purposes of determining whether comparable, the following shall be considered Section , Item 1.

- (1) The name of the out-of-jurisdiction offense;
- (2) The elements of the out-of-jurisdiction offense;
- (3) Whether the out-of-jurisdiction offense prohibits similar conduct prohibited by the closest approximate Kansas offense.

(o) For the purpose of this section:

- (1) **Imprisonment** includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city; and
- (2) **Drug** includes toxic vapors as such term is defined in K.S.A. 21-5712, and amendments thereto. (K.S.A. 8-2,144)

### **Sec. 30.2. Preliminary Breath Test.**

- (a) A law enforcement officer may request a person who is operating or attempting to operate a motor vehicle within this state to submit to a preliminary screening test of the person's breath or oral fluid, or both, if the officer has reasonable suspicion to believe that the person has been operating or attempting to operate a vehicle while under the influence of alcohol or drugs or both alcohol and drugs.
- (b) If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of a vehicle except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

(B) On a second or subsequent violation of subsection (a)(4), the division shall restart the original ignition interlock restriction period on the person's driving privileges; and

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(2) On a conviction of a violation of subsection (a)(4), the division shall restart the original ignition interlock restriction period on the person's driving privileges.

(K.S.A. 8-1017)

**{Editor's Note:** K.S.A.8-1015(e) seems to provide an exception to K.S.A. 8-1017(a)(4) as replicated in STO section 30.3 (a) (4) with regard to driving an employer's vehicle. However, there are also exceptions to this exception. Please see K.S.A. 8-1015 for further guidance.}

#### **Sec. 30.4. Impounded Motor Vehicle; Disposition; When.**

If the owner of a motor vehicle which has been impounded pursuant to Section 30 or Section 105, refuses to pay any towing, impoundment, storage, or other fees relating to the impoundment or immobilization of such vehicle or fails to take possession of such vehicle within 30 days following the date of the expiration of the impoundment period, such vehicle shall be deemed abandoned and the vehicle may be disposed of by the person having possession of such vehicle. If the person having possession of such vehicle is a public agency, disposition of such vehicle shall be in compliance with the procedures for notice and public auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amendments thereto. If the person having possession of such vehicle is not a public agency, disposition of such vehicle shall be in compliance with K.S.A. 8-1103 through 8-1108, and amendments thereto. (K.S.A. 8-1021)

**{Editor's Note:** The requirements for the disposition of such vehicle in K.S.A. 8-1103 through K.S.A. 8-1108 were amended in 2021 SB 36.}

#### **Sec. 30.5. Commercial Driver's Licenses; Diversion Agreements Not Allowed.**

(a) A driver or a holder of a commercial driver's license may not enter into a diversion agreement in lieu of further criminal proceedings that would prevent such person's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, from appearing on the person's record, whether the person was convicted for an offense committed in the state where the person is licensed or another state.

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- (b) For purposes of subsection (a), [redacted] shall be considered a holder of a commercial driver's license if the person was a holder of a commercial driver's license at the time the person was arrested or was issued a citation and shall remain a holder of a commercial driver's license even if the person surrenders the commercial driver's license after the arrest or citation. (K.S.A. 8-2,150)
- (c) (1) A prosecuting attorney as defined in K.S.A. 22-2202, and amendments thereto, shall not mask or defer imposition of judgment or allow an individual to enter into a diversion program that would prevent a commercial learner's permit or commercial driver's license holder's conviction from appearing on the CDLIS driver record of any violation of a local traffic control law that occurred in any type of motor vehicle. The provisions of this subsection shall apply regardless of whether the driver was convicted for an offense committed in the state where the driver is licensed or in any other state.
- (2) The provisions of this subsection shall not apply to parking, vehicle weight or vehicle defect violations. (K.S.A. 8-2,150)

### **Sec. 31. Fleeing or Attempting to Elude a Police Officer.**

- (a) (1) Any driver of a motor vehicle who knowingly fails or refuses to bring such driver's vehicle to a stop for a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop shall be guilty as provided by subsection (c).
- (2) Any driver of a motor vehicle who knowingly otherwise flees or attempts to elude a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (c).
- (3) It shall be an affirmative defense to any prosecution under subsection (a)(1) that the driver's conduct in violation of such paragraph was caused by such driver's reasonable belief that the vehicle or bicycle pursuing such driver's vehicle is not a police vehicle or police bicycle.
- (b) The signal given by the police officer may be by hand, voice, emergency light, or siren:
- (1) If the officer giving such signal is within or upon an official police vehicle or police bicycle at the time the signal is given, the vehicle or bicycle shall be appropriately marked showing it to be an official police vehicle or police bicycle; or

(c) This section shall not apply to:

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- (1) An employee under the age of 14 years engaged in the necessary discharge of the employee's duty within truck bodies in space intended for merchandise or cargo; or
- (2) When the vehicle is being operated in parades, caravans or exhibitions which are officially authorized or otherwise permitted by law.  
(K.S.A. 8-1578a)

**Ref.:** For Persons Under 14 Years of Age see Sec. 182.2.

**Sec. 116. Driving Upon Sidewalk.** No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway. (K.S.A. 8-1575)

**Sec. 117. Limitations on Backing.**

- (a) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.
- (b) The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway.  
(K.S.A. 8-1574)

**Sec. 118. Driving Through or On Private Property to Avoid Traffic Control Devices.** No person shall drive through the property of a gasoline service station or the service entrance of any public or private property adjacent to any street intersection to avoid any official traffic control device or short cut from one street to another.

**Sec. 119. Parades and Processions.** No parade of persons or vehicles, excepting the military forces of the United States, the military forces of the State of Kansas, or the forces of the city police and fire departments, shall occupy, march or proceed along any highway until the chief of police or designee shall have been notified by the person or persons in charge thereof and until the chief shall have made provision for such purpose together with a police escort if he or she deems such escort necessary. (K.S.A. 8-2002(a)(3))

**Section 126.1.1 Display of License Plate.**

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- (a) The license plate assigned to the vehicle shall be attached to the rear of the vehicle and shall be displayed during the current registration year or years. Except as otherwise provided in subsection (b), a Kansas registered vehicle shall not have a license plate attached to the front of the vehicle,
  
- (b) The following classes of vehicles shall attach a license plate in the location or locations specifically stated:
  - (1) The license plate issued for a truck tractor shall be attached to the front of the truck tractor;
  - (2) a model year license plate issued for an antique vehicle, in accordance with K.S.A. 8-172, and amendments thereto, may be attached to the front of the antique vehicle;
  - (3) a personalized license plate issued to a passenger vehicle or truck pursuant to K.S.A. 8-132(c), and amendments thereto, may be attached to the front of the passenger vehicle or truck;
  - (4) the license plate issued for a motor vehicle used as a concrete mixer truck may be attached to either the front or rear of the vehicle; and
  - (5) the license plate issued for a motor vehicle used as a dump truck with a gross weight of 26,000 pounds or more shall be attached to the front of the vehicle. The provisions of this paragraph shall not apply to such vehicle if such vehicle is registered as a farm truck.
  
- (c) Every license plate shall at all times be securely fastened to the vehicle to which it is assigned, to prevent the plate from swinging, and at a height not less than 12 inches from the ground, measuring from the bottom of such plate,. The license plate shall be fastened in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible.
  
- (d) During any period in which the construction of license plates has been suspended pursuant to the provisions of K.S.A. 8-132, and amendments thereto, the plate, tag, token, marker or sign assigned to such vehicle shall be attached to and displayed on such vehicle in such place, position, manner and condition as shall be prescribed by the director of vehicles. (K.S.A. 8-133)

- (b) Every bicycle shall be equipped with a \_\_\_\_\_ enable the operator to make the brakes \_\_\_\_\_ dry, level, clean pavement. Section , Item 1.
- (c) No person shall sell a pedal for use on a bicycle, unless such pedal is equipped with a reflector which is visible from the front and rear of the bicycle to which it is attached during darkness from a distance of 200 feet, and no person shall sell a new bicycle, unless it is equipped with pedals meeting the requirements of this subsection. (K.S.A. 8-1592)

**Sec. 134. Application of Sec. 127 to Sec. 133 to Motorize Bicycles.** The provisions of Sections 127 to 133, inclusive, shall be applicable to motorized bicycles, and every person operating a motorized bicycle shall be subject to the provisions thereof. (K.S.A. 8-1592a)

**Sec. 135. Electric-Assisted Bicycles, Traffic Law Application.**

- (a) Except as specifically provided, an electric-assisted bicycle or a rider of an electric-assisted bicycle shall be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the rider of a bicycle. An electric-assisted bicycle is a vehicle to the same extent as a bicycle.
- (b) An electric-assisted bicycle or a person riding an electric-assisted bicycle shall not be required to maintain: (1) Vehicle liability insurance coverage; (2) a driver's license; (3) registration in accordance with article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto; (4) a certificate of title; or (5) a license plate. An electric-assisted bicycle shall not be considered a motor vehicle.
- (c) On and after January 1, 2023, manufacturers and distributors of electric-assisted bicycles shall apply a label that is permanently affixed, in a prominent location, to each electric-assisted bicycle. The label shall contain the classification number, top assisted speed and motor wattage of the electric-assisted bicycle and shall be printed in Arial font in at least nine-point type.
- (d) A person shall not tamper with or modify an electric-assisted bicycle in a manner that changes the motor-powered speed capability or engagement of an electric-assisted bicycle, unless the label indicating the classification required in subsection (c) is replaced after modification.
- (e) An electric-assisted bicycle shall comply with the equipment and manufacturing requirements adopted by the United States consumer product safety commission 16 C.F.R. part 1512.

- (f) (1) An electric-assisted bicycle may be operated on any public way where bicycles are allowed, including Section , Item 1. streets, highways, roadways, bicycle lanes, bicycle or multi-use paths, trails or trail networks.
- (2) Subsection (f) (1) shall not apply to a trail that is specifically designated as nonmotorized and that has a natural surface tread that is made by clearing and grading

- (g) No person under 16 years of age may operate a class 3 electric-assisted bicycle. A person under 16 years of age may ride as a passenger on a class 3 electric-assisted bicycle that is designed to accommodate passengers.

(K.S.A. 8-1592b)

**{Editor's Note:** This section mirrors state law, but under K.S.A. 8-1592b(f)(2) a city may adopt an ordinance further restricting and governing the operation of electric-assisted bicycles on streets, highways, roadways, sidewalks, sidewalk areas, bicycle or multi-use paths, or trail or trail networks.}

### **Sec. 135.1. Electric-Assisted Scooters, Traffic Law Application.**

- (a) It shall be unlawful for any person to operate an electric-assisted scooter on any interstate highway, federal highway or state highway. Notwithstanding the provisions of subsection (a), traffic regulations applicable to bicycles, Sections 127 to 133, inclusive, shall be applicable to electric-assisted scooters.
- (a) Notwithstanding the provisions of subsection (a), traffic regulations applicable to bicycles, Sections 127 to 133, inclusive, shall be applicable to electric-assisted scooters.
- (b) The governing body of a city or county may adopt an ordinance or resolution that further restricts or prohibits the operation of electric-assisted scooters on any public highway, street or sidewalk within such city or county.
- (c) Except as otherwise provided in subsection (c), the provisions of subsection (a) shall not prohibit an electric-assisted scooter from crossing a federal or state highway.
- (K.S.A. 8-15,113)

**{Editor's Note:** Pursuant to subsection (c) a city can adopt an ordinance regulating the use of electric-assisted scooters including banning their use within the city.}



# City Commission Agenda Item

Section , Item 2.

**Meeting Date:** September 6, 2022  
**From:** Larry Schwartz, City Attorney  
**Item:** Uniform Public Offense Code for Kansas Cities, 38<sup>th</sup> Edition

**Purpose:** Consider first reading of an Ordinance adopting by reference the Uniform Public Offense Code for Kansas Cities, 38<sup>th</sup> Edition, prepared and published in book form in 2022 by the League of Kansas Municipalities. **(Roll Call Vote)**

**Background:**

The League of Kansas Municipalities has published the Uniform Public Offense Code (UPOC) since 1980. The UPOC is designed to provide a comprehensive public offense ordinance for Kansas cities and does not take effect in a city until the governing body has passed and published an ordinance incorporating it by reference. It generally mirrors Kansas statute and case law, and allows violations of those laws to be prosecuted in Arkansas City Municipal Court.

The following sections were added, modified, or deleted in the 38<sup>th</sup> edition of the UPOC published in 2022.

**New Section:**

10.30, 10.30.1, 10.30.2 Operating an Aircraft Under the Influence

**Changes:**

- 3.2.1 Sexual Battery
- 6.1 Theft
- 6.5 Criminal Deprivation of Property
- 6.18 Motor Vehicle Dealers; Selling Motor Vehicles Without a License
- 7.14 Electioneering
- 7.15 Intimidation of a Witness or Victim
- 9.9.5 Unlawful Possession of a Simulated Substance
- 11.8 Gambling

**Deleted Section:**

7.5 Distribution of Unattributed Applications for Advance Voting Ballots

**Commission Options:**

1. Approve the Ordinance on first reading so City Law mirrors State Law.

**Fiscal Impact:**

Amount:

Fund: Department: Expense Code:

- Included in budget       Grant       Bonds       Other (explain)

**Approved for Agenda by:**

Randy Frazer, City Manager

**ORDINANCE NO. 2022-09-**

**AN ORDINANCE ESTABLISHING CRIMINAL CONDUCT WITHIN THE CORPORATE LIMITS OF THE CITY OF ARKANSAS CITY, KANSAS; INCORPORATING BY REFERENCE THE “UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES,” 38<sup>TH</sup> EDITION , WITH CERTAIN CHANGES AND ADDITIONS; AMENDING THE CITY OF ARKANSAS CITY MUNICIPAL CODE TO SO REFLECT; AND REPEALING ORDINANCE NUMBER 2021-09-4542.**

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

**Section 1. INCORPORATING UNIFORM PUBLIC OFFENSE CODE.**

There is hereby incorporated by reference for the purpose of establishing criminal conduct within the corporate limits of the City of Arkansas City Kansas, that certain standard public offenses known as the “Uniform Public Offense Code for Kansas Cities,” ~~37~~ 38<sup>th</sup> Edition, prepared and published in book form in ~~2021~~ 2022 by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed herein. No fewer than one copy of said Standard Uniform Public Offense Code for Kansas Cities shall be marked or stamped “Official Copy as Adopted by Ordinance No. \_\_\_\_\_,” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the public offense code shall be supplied, at the cost of the city, such number of official copies of such Uniform Public Offense Code similarly marked, as may be deemed expedient.

**Section 2: AMENDMENTS TO MUNICIPAL CODE**

The Governing Body hereby modifies and amends the Arkansas City Municipal Code Chapter 42, Article II to provide additions and modifications to the Standard Uniform Public Offense Code for Kansas Cities as follows (new provisions in italics; deleted provisions struck through):

**42-19 Title.**

The Uniform Public Offense Code for Kansas Cities, ~~37~~ 38<sup>th</sup> Edition (hereafter “Uniform Public Offense Code”), is incorporated by reference in its entirety and made a part of the Public Offense Code of the City of Arkansas City as if fully set forth herein, except as modified or supplemented in this Chapter.

**Section 3: DEVIATIONS FROM UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, ~~37~~ 38<sup>th</sup> EDITION:**

The City of Arkansas City Municipal Code provides additions, exceptions and modifications to certain sections of the Uniform Public Offense Code for Kansas Cities, 38<sup>th</sup> Edition, which are hereby ratified and confirmed. As described in City of Arkansas City Municipal Code: ~~Uniform Public Offense Code Section 5.7 is amended by Municipal Code Section 42-29.~~ Uniform Public Offense Code Section 5.8 is amended by Municipal Code Section 42-20; Uniform Public Offense Code Section 6.8 is supplanted by Municipal Code Section 42-26; Uniform Public Offense Code Section 9.5 is supplanted by Municipal Code Section 42-27; and Uniform Public Offense Code Section 10.6 is amended by Municipal Code 42-28. Further, the Uniform Public Offense Code is supplemented with the following Municipal Code Sections: 42-21; 42-22; 42-23; and 42-24.

**Section 4:** *Section 42-29 of the Arkansas City Municipal Code pertaining to Selling, giving or furnishing cigarettes or tobacco products to a minor is hereby repealed.*

**Section 5: REPEAL**

To the extent any provision(s) of Ordinance number 2021-09-4542 conflicts with or is otherwise specifically supplanted by this Ordinance, those provisions of Ordinance number 2021-09-4542 are hereby repealed.

**Section 6: EFFECTIVE DATE**

The City Clerk shall make proper publication of this Ordinance, or a summary thereof, in the official City newspaper, and shall take effect and be in force from and after said publication. That the Mayor, City Clerk, and/or City Administration of the City of Arkansas City, Cowley County, Kansas, are authorized and directed to execute any and all documents necessary to consummate the Legislative purposes and intents as expressed herein and if executed by the Mayor (or other person authorized by law to act in the event of the absence or inability of the Mayor to act), the City Clerk is directed to attest to and affix the Official Seal of the City thereon.

**PASSED AND ORDAINED** by the Governing Body of the City of Arkansas City, Kansas, on this 6<sup>th</sup> day of September, 2022.

(Seal)

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Ordinance No. 2022-09-\_\_\_\_ of the City of Arkansas City, Kansas adopted by the governing body on September 6, 2022 as the same appears of record in my office.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Lesley Shook, City Clerk



## Section 1.1. Definitions.

The League deleted the definitions for advance voting site, because it is in Sec. 7.14, and maliciously, because that term is not used in the UPOC. The definitions for controlled substance and law enforcement officer were also updated to mirror state law. Other definitions that were amended include: Dwelling (HB 2508), Motor Vehicle (SB 101), Possession (HB 2508), Public Employee (HB 2508), Vehicle Dealer (SB 101), Wildlife (SB 101), and Written Instrument (HB 2508).

### Section 3.2.1. Sexual Battery.

The League updated the editor's note in light of *City of Shawnee v. Adem*, 214 Kan 12 (2021). There, the Kansas Supreme Court held the Kansas Offender Registration Act applies to any person convicted of sexual battery under Sec. 3.2.1. of the UPOC.

### Section 6.1. Theft.

SB 483, Section 1, amends the theft statute to address the theft of remote service units. The League also amended the editor's note to include changes made by SB 408 and HB 2492.

### Section 6.5. Criminal Deprivation of Property.

The League added the motor vehicle definition to this section to match state law.

### Section 6.18. Motor Vehicle Dealers; Selling Motor Vehicles Without a License.

SB 101, Section 10, amends the definitions of vehicle and motor vehicle, exempting electric-assisted bicycles from those definitions.

### Section 7.5. Distribution of Unattributed Applications for Advance Voting Ballots.

The League deleted this provision from the UPOC in light of *VoteAmerica v. Schwab*, 2021 WL 5918918 (O. Kan. 2021).

## Section 7.14. Electioneering.

HB 2138, Section 7, clarifies that the electioneering offense does not apply to certain individuals, such as certain county election office employees while they are performing their duties as employees.

### Section 7.15. Intimidation of a Witness or Victim.

The League added the definition civil injury or loss to match state law.

### Section 9.9.5. Unlawful Possession of a Simulated Substance.

The League added the definition of simulated controlled substance to this section.

### Section 10.30. Operating an Aircraft Under the Influence, Section 10.30.1 Same; Preliminary Breath Test, and Section 10.30.2. Same; Definitions.

HB 2377, Sections 1-4 added a new offense for operating an aircraft under the influence. The League added this offense to Sections 10.30-10.30.2.

### Section 11.8. Gambling.

SB 84, Section 20, excludes sports wagering from the definition of bet.

In addition, to the changes described above, the League updated several citations to state law. 🗺️

🗺️ **Nicole Proulx Aiken** is the Deputy General Counsel for the League of Kansas Municipalities. She can be reached at [nproulxaiken@lkm.org](mailto:nproulxaiken@lkm.org).

**NOW AVAILABLE**

**STO / UPOC**  
*Standard Traffic Ordinance / Uniform Public Offense Code*

GO TO THE LEAGUE WEBSITE  
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TO FIND THE MOST UP-TO-DATE STANDARD TRAFFIC ORDINANCE  
AND UNIFORM PUBLIC OFFENSE CODE.

juveniles as assigned by the court, corrections supervision and any Section , Item 2.

of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs;

- (4) **Court Services Officer** means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court.

- (c) Battery against a law enforcement officer is a Class A violation. (K.S.A. 21-5413)

### **Sec. 3.2.1. Sexual Battery.**

- (a) Sexual battery is the touching of a victim who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.
- (b) Sexual battery is a Class A violation. (K.S.A. 21-5505)

{**Editor's note:** In *City of Shawnee v. Adem*, 314 Kan. 12 (2021), the Kansas Supreme Court held the Kansas Offender Registration Acts applies to any person convicted of sexual battery under Sec. 3.2.1. of the UPOC.}

### **Sec. 3.2.2. Battery Against a School Employee.**

- (a) Battery against a school employee is a battery, as defined in Section 3.1, committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.
- (b) Battery against a school employee is a Class A violation. (K.S.A. 21-5413)

- (C) (i) Was the person who appeared to be Section , Item 2. ly assistance as described in subsection (d)(1)(B), but did not initiate contact with law enforcement or emergency medical services; and
- (ii) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance.
- (2) A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or such officer's employer, based on the officer's compliance or failure to comply with this subsection.
- (e) Violation of this section by a person 18 or more years of age but less than 21 years of age is a Class C violation for which the minimum fine is \$200.  
(K.S.A. 41-727)

## **Article 6. Offenses Against Property**

### **Sec. 6.1. Theft.**

- (a) Theft is any of the following acts done with the intent to permanently deprive the owner of the possession, use or benefit of the owner's property or services.
- (1) Obtaining or exerting unauthorized control over property or services;
  - (2) Obtaining control over property or services by deception;
  - (3) Obtaining control over property or services by threat;
  - (4) Obtaining control over stolen property or services knowing the property or services to have been stolen by another; or
  - (5) Knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel.
- (b) Theft of property or services of the value of less than \$1,500 is a Class A violation.

(c) As used in this section:

Section , Item 2.

- (1) **Regulated scrap metal** means the same as defined in K.S.A. 50-6,109, and amendments thereto;
- (2) **Remote service unit** means the same as defined in K.S.A. 9-1111, and amendments thereto, and includes, but is not limited to, automated cash dispensing machines and automated teller machines; and
- (3) **Value** means the value of the property or, if the property is regulated scrap metal or a remote service unit, the cost to restore the site of the theft of such regulated scrap metal or remote service unit to its condition at the time immediately prior to the theft of such regulated scrap metal or remote service unit, whichever is greater.  
(K.S.A. 21-5801)

**{Editor's Note:** Under state law, theft of property or services of the value of less than \$1,500 is a Class A violation, unless any one of the following is present:

- (1) Property of the value of less than \$1,500 from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony;
- (2) Property of the value of at least \$50 but less than \$1,500 is a severity level 9, nonperson felony if committed by a person who has, within five years immediately preceding commission of the crime, excluding any period of imprisonment, been convicted of theft two or more times;
- (3) Property that is a firearm of the value of less than \$25,000 is a severity level 9, nonperson felony; and
- (4) Property that is mail of the value of less than \$1,500 from three separate locations within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony. Violations under these facts are considered felony violations over which municipal court has no jurisdiction and should be referred to the appropriate prosecuting authority.}

## **Sec. 6.2. Intent; Permanently Deprive.**

- (a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

- (E) Causing, procuring, permitting, or abetting any person to do any act described in subparagraphs (A) through (D). (K.S.A. 21-5804)
- Section , Item 2.

### **Sec. 6.3. Theft of Property Lost, Mislaid or Delivered by Mistake.**

- (a) Theft of property lost, mislaid or delivered by mistake is obtaining control of property of another by a person who:
- (1) Knows or learns the identity of the owner thereof;
  - (2) Fails to take reasonable measures to restore to the owner lost property, mislaid property or property delivered by a mistake; and
  - (3) Intends to permanently deprive the owner of the possession, use or benefit of the property.
- (b) As used in this section, **property delivered by mistake** includes, but is not limited to, a mistake as to the:
- (1) Nature or amount of the property; or
  - (2) Identity of the recipient of the property.
- (c) Theft of property lost, mislaid or delivered by mistake of the value of less than \$1,000 is a Class A violation. (K.S.A. 21-5802)

### **Sec. 6.4. Reserved for Future Use.**

### **Sec. 6.5. Criminal Deprivation of Property.**

- (a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property.
- (b) Penalties.
- (1) Criminal deprivation of property that is a motor vehicle upon a first or second conviction is a Class A violation. Upon a first conviction of this paragraph, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than \$100.

Upon a second conviction of this section, a person shall be sentenced to not less than 30 days nor more than one year of imprisonment and fined not less than \$200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.

Section , Item 2.

- (2) Criminal deprivation of property other than a motor vehicle or a firearm is a Class A violation. Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this subsection relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice. (K.S.A. 21-5803)

- (c) As used in this section, **motor vehicle** means the same as in K.S.A. 8-1437, and amendments thereto. (K.S.A. 21-5803)

## Sec. 6.6. Criminal Damage to Property.

- (a) Criminal damage to property is by means other than by fire or explosive:
- (1) Knowingly damaging, destroying, defacing or substantially impairing the use of any property in which another has an interest without the consent of such other person; or
  - (2) Damaging, destroying, defacing or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.
- (b) Criminal damage to property is a Class B violation if the property damaged is of the value of less than \$1,000 or is of the value of \$1,000 or more and is damaged to the extent of less than \$1,000.
- (c) In determining the amount of damage to property, damages may include the cost of repair or replacement of the property that was damaged, the reasonable cost of the loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property. (K.S.A. 21-5813)

- (2) Using a financial card, or description thereof, which has Section , Item 2. canceled; or
- (3) Using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(b) For the purposes of subsection (a)(2), a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

(c) Criminal use of a financial card is a Class A violation if the money, goods, property or services obtained within a seven-day period is of the value of less than \$1,000. (K.S.A. 21-5828)

### **Sec. 6.18. Motor Vehicle Dealers; Selling Motor Vehicles Without a License.**

(a) It shall be unlawful for any person to do business as a motor vehicle dealer, salvage vehicle dealer, motor vehicle manufacturer, motor vehicle converter, auction motor vehicle dealer, vehicle crusher, vehicle recycler, rebuilder, scrap metal recycler, salvage vehicle pool or salesperson without a license issued by the director of vehicles. The isolated or occasional sale of a vehicle by a person who owned such vehicle shall not constitute the doing of business as a vehicle dealer.

(b) As used in this section:

- (1) **Vehicle** means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and is required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, except that **vehicle** includes micro utility trucks, as defined in K.S.A. 8-126, and amendments thereto, but does not include motorized bicycles or electric-assisted bicycles, and does not include manufactured homes or mobile homes. As used in this subsection, the terms “manufactured home” and “mobile home” mean the same as defined by K.S.A. 58-4202, and amendments thereto. (K.S.A. 8-2401(h))

(2) **Motor vehicle** means any Section , Item 2. a motorized bicycle or electric bicycle that is self-propelled and is required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, except that **motor vehicle** includes micro utility trucks, as defined in K.S.A. 8-126, and amendments thereto. (K.S.A. 8-2401(i))

(c) Violation of this section shall be punishable by a fine not to exceed \$2,500. (K.S.A. 8-2434)

### **Sec. 6.19. Equity Skimming.**

(a) Equity skimming is, with the intent to defraud, intentionally engaging in a pattern or practice of:

(1) Purchasing one family to four family dwellings, including condominiums and cooperatives or acquiring any right, title or interest therein, including, but not limited to, an equity of redemption interest, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage;

(2) Failing to deliver to the holder of the mortgage before a sheriff's sale or holder of the certificate of purchase during the period of redemption all rent proceeds received from rental of the property, not to exceed the monthly payment of principal and interest required by the note and mortgage; and

(3) Applying or authorizing the application of rents from such dwellings for such person's own use.

(b) Violation of this section is a Class A violation. Each purchase of a dwelling pursuant to this section shall be deemed a separate offense.  
(K.S.A. 21-6504)

### **Sec. 6.20. Unlawful Acts Concerning Computers.**

(a) It is unlawful for any person to:

(1) Knowingly and without authorization, disclose a number, code, password or other means of access to a computer, computer network, social networking website or personal electronic content; or



### **Sec. 7.13. Interference With Police Dogs.**

*Section , Item 2.*

- (a) It shall be unlawful for any person to strike, abuse, tease, harass, or assault any dog being used by the city for the purpose of performing the duties of a police dog regardless of whether the dog is on duty or off.
- (b) It shall be unlawful for any person to interfere with a dog being used by the police department or attempt to interfere with the handler of the dog in such a manner as to inhibit, restrict or deprive the handler of his or her control of the dog.
- (c) Violation of this section is a Class C violation.

### **Sec. 7.14. Electioneering.**

- (a) (1) Electioneering is:
  - (A) knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted, including wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicates support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof; or
  - (B) if committed by a candidate:
    - (i) Touching or handling any voter's ballot during the voting process;
    - (ii) distributing ballots or counting ballots;
    - (iii) hindering or obstructing any voter from voting or from entering and leaving the polling place; or
    - (iv) hindering or obstructing any election board worker from performing election duties.

- (2) Electioneering shall not include the use of stickers affixed to a motor vehicle to transport voters to a polling place or to an advance voting site for the purpose of voting. Section , Item 2.
- (b) The provisions of subsection (a)(1)(B) shall not apply to:
- (1) The secretary of state, any election official or any county election officer;
  - (2) a candidate for precinct committeeman or committeewoman who is employed by a county election office and is engaged in the performance of such employee's duties;
  - (3) a candidate for any office not specified in paragraphs (1) or (2) who is employed by a county election office and is engaged in the performance of such employee's duties, if such employee does not appear as a candidate for office on any ballot such employee touches, handles, distributes or counts; or
  - (4) a candidate transmitting or delivering an advance voting ballot in accordance with section 2(b), and amendments thereto.
- (c) (1) As used in this section, “**advance voting site**” means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122(c), and amendments thereto, and adult care homes and hospital based care units at the time of an election participating in the voting procedures prescribed in K.S.A. 2020 Supp. 25-2812, and amendments thereto.
- (2) **Candidate** means an individual who has declared such individual's candidacy pursuant to K.S.A. 25-205 et seq., and amendments thereto, or has been nominated for elected office pursuant to K.S.A. 25-301 et seq., and amendments thereto, in the election for which the individual is charged with having violated the provisions of this section.
- (d) Electioneering is a Class C violation.  
(K.S.A. 25-2430)

**Sec. 7.15. Intimidation of a Witness or Victim**

Section , Item 2.

- (a) Intimidation of a witness or victim is preventing or dissuading, or attempting to prevent or dissuade, with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:
  - (1) Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or
  - (2) Any witness, victim or person acting on behalf of a victim from:
    - (A) Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer, judicial officer, the secretary for children and families, the secretary for aging and disability services, or any agent or representative of either secretary, or any person required to make a report pursuant to K.S.A. 38-2223, and amendments thereto;
    - (B) Causing a complaint, indictment or information to be sought and prosecuted or causing a violation of probation, parole or assignment to a community correctional services program to be reported and prosecuted, and assisting in its prosecution;
    - (C) Causing a civil action to be filed and prosecuted and assisting in its prosecution; or
    - (D) Arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.
- (b) Intimidation of a witness or victim is a Class B person violation.

(c) As used in this section

Section , Item 2.

(1) **Victim** means any individual:

- (A) Against whom any crime under the laws of this state, any other state or the United States is being, has been or is attempted to be committed; or
- (B) Who suffers a civil injury or loss; and

(2) **Witness** means any individual:

- (A) Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law;
- (B) Whose declaration under oath is received or has been received as evidence for any purpose;
- (C) Who has reported any crime or any civil injury or loss to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;
- (D) Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, any other state or the United States; or
- (E) Who is believed by the offender to be an individual described in this subsection.

(3) **Civil injury or loss** means any injury or loss for which a civil remedy is provided under the laws of this state, any other state, or the United States.

(K.S.A. 21-5908; 21-5909)

#### Sec. 9.9.4. Unlawful Possession of Controlled

Section , Item 2.

- (a) No person shall possess any of the controlled substances or controlled substance analogs thereof found in K.S.A. 21-5706(b) and amendments thereto.
- (b) Violation of subsection (a) is a Class A violation. (K.S.A. 21-5706)

{**Editor's Note:** Violations of K.S.A. 21-5704 subsections (b)(1) through (b)(5) or (b)(7) is a drug severity level 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3,4 methylenedioxymethamphetamine (MDMA), marijuana as designated in K.S.A. 65-4105(d), and amendments thereto, or any substance designated in K.S.A. 65-4105(h), and amendments thereto, or an analog thereof. As these violations are considered felonies under state law over which municipal courts have no jurisdiction, they should be referred to the appropriate prosecuting authority}.

#### Sec. 9.9.5. Unlawful Possession of a Simulated Substance.

- (a) No person shall use or possess with intent to use any simulated controlled substance.
- (b) This is a Class A violation.
- (c) "Simulated controlled substance" means any product that identifies itself by a common name or slang term associated with a controlled substance and that indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance. (K.S.A. 21-5701(r)) (K.S.A. 21-5713)

#### Sec. 9.9.6. Distribution of a Non-controlled Substance.

- (a) No person shall distribute or possess with the intent to distribute any substance, which is not a controlled substance, to a person who is over the age of eighteen:
  - (1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

- (4) “raw agricultural commodity” means its raw or natural state, including those that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing. Section , Item 2.

- (c) Endangering the food supply is a Class A violation except if the contagious or infectious disease is food-and-mouth disease in which class it is classified as a felony under state law and will be referred to the appropriate prosecuting authority.  
(K.S.A. 21-6317)

### **Sec. 10.29. Violation of a Public Health Order.**

- (a) It shall be unlawful for any person to violate, refuse, or fail to comply with, a written order of the County Health Officer, Board of Health, or Director of Health issued under their respective authorities.
- (b) A violation of this section is a Class C violation.

### **Sec. 10.30. Operating an Aircraft Under the Influence.**

- (a) Operating an aircraft under the influence is operating or attempting to operate any aircraft within this state while:
- (1) The alcohol concentration in the person’s blood or breath as shown by any competent evidence, including other competent evidence, is 0.04 or more;
  - (2) the alcohol concentration in the person’s blood or breath, as measured within four hours of the time of operating or attempting to operate an aircraft, is 0.04 or more;
  - (3) under the influence of alcohol to a degree that renders the person incapable of safely operating an aircraft;
  - (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating an aircraft; or
  - (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating an aircraft.
- (b) (1) Operating an aircraft under the influence is an ordinance violation.

- (A) On a first conviction, the person shall be sentenced to not less than Section , Item 2. 100 hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$750.
- (B) On second or subsequent conviction, the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250. The following conditions shall apply to such sentence:
- (i) As a condition of any probation granted under this subsection, the person shall serve at least 120 hours of confinement. The hours of confinement shall include at least 48 hours of imprisonment and otherwise may be served by a combination of: Imprisonment; a work release program, if such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program; and
- (ii) (a) if the person is placed into a work release program or placed under a house arrest program for any portion of the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum sentence is met. If the person is placed into a work release program or placed under a house arrest program for more than the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum of 120 hours of confinement is completed, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and
- (b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's work day. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence.

- (2) As part of the judgment court shall order the person not to operate an aircraft for any purpose for a period of six months from the date of final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is later or one year from such date on a second conviction. If the court suspends the sentence and places the person on probation as provided by law, the court shall order as one of the conditions of probation that such person not operate an aircraft for any purpose for a period of 30 days from the date of the order on a first conviction or 60 days from the date of the order on a second conviction.
- (3) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence:
- (A) "Conviction" includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (a); and
  - (B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.
- (c) If a person is charged with a violation of subsection (a)(4) or (a)(5), the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge. (L. 2022, ch. 80, § 1) (HB 2377)

**Sec. 10.30.1. Same; Preliminary Breath Test.**

- (a) A law enforcement officer may request a person who is operating or attempting to operate an aircraft within this state to submit to a preliminary screening test of the person's breath or oral fluid, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate an aircraft while under the influence of alcohol or drugs, or a combination of alcohol and any drug or drugs.



- (b) If the person submits to the test Section , Item 2. used for the purpose of assisting officers in determining whether an arrest should be made and whether to request the tests authorized by L. 2022, ch. 80, § 2, and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of an aircraft except to aid the court in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to section 2, and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to L. 2022, ch. 80, § 2, and amendments thereto.
- (c) Any preliminary screening of a person's breath shall be conducted with a device approved pursuant to K.S.A. 65-1,107, and amendments thereto. Any preliminary screening of a person's oral fluid shall be conducted in accordance with rules and regulations, if any, approved pursuant to K.S.A. 75-712h, and amendments thereto. (L. 2022, ch. 80, § 3) (HB 2377)

### **Sec. 10.30.2. Same; Definitions.**

As used in Sections 10.30 through 10.30.2 and amendments thereto:

- (a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
- (b) "Drug" includes toxic vapors as such term is defined in K.S.A. 2021 Supp. 21-5712, and amendments thereto.
- (c) "Imprisonment" includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.
- (d) "Law enforcement officer" means the same as in K.S.A. 2021 Supp. 21-5111, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of section 1, and amendments thereto, if committed off a military reservation in this state.

- (e) “Other competent evidence” includes Section , Item 2.
- (1) Alcohol concentration tests obtained from samples taken four hours or more after the operation or attempted operation of an aircraft; and
  - (2) readings obtained from a partial alcohol concentration test on a breath testing machine. (L. 2022, ch. 80, § 4) (HB 2377)

## Article 11. Offenses Against Public Morals

### Sec. 11.1. Promoting Obscenity.

- (a) Promoting obscenity is recklessly:
- (1) Manufacturing, mailing, transmitting, publishing, distributing, presenting, exhibiting, or advertising any obscene material or obscene device;
  - (2) Possessing any obscene material or obscene device with intent to mail, transmit, publish, distribute, present, exhibit or advertise such material or device;
  - (3) Offering or agreeing to manufacture, mail, transmit, publish, distribute, present, exhibit, or advertise any obscene material or obscene device; or
  - (4) Producing, presenting, or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.
- (b) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a rebuttable presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:
- (1) The materials or devices were promoted to emphasize their prurient appeal; or
  - (2) The person is not a wholesaler and promotes the materials or devices in the course of the person’s business.
- (c) As used in this section:
- (1) Any material or performance is **obscene** if:

- (6) **Performance** means a Section , Item 2. e,  
file, video tape, played r  
h,  
tape recording, preview, trailer, play, show,  
skit, dance or other exhibition performed or  
presented to or before an audience of one or  
more, with or without consideration.
- (7) **Sadomasochistic abuse** means flagellation  
or torture by or upon a person clad in  
undergarments, in a mask or bizarre costume  
or in the condition of being fettered, bound or  
otherwise physically restrained on the part of  
one so clothed.
- (8) **Sexual conduct** means acts of masturbation,  
homosexuality, sexual intercourse or physical  
contact with a person's clothed or unclothed  
genitals or pubic area or buttocks or with a  
human female's breast.
- (9) **Sexual excitement** means the condition of  
human male or female genitals when in a state  
of sexual stimulation or arousal.
- (d) The provisions of this section shall not apply to a retail  
sales clerk, if such clerk has no financial interest in  
the materials or performance or in the commercial  
establishment displaying, presenting or distributing  
such materials or presenting such performance other  
than regular employment as a retail sales clerk. The  
provisions of this section shall not exempt any retail  
sales clerk from criminal liability for any act unrelated  
to regular employment as a retail sales clerk.
- (e) Violation of subsection (a) is a Class B violation.  
(K.S.A. 21-6402)

### **Sec. 11.8. Gambling.**

- (a) Definitions of gambling terms used in sections 11.8,  
11.9, and 11.10 shall be as follows:
- (1) A **bet** is a bargain in which the parties agree  
that, dependent upon chance, one stands to  
win or lose something of value specified in the  
agreement. A bet does not include:

- (A) Bona fide business transactions are valid under the law Section , Item 2. including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;
- (B) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;
- (C) A lottery as defined in this section;
- (D) Any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;
- (E) A lottery operated by the state pursuant to the Kansas lottery act;
- (F) Any system of pari-mutuel wagering managed, operated and conducted in accordance with the Kansas pari-mutuel racing act; or
- (G) Tribal gaming;
- (H) Charitable raffles as defined by K.S.A. 75-5173, and amendments thereto; or
- (I) A fantasy sports league as defined in this section; or
- (J) Sports wagering, as defined in K.S.A. 74-8701, and amendments thereto.

(2) A **lottery** is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include:

- (A) A lottery operated by the state pursuant to the Kansas lottery act; or
- (B) Tribal gaming.

- (3) **Consideration** means Section , Item 2. a commercial or financial benefit or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

**Consideration** shall not include sums of money paid by or for:

- (A) Participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701, and amendments thereto;
- (B) Participants in any lottery operated by the state pursuant to the Kansas lottery act;
- (C) Participants in any system of pari-mutuel wagering managed, operated and conducted in accordance with the Kansas pari-mutuel racing act; or
- (D) A person to participate in tribal gaming.

(4) **Fantasy sports league** means any game or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

Section , Item 2.

- (A) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants;
- (B) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in real-world sporting events; and
- (C) No winning outcome is based:
  - (i) On the score, point spread or any performance or performances of any single real-world team or any combination of such teams; or
  - (ii) Solely on any single performance of an individual athlete in any single real-world sporting event.

(5) (A) **Gambling device** means any:

- (i) So-called slot machine or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and (i) that when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;
- (ii) Other machine, mechanical device, electronic device or other contrivance including, but not limited to, roulette wheels and

similar device with or design Section , Item 2. and

the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and (i) that when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

- (iii) Subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but that is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or
- (iv) Token, chip, paper, receipt or other document that evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(B) **Gambling device** shall not include:

- (i) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing and gaming commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

- (ii) Any machine, device, electronic contrivance, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, that is not designed and manufactured primarily for use in connection with gambling, and (i) that when operated does not deliver, as a result of chance, any money, or (ii) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;
- (iii) Any so-called claw, crane or digger machine and similar devices that are designed and manufactured primarily for use at carnivals or county or state fairs; or
- (iv) Any machine, mechanical device, electronic device or other contrivance used in tribal gaming.

Section , Item 2.

- (6) A **gambling place** is any place, room, building, vehicle, tent or location that is used for any of the following: Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.
- (7) **Tribal gaming** has the meaning provided by K.S.A. 74-9802, and amendments thereto.

(b) **Gambling** is:

- (1) Making a bet; or
- (2) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device.

- (c) Gambling is a Class B violation. (K.S.A. 21-6403; K.S.A. 21-6404)





# City Commission Agenda Item

**Meeting Date:** 9/6/22  
**From:** Josh White, Principal Planner  
**Item:** Floodplain Management Ordinance

**Purpose:** Consider first reading of an Ordinance amending Zoning Regulations Article 28 (Floodplain Management), and incorporating such regulations by reference. **(Roll Call Vote)**

**Background:**

The City desires to enter into the Federal Emergency Management Agency’s Community Rating System which requires the City to go above the minimum requirements of the National Flood Insurance Program to ensure the City’s residents are protected from most floods. The program also offers an incentive in the form of discounts on flood insurance policies. Staff has worked with the Kansas Department of Agriculture Division of Water Resources to craft updated regulations. Most of the amendments involve updating out of date language since the ordinance has not been updated since 2010. One particular increase in regulations involves elevating mechanical equipment at least 1 foot above base flood elevation to match the lowest floor of the structure. A full list of the changes is included in this packet. Since the floodplain management ordinance is adopted by reference into the Zoning Regulations, a review and a public hearing by the Planning Commission was required. The entirety of the recommended amendments is attached as well as a quick reference for all the amendments. Also as part of the process of adopting an ordinance, administrative procedures also must be adopted. The proposed administrative procedures will be adopted alongside the ordinance. These procedures are attached to this action item.

The Planning Commission held a public hearing and voted to recommend adoption of the Floodplain Management Ordinance and corresponding change to the Zoning Regulations at their meeting on August 9, 2022.

**Commission Options:**

- 1. Approve the Ordinance
- 2. Send back to Planning Commission for further consideration.
- 3. Table for second reading

**Fiscal Impact: Cost of publication**

Amount:

Fund: \_\_\_\_\_ Department: \_\_\_\_\_ Expense Code: \_\_\_\_\_  
\_\_\_\_\_ Included in Budget \_\_\_\_\_ Grant \_\_\_\_\_ Bonds \_\_\_\_\_ Other (explain): \_\_\_\_\_

**Attachments: Proposed ordinance, amendments and summary of changes, administrative procedures**

**Approved for Agenda by:**

Randy Frazer, City Manager



Topeka Field Office  
1131 SW Winding Rd, Suite 400  
Topeka, KS 66615

Phone: 785-296-5733  
www.agriculture.ks.gov

Mike Beam, Secretary

Laura Kelly, Governor

June 07, 2022

Josh White  
Principal Planner  
118 W. Central Ave.  
Arkansas City, Ks 67005

*Subject: Floodplain Management Ordinance for Arkansas City, Kansas*

Dear Mr. White,

The floodplain management regulations submitted for Arkansas City, Kansas were received for review on June 06, 2022. The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, acting under terms of K.S.A. 12-766, and the administrative regulations adopted pursuant thereto (K.A.R. 5-44-1 through 7) approved your regulations on June 08, 2022. An approved draft copy of the regulations is returned for action by the governing body.

When the governing body has officially adopted the regulations, please send a signed copy of the adopted document to me. I will send the documentation to FEMA for you. Please call me at (785)-296-0854 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Cheyenne Sun Eagle".

Cheyenne Sun Eagle  
NFIP Specialist

Enclosures:  
Approved Draft Document

**ORDINANCE NO. 2022-09-\_\_\_\_\_**

**AN ORDINANCE AMENDING ZONING REGULATIONS ARTICLE 28 (FLOODPLAIN MANAGEMENT), AND INCORPORATING SUCH REGULATIONS BY REFERENCE.**

**WHEREAS**, the City Commission of Arkansas City adopted Zoning Regulations on May 20, 2014 and has since amended both sets of regulations; and

**WHEREAS**, such regulations need to be reviewed and amended from time to time; and

**WHEREAS**, the City desires to enter into the Federal Emergency Management Agency’s Community Rating System and the program requires certain amendments to the Floodplain Management Ordinance 2010-08-4259 and such ordinance has not been updated since 2010 and contains some outdated provisions; and

**WHEREAS**, in accordance with state and federal law, all such floodplain zoning regulations must be approved by the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources, Floodplain Program and must coordinate with the requirements and regulations of the National Flood Insurance Act of 1968 as amended; and

**WHEREAS**, the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources, Floodplain Program and the officials of the Federal Emergency Management Agency (FEMA) Region VII have recommended that Arkansas City revise its floodplain management zoning regulations and adopt new regulations based upon the recommended model floodplain management regulations; and

**WHEREAS**, the Floodplain Management Ordinance is incorporated by reference into the Zoning Regulations as Article 28; and

**WHEREAS**, on the 9th day of August, 2022 the Planning Commission held a public hearing after due public notice on the proposed amendments to Article 28 of the Zoning Regulations; and

**WHEREAS**, on that date the Planning Commission recommended the Governing Body adopt the amendments to the Zoning Regulations based on said model floodplain management regulations; and

**WHEREAS**, the Governing Body desires to accept the Planning Commission’s recommendation and amend Article 28 Floodplain Management of the Zoning Regulations.

**NOW, THEREFORE, IN CONSIDERATION OF THE AFORESTATED PREMISES, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE: REPEAL**

The Floodplain Management Ordinance 2010-08-4259 is hereby repealed in full.

**SECTION TWO: INCORPORATING BY REFERENCE FLOODPLAIN MANAGEMENT ORDINANCE.**

There is hereby incorporated by reference for the purpose of regulating floodplain management zoning within the corporate limits of the City of Arkansas City, Kansas, that certain standard floodplain zoning

ordinances, known as the "Floodplain Management Ordinance of the City of Arkansas City, Kansas," which is based upon and modeled after Model Floodplain Ordinance as approved and recommended by the Federal Emergency Management Agency Region VII and the Kansas Department of Agriculture, Division of Water Resources, Floodplain program.

No fewer than three copies of the Floodplain Management Ordinance for the City of Arkansas City, Kansas, shall be marked or stamped "**Official Copy as incorporated by Ordinance No. \_\_\_\_\_ of the City of Arkansas City, Kansas,**" and such copies shall be filed with the city clerk to be open to inspection and available to the public at all reasonable business hours, provided that such official copies may not be removed from city hall. All city officials requiring the use of the Floodplain Management Ordinance for the City of Arkansas City, Kansas, shall be supplied, at the expense of the City, such number of official copies of such ordinance as may be deemed expedient by the Governing Body.

**SECTION THREE: AMENDMENTS TO MUNICIPAL CODE.**

The Governing Body of the City of Arkansas City desires to amend Article 28 of the City's Zoning Regulations regarding Floodplain Management, said amended Article 28 is attached hereto and incorporated by reference as if fully set forth herein. The Governing Body therefore hereby amends Arkansas City Municipal Code Part III, Title 18 to read as follows (new provisions in italics; deleted provisions struck through):

**Title 18 - ZONING**

**Sec. 18.1. - Adopted by reference.**

The City of Arkansas City Zoning Regulations (hereafter "Zoning Regulations"), as prepared in book form by the Planning Commission under date of ~~September 2018~~ *August 2022*, following a public hearing as required by state law, and the same and new zoning map are hereby declared to be approved and incorporated by reference as if set out fully herein pursuant to K.S.A. 12-3001 et seq., K.S.A. 12-3009 et seq. and K.S.A. 12-3301 et seq.

**SECTION FOUR:** The Governing Body of the City of Arkansas City hereby authorizes the Mayor and/or City Manager of the City of Arkansas City to take such further and other necessary actions that are required to effectuate the intent and purposes of this Legislative Enactment.

**SECTION FIVE: PUBLICATION; EFFECTIVE DATE.** This ordinance, or a summary thereof, shall be published one time in the official City newspaper, and shall take effect and be in force from and after said publication.

**PASSED AND ORDAINED** by the Governing Body of the City of Arkansas City, Kansas, on this 6th day of September, 2022.

(Seal)

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

DRAFTED AND APPROVED AS TO FORM:

\_\_\_\_\_  
Larry Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Ordinance No. 2022-\_\_-\_\_\_\_ of the City of Arkansas City, Kansas adopted by the Governing Body thereof on \_\_\_\_\_, 2022, as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Lesley Shook, City Clerk

**FLOODPLAIN MANAGEMENT ORDINANCE**  
**Pursuant to 44 CFR § 60.3 (d) - Regulatory Floodway Identified,**  
**K.S.A. 12-766, and K.A.R. 5-44-1 through 5-44-7**

**ORDINANCE No. 2022- -**

**ARTICLE 1            STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSES**

**SECTION A. STATUTORY AUTHORIZATION**

*1. Approval of Draft Ordinance by Kansas Chief Engineer Prior to Adoption*

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on June 7, 2022.

*2. Kansas Statutory Authorization*

The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare of the public. Therefore, the City Commission of Arkansas City, Kansas, ordains as follows:

**SECTION B. FINDINGS OF FACT**

*1. Flood Losses Resulting from Periodic Inundation*

The special flood hazard areas of Arkansas City, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

*2. General Causes of the Flood Losses*

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

*3. Methods Used To Analyze Flood Hazards*

The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

- a. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated October 19, 2010 as amended, and any future revisions thereto.
- b. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
- c. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
- d. Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.
- e. Delineation of flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

**SECTION C. STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote the public health, safety, and general welfare of the public; to minimize those losses described in Article 1, Section B(1); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) § 59.22(a)(3); and to meet the requirements of 44 CFR § 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this ordinance to:

- 1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
- 2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
- 3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

**ARTICLE 2 GENERAL PROVISIONS**

**SECTION A. LANDS TO WHICH ORDINANCE APPLIES**

This ordinance shall apply to all lands within the jurisdiction of the City of Arkansas City, Kansas identified as numbered and unnumbered A Zones, AE, AO and AH Zones on the Flood Insurance Rate Map (FIRM) panels referenced on the associated FIRM Index dated October 19, 2010 as amended, and any future revisions thereto. In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the

City Commission or its duly designated representative under such safeguards and restrictions as the City Commission or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4.

#### SECTION B. COMPLIANCE

No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

#### SECTION C. ABROGATION AND GREATER RESTRICTIONS

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

#### SECTION D. INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

#### SECTION E. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create a liability on the part of the City of Arkansas City, Kansas, any officer or employee thereof, for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made there under.

#### SECTION F. SEVERABILITY

If any section; clause; provision; or portion of this ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this ordinance shall not be affected thereby.

### **ARTICLE 3 ADMINISTRATION**

#### SECTION A. FLOODPLAIN DEVELOPMENT PERMIT

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in Article 2, Section A. No person, firm, corporation, or unit of government shall initiate any development or substantial-



improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

#### SECTION B. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Principal Planner or other duly appointed floodplain manager is hereby appointed to administer and implement the provisions of this ordinance.

#### SECTION C. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue floodplain development permits for all approved applications;
5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;
9. When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

#### SECTION D. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the floodplain administrator;
8. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

## **ARTICLE 4 PROVISIONS FOR FLOOD HAZARD REDUCTION**

### **SECTION A. GENERAL STANDARDS**

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the one percent annual chance or 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
4. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:

- a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Construction with materials resistant to flood damage;
- c. Utilization of methods and practices that minimize flood damages;
- d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
- f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
  - (1) All such proposals are consistent with the need to minimize flood damage;
  - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
  - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
  - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

#### 5. *Storage, Material, and Equipment*

- a. Storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

#### 6. *Nonconforming Use*

A structure, or the use of a structure or premises that was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:

- a. If such structure, use, or utility service has been or is discontinued for twenty-four consecutive months, any future use of the building shall conform to this ordinance.

- b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

## 7. *Agricultural Structures*

Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, wholesale, or manufacturing use included in the structure; the structure meets the following floodplain management requirements; and a floodplain development permit has been issued.

Any permit granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances. In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any permit issued for agricultural structures that are constructed at-grade and wet-floodproofed:

- a. All proposed agricultural structures shall demonstrate that no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farm houses, cannot be considered agricultural structures.
- b. Use of the structures must be limited to agricultural purposes in any special flood hazard area only as identified on the community's Flood Insurance Rate Map (FIRM).
- c. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.
- d. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Article 4, Section A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- e. Any mechanical, electrical, or other utility equipment must be located (1) one foot above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance. The elevation shall be certified by a licensed land surveyor or professional engineer.

- f. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this ordinance.
- g. The agricultural structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E(2) of this ordinance. No permits may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.
- h. Major equipment, machinery, or other contents must be protected from any flood damage.
- i. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures.
- j. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

#### 8. *Accessory Structures*

Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 600 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; the accessory structure meets the following floodplain management requirements; and a floodplain development permit has been issued. Wet-floodproofing is only allowed for small low cost structures.

Any permit granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Permits shall meet the following conditions.

In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be required for any permit issued for accessory structures that are constructed at-grade and wet-floodproofed:

- a. Use of the accessory structures must be solely for parking and limited storage purposes in any special flood hazard area as identified on the community's Flood Insurance Rate Map (FIRM).

- b. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.
- c. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Article 4, Section A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- d. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance.
- e. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this ordinance.
- f. The accessory structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E (2) of this ordinance. No permits may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
- g. Equipment, machinery, or other contents must be protected from any flood damage.
- h. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
- i. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

## 9. *Critical Facilities*

- a. All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated at least one (1) foot above the .2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be floodproofed so that below a minimum of one (1) foot above the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with

structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).

- b. All critical facilities shall have access routes that are above the elevation of the 500-year flood.
- c. No critical facilities shall be constructed in any designated floodway.

#### 10. *Hazardous Materials*

All hazardous material storage and handling sites shall be located out of the special flood hazard area.

#### 11. *Cumulative Improvement*

A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last five (5) calendar years does not exceed fifty (50) percent of the structure's current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure's current market value, the structure must be brought into compliance with Article 4, Section B(1) which requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation/floodproofing of non-residential structures to one (1) foot above the base flood elevation.

### SECTION B. SPECIFIC STANDARDS

- 1. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Article 4, Section A(2), the following provisions are required:

- a. *Residential Construction*

New construction or substantial-improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. Mechanical and HVAC equipment servicing the building must be elevated to the same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

- b. *Non-Residential Construction*

New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so

that below one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. Mechanical and HVAC equipment servicing the building must be elevated or flood protected to same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).

c. *Enclosures Below Lowest Floor*

Require, for all new construction and substantial-improvements that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
- (2) The bottom of all opening shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

## SECTION C. MANUFACTURED HOMES

1. All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors in addition to proper anchoring as required in the city adopted building codes.
2. Require manufactured or mobile homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
  - a. Outside of a manufactured home park or subdivision;
  - b. In a new manufactured home park or subdivision;
  - c. In an expansion to an existing manufactured home park or subdivision; or
  - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial-damage as the result of a flood, be elevated on a permanent



foundation such that the lowest floor of the manufactured home is elevated a minimum of one (1) foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Mechanical and HVAC equipment servicing the building must be elevated to the same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

- 3. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of Article 4, Section C(2) of this ordinance, be elevated so that:
  - a. The lowest floor of the manufactured or mobile home is a minimum of one (1) foot above the base flood level. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Mechanical and HVAC equipment to be elevated to same level as the lowest floor.

SECTION D. AREAS OF SHALLOW FLOODING (AO and AH zones)

Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

- 1. *AO Zones*
  - a. All new construction and substantial-improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified) plus one (1) foot of freeboard. Mechanical and HVAC equipment to be elevated to same level as lowest floor.
  - b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) plus one (1) foot of freeboard or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Mechanical and HVAC to be flood protected or elevated to same freeboard level.

- c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

## 2. *AH Zones*

- a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Article 4, Section B.
- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

## SECTION E. FLOODWAY

Located within areas of special flood hazard established in Article 2, Section A, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
2. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
3. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 CFR 65.12, and receives the approval of FEMA.
4. If Article 4, Section E(2), is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Article 4.
5. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Article 4, Section A(2).

## SECTION F. RECREATIONAL VEHICLES

Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO Zones on the community's FIRM either:

1. Be on the site for fewer than 180 consecutive days, *or*

2. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions, or
3. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance if within an approved travel trailer park.

## SECTION G. CONDITIONS FOR APPROVING TEMPORARY STRUCTURES

Any permit granted for a temporary structure shall be decided individually based on a case by case analysis of the building's unique circumstances.

1. A temporary structure may be considered for location within the one percent annual chance flood event, also referred to as the 100-year floodplain only when all of the following criteria are met:
  - a. Use of the temporary structure is unique to the land to be developed and cannot be located outside of the floodplain nor meet the NFIP design standards;
  - b. Denial of the temporary floodplain development permit will create an undue hardship on the property owner;
  - c. Community has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and,
  - d. Community has sufficient staff to monitor the placement, use, and removal of the temporary structure throughout the duration of the permit.
  - e. The placement of any temporary structure within the special flood hazard areas as shown on the community's adopted FEMA/NFIP map shall require an approved temporary floodplain development permit. The temporary floodplain development permit shall be valid for a period not to exceed 180 days.
  - f. An emergency plan for the removal of the temporary structure that includes specific removal criteria and time frames from the agency or firm responsible for providing the manpower, equipment, and the relocation and disconnection of all utilities shall be required as part of the temporary floodplain development permit application for the placement of any temporary structure.
  - g. On or before the expiration of the end of the 180 day permit period, the temporary structure shall be removed from the site. All utilities, including water, sewer, communication, and electrical services shall be disconnected.
  - h. To ensure the continuous mobility of the temporary structure for the duration of the permit, the temporary structure shall retain its wheels and tires, licenses, and towing appurtenance on the structures at all times.

- i. Under emergency flooding conditions, the temporary structure shall be removed immediately or as directed by the community and as specified in the emergency removal plan.
- j. Location of any temporary structure within the regulatory floodway requires the provision of a "no-rise" certificate by a registered professional engineer.
- k. Violation of or non-compliance with any of the stated conditions of the temporary floodplain development permit during the term thereof, shall make the permit subject to revocation by the floodplain administrator. Issuance of permit revocation notice shall be made to the landowner and the occupant of the land.
- l. Any deviation from the approved site plan shall be deemed a violation of the temporary floodplain development permit approval and the uses allowed shall automatically be revoked. The subsequent use of the land shall be as it was prior to the permit approval.
- m. If the temporary structure is to be returned to its previously occupied site, the process for issuing a temporary floodplain development permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

**ARTICLE 5 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES**

**SECTION A. ESTABLISHMENT OF APPEAL BOARD**

The Board of Zoning Appeals shall act as the Appeal Board as established by the City of Arkansas City, Kansas and shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance.

**SECTION B. RESPONSIBILITY OF APPEAL BOARD**

Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in Article 5, Section A.

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

**SECTION C. FURTHER APPEALS**

Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

SECTION D. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA

In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

SECTION E. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, repair, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provided the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.

3. Variances shall not be issued within any designated floodway if any significant increase in flood discharge or base flood elevation would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
7. A community shall maintain a record of all variance actions, including justification for their issuance.
8. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of items 1 through 5 of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

## ARTICLE 6 VIOLATIONS

1. The floodplain administrator may make reasonable entry upon any lands and waters in Arkansas City, Kansas for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The floodplain administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property a minimum of five (5) days prior to entry.
2. A structure or other development without a floodplain development permit or other evidence of compliance is presumed to be in violation until such documentation is provided.
3. The floodplain administrator shall provide written notice of a violation of this ordinance to the owner, the owner's agent, lessee, or lessee's agent by personal service or by certified mail, return receipt requested. The written notice shall include instructions and a deadline to request a hearing before the appeals board, and if no hearing is requested, a deadline by which the violation must be corrected.

4. Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than five hundred dollars (\$500), and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Arkansas City or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

5. Notwithstanding any criminal prosecutions or in lieu of any criminal prosecutions, if the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the period specified, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

6. If the public officer or an authorized assistant abates or removes the nuisance pursuant to this section, notice shall be provided to the owner, the owner's agent, lessee, or lessee's agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred. The notice shall also state that the payment is due within 30 days following receipt of the notice. The cost of providing notice, including any postage, required by this section may also be recovered.

7. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (K.S.A. 12-1617f).

## **ARTICLE 7 AMENDMENTS**

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Arkansas City. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this ordinance are in compliance with the NFIP regulations.

## ARTICLE 8 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this ordinance its most reasonable application.

**"100-year Flood"** *see "base flood."*

**"Accessory Structure"** means the same as *"appurtenant structure."*

**"Actuarial Rates"** *see "risk premium rates."*

**"Administrator"** means the Federal Insurance Administrator.

**"Agency"** means the Federal Emergency Management Agency (FEMA).

**"Agricultural Commodities"** means agricultural products and livestock.

**"Agricultural Structure"** means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.

**"Appeal"** means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

**"Appurtenant Structure"** means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

**"Area of Shallow Flooding"** means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**"Area of Special Flood Hazard"** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

**"Base Flood"** means the flood having a one percent chance of being equaled or exceeded in any given year.

**"Base Flood Elevation"** means the elevation of the surface of the water during a one percent annual chance flood event.

**"Basement"** means any area of the structure having its floor subgrade (below ground level) on all sides.

**"Building"** *see "structure."*



**“Chief Engineer”** means the chief engineer of the division of water resources, Kansas Department Of Agriculture.

**"Chief Executive Officer" or "Chief Elected Official"** means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

**"Community"** means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**"Development"** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**"Elevated Building"** means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**"Eligible Community" or "Participating Community"** means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

**"Existing Construction"** means for the purposes of determining rates, structures for which the *"start of construction"* commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. *"existing construction"* may also be referred to as *"existing structures."*

**"Existing Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**"Expansion to an Existing Manufactured Home Park or Subdivision"** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**"Flood" or "Flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

**"Flood Boundary and Floodway Map (FBFM)"** means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

**"Flood Elevation Determination"** means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

**"Flood Elevation Study"** means an examination, evaluation and determination of flood hazards.

**"Flood Fringe"** means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

**"Flood Hazard Boundary Map (FHBM)"** means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

**"Flood Hazard Map"** means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

**"Flood Insurance Rate Map (FIRM)"** means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**"Flood Insurance Study (FIS)"** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**"Floodplain" or "Flood-prone Area"** means any land area susceptible to being inundated by water from any source (*see "flooding"*).

**"Floodplain Management"** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**"Floodplain Management Regulations"** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

**"Floodproofing"** means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

**"Floodway" or "Regulatory Floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**"Floodway Encroachment Lines"** means the lines marking the limits of floodways on Federal, State and local floodplain maps.

**"Freeboard"** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

**"Functionally Dependent Use"** means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

**"Highest Adjacent Grade"** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**"Historic Structure"** means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

**"Lowest Floor"** means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

**"Manufactured Home"** means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *"manufactured home"* does include mobile homes manufactured prior to 1976 but **does not include** a *"recreational vehicle."*

**"Manufactured Home Park or Subdivision"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**"Map"** means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

**"Market Value" or "Fair Market Value"** means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

**"Mean Sea Level"** means, for purposes of the National Flood Insurance Program (NFIP), the National American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**"New Construction"** means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**"New Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

**"(NFIP)"** means the National Flood Insurance Program (NFIP).

**"Numbered A Zone"** means a special flood hazard area where the Flood Insurance Rate Map shows the Base Flood Elevation.

**"One percent annual chance flood"** see *"base flood."*

**"Participating Community"** also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

**"Permit"** means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

**"Person"** includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

**"Principally Above Ground"** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**"Reasonably Safe From Flooding"** means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**"Recreational Vehicle"** means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**"Remedy A Violation"** means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

**"Risk Premium Rates"** means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *"Risk premium rates"* include provisions for operating costs and allowances.

**"Special Flood Hazard Area"** *see "area of special flood hazard."*

**"Special Hazard Area"** means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

**"Start of Construction"** includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**"State Coordinating Agency"** means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

**"Structure"** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**"Substantial-Damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**"Substantial-Improvement"** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before *"start of construction"* of the improvement. This term includes structures, which have incurred *"substantial-damage,"* regardless of the actual repair work performed. The term does not,

however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "*historic structure*," provided that the alteration will not preclude the structure's continued designation as a "*historic structure*."

**"Temporary Structure"** means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until permanent facilities can be constructed, but at no time shall it include manufactured homes used as residences.

**"Unnumbered A Zone"** means a special flood hazard area shown on either a flood hazard boundary map or flood insurance rate map where the base flood elevation is not determined.

**"Variance"** means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

**"Violation"** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

**"Water Surface Elevation"** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

**ARTICLE 9 CERTIFICATE OF ADOPTION**

This Floodplain Management Ordinance for the community of Arkansas City, Kansas.

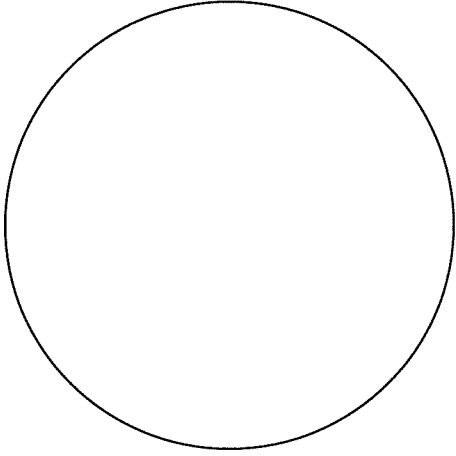
PASSED AND ADOPTED by the Governing Body of Arkansas City, Kansas.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

**Chief Engineer Draft Approval Seal Here:**

**APPROVED**  
 This 7<sup>th</sup> day of June, 2022  
Steve Sammelson For Earl Lewis  
 Earl D. Lewis, Jr., P.E.  
 Chief Engineer  
 Division of Water Resources  
 Kansas Department of Agriculture

**Community Approval Seal Here:**



**APPROVED:**

\_\_\_\_\_ Date  
 Kanyon Gingher, Mayor

**ATTEST:**

\_\_\_\_\_ Date  
 Lesley Shook, City Clerk

Published in the Cowley Courier Traveler on the \_\_\_\_\_ day of \_\_\_\_\_, 2022

## Proposed Changes to Floodplain Management Ordinance and Corresponding Zoning Regulations Article 28

### Summary of Changes to Floodplain Management Ordinance:

Agricultural Structures no longer require a variance but still have essentially the same requirements.

Accessory structures no longer require a variance but still have essentially the same requirements. Accessory buildings meeting these new requirements can now be up to 600 square feet, an increase from 400. Accessory buildings larger than 600 square feet will need to follow the standards for Non-Residential Construction found in Article 4, Section B (or Section D1(b) if in an AO zone).

Critical Facilities will now be required to be elevated 1 foot above the .2 percent annual chance flood event (500 year flood) instead of just being elevated to the level of the 500 year flood.

Residential and Non-Residential Structures now require that all HVAC and mechanical equipment be elevated to the same level as the lowest floor

All newly placed and substantially improved manufactured homes will now be required to be elevated at least 1 foot above the base flood elevation. One provision allowed the chassis to be 36 inches above grade which was sometimes still below the base flood elevation.

Temporary structures no longer require a variance but still have essentially the same requirements. A requirement for the City Commission to approve the temporary floodplain development permit was also removed.

The section on violations was redone to better describe the process and to ensure due process was documented within the ordinance. The new language also clarified enforcement actions and puts them more in line with the traditional code enforcement process used by staff.

While not a change per se, it should also be noted that because this ordinance is a part of the Zoning Regulations, the Planning Commission will be the designated body to hold public hearings regarding any amendments to the floodplain management ordinance. The City Commission could still, at its option, hold its own public hearing, but this wouldn't be required.

**Specific Changes :** Changes noted reference the new ordinance. Some sections have changed in the new but that will be noted as needed.

Article 1, Section A: the only change here will be the new date the draft ordinance was approved by the Kansas Chief Engineer

Article 1, Sections B & C: no changes from the current ordinance

Article 2, Section A: This section was reworded slightly for clarity but the intent is the same

Article 2, Sections B-F: no changes

Article 3, Section A: no changes

Article 3, Section B: The designation of floodplain administrator was changed to Principal Planner.



Article 3, Sections C-D: no changes

Article 4, Section A: No changes to #1,3,4,6,10 and 11. Change to #2: add a reference to “one percent annual chance flood”. Changes to #5: simplified section, removed references to hazardous materials as those are referenced in #10.

Changes to #7: Agricultural structures no longer require a variance. Additional language was added to this section which was brought over from the current ordinance’s Article 5, Section F. In a (formerly 1), language about variances was removed. In b (formerly 2), agricultural buildings are now allowed in any flood zone not just A zones. In f (formerly 5), language requiring mechanical equipment to be elevated 1 foot above base flood elevation was added and a note that the elevation must be certified by a licensed surveyor or professional engineer was also added. In g( formerly 6), the previous reference to variance was changed to permit. The current ordinance’s #10 was removed as it was language regarding variances. In j (formerly 11), a note was added stating that any certification costs are the responsibility of the developer.

Changes to #8: Accessory structures no longer require a variance. Additional language was added to this section which was brought over from the current ordinance’s Article 5, Section G. The allowable size of accessory buildings using this section increases from 400 to 600 square feet. Larger structures must follow the provisions for Non-residential structures found in Article 4, Section B (or Section D if in an AO zone) In a (formerly 1), accessory structures are now allowed in any flood zone, not just A zones. In (f, formerly 6), the previous reference to variance was changed to permit. The current ordinance’s #9 was removed as it was language about variances. In (j formerly 10), a sentence was added stated that any certification costs are the responsibility of the developer.

Changes to #9: Critical facilities are now required to be elevated to one foot above the 500 year flood level as opposed to being required to be placed at the 500 year flood level.

Article 4, Section B: Changes to #1a: added language about mechanical and HVAC equipment requiring that it be elevated to the same level as the lowest floor of the structure. Changes to #1b: added language about mechanical and HVAC equipment requiring that it be elevated to the same level as the lowest floor of the structure or be flood protected to that same level. Also added some clarifying language about floodproofing requirements. Changes to #1c: added a title to this section regarding “Enclosures below the lowest floor”

Article 4, Section C: In #1, the wording slightly changed for clarity. In #2d, language regarding mechanical and HVAC equipment was added as before. #3 in the current ordinance was modified. #3b in the current ordinance allows manufactured homes to be placed where the chassis was 36 inches above ground level. The requirement now will be that all manufactured homes chassis be placed a minimum of 1 foot above the base flood elevation in all instances.

Article 4, Section D: No changes in the opening paragraph. In 1a, language the HVAC and mechanical systems was added. In 1b, a reference to manufactured homes is removed as they are covered in 1a. HVAC and Mechanical systems language was also added. There were no changes to #2.

Article 4, Section E: There were no changes to #1 or 2. A new #3 was added that states a community can permit encroachments if a conditional FIRM and floodway revision is applied for. The remaining subsections were then renumbered.

Article 4, Section F: #3 from the current ordinance was reworded as it would not be compliant with our zoning regulations. Language regarding the placement to be within an approved travel trailer park was added. Recreational vehicles are only allowed to be stored outside of approved travel trailer parks and therefore would have to meet #1 or #2 of this section. A note at the end of this section was added to the end of #2 instead.

Article 4, Section G: This section was moved over from the current ordinance's Article 5, Section H. A requirement for a public hearing for temporary floodplain permits was removed. These permits will be reviewed by staff to ensure that the remaining provisions are met. In e (formerly 2a), special use permit was changed to temporary floodplain development permit. The current ordinance's 2b was removed as it regarding a public hearing process that is unnecessary if staff is doing the review. It is highly unusual for the public to be involved in such approvals at this level. In f (formerly 2c) special use permit was changed to floodplain development permit. In l (formerly 2i), special use permit was changed to floodplain development permit and a confusing reference to violations was removed. Violations to this section will be handled the same way as any other violation is handled as found in Article 6. Stop work orders can be issued if necessary to stop other construction from occurring that is not temporary until the temporary structure violation is removed.

Article 5, Sections A-E: No changes

Changes to the current ordinance's Article 5, Section F: moved to Article 4, Section A #7

Changes to the current ordinance's Article 5, Section G: moved to Article 4, Section A #8

Changes to the current ordinance's Article 5, Section H: moved to Article 4, Section G.

Article 6: This article is entirely new. The current ordinance's violation section was removed and replaced with this one to clarify procedures and add detail. This proposed version also matches current standard code enforcement processes and due process for the violator.

Article 7: no changes

Article 8: added definitions for "Agricultural Commodities", "Agricultural Structures", "Numbered A zones", "one percent annual chance" and "unnumbered A zones"

Article 9: No changes

**Changes to Zoning Regulations Article 28**: In 28-101b the current floodplain management ordinance number is referenced. The number in this section will change upon adoption of the new floodplain management ordinance.

## ARTICLE 28

### FLOODPLAIN MANAGEMENT

#### Sections:

#### 28-1 Incorporation by Reference of Floodplain Management Ordinance

#### SECTION 28-1 INCORPORATION BY REFERENCE OF FLOODPLAIN MANAGEMENT ORDINANCE

##### 28-101.

- a. Pursuant to the provisions of K.S.A. §§ 12-3009, 12-3010 and 12-3301, there is hereby incorporated by reference for the purpose of providing floodplain zoning regulations within the City of Arkansas City, that certain standard floodplain management zoning ordinance, known as the “Floodplain Management Ordinance for the City of Arkansas City, Kansas,” which is based upon and modeled after the Model Floodplain Management Ordinance as approved and recommended by the Federal Emergency Management Agency Region VII and the Kansas Department of Agriculture, Division of Water Resources, Floodplain Program.
- b. No fewer than three copies of the Floodplain Management Ordinance for the City of Arkansas City Kansas, shall be marked or stamped “Official Copy as incorporated by Ordinance No. ~~2010-08-4259~~ *2022-00-0000* of the City of Arkansas City, Kansas,” and such copies shall be filed with the City Clerk to be open to inspection and available to the public at all reasonable business hours.

**ADMINISTRATIVE PROCEDURES FOR IMPLEMENTING**  
**Ordinance#2022-00-0000 for Floodplain Management**

*For*

**Arkansas City**

**I. Duties of the Floodplain Manager**

Duties of the Principal Planner, or other person designated as the Floodplain Manager in the above referenced ordinance(s):

- ◆ Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this resolution have been satisfied;
- ◆ Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
- ◆ Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
- ◆ Issue floodplain development permits for all approved applications;
- ◆ Visually inspect all flood zones periodically to verify there has been no unpermitted development.;
- ◆ Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
- ◆ Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
- ◆ Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;
- ◆ Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been flood proofed; and
- ◆ When flood proofing techniques are utilized for a particular non-residential structure, the Floodplain Manager shall require certification from a registered professional engineer or architect.

## II. Floodplain Development Permitting System

### A. Submittal of Floodplain Development Permit Application

- ◆ Floodplain Development Permits are turned in to the Floodplain Manager in the Neighborhood Services Office on the 2<sup>nd</sup> Floor of City Hall
- ◆ There is currently no fee for a Floodplain Development Permit, if a fee is implemented in the future, it will be listed in the City of Arkansas City Comprehensive Fee Schedule.
- ◆ The numbering system for Floodplain Development Permits shall be as follows. First are the letters “FD” to designate floodplain development. The next four digits are the year the permit is issued. The following numbers shall be assigned in order as each permit is issued beginning with 001. Example: FD-2022-001.
- ◆ Floodplain Development Permits may need to be accompanied by the following documents: building plans, an elevation certificate, encroachment survey, a site map showing the location of the proposed development, non-residential floodproofing certificate, a FIRMette, no-rise certification, building permits, copies of any required state and federal permits. For some minor projects there will not be any additional documents. The required documentation will be determined for each individual permit.
- ◆ A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last five calendar years does not exceed fifty (50) percent of the structure’s current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure’s current market value, the structure must be brought into compliance with the Floodplain Management Ordinance which requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation and/or floodproofing of non-residential structures to one (1) foot above the base flood elevation. Permits are tracked through our permitting system which stores the permits electronically for individual addresses and will be reviewed when new permits are applied for.

### B. Reviewing the Floodplain Development Permit Application

- ◆ During the review of a Floodplain Development Permit the property will be found and checked on flood maps. It will be determined which flood zone the property is located in. It will also be determined if the property is in a floodway. A FIRMette or a GIS map of the area will be made and attached to the permit. The development site will be marked on the map. The Division of Water Resources will be contacted to verify State permit requirements have been met.

### C. Review documentation for compliance with technical requirements of community's floodplain management ordinance:

- ◆ The Floodplain Manager will review documents such as Floodplain Development Permits or Elevation Certificates for accuracy. If the Floodplain Manager is absent a preliminary review will be conducted by the Building

Official. In the event the Building Official or the Floodplain Manager provides technical assistance they will consult with the city's designated city engineer, Smith & Oakes.

- ◆ Elevation Certificates will be reviewed for accuracy and completeness. Information will be checked against the flood map to make sure the correct map information has been entered. Incomplete elevation certificates will be returned to the developer for completion. Permits (or certificates of occupancy) will not be approved in cases where an elevation certificate has errors.
  1. Elevation Certificates without photos will not be accepted.
  2. Particular attention will be paid to use of a consistent vertical datum in Section B11 and C2.
  3. Elevation Certificates with bland values for non-applicable fields (rather than "N/A" or 0) will not be accepted.
  4. The address in Section A2 will be the address of the property owner and not the developer or surveyor.
  5. Both community name and Community Identification (CID) number will be listed in Section B1.
  6. Data for garage or second story should be included if applicable.
  7. An engineer's certificate of net opening shall be attached when engineered openings are used.

#### D. Review of engineering documents

- ◆ Copies of engineering documents may be sent to the Neighborhood Services office using email, postal mail or may be delivered in person for review.
- ◆ Examples of engineering documents linked to NFIP requirements are hydrologic and hydraulic calculations, loading calculations and methods of construction relative to floodproofing and alternative designs for openings below lowest floor.

#### E. Approval or denial of the floodplain development permit application:

- ◆ **Approval** – The approved permit is signed by the Floodplain Manager. A copy is provided to the applicant.
- ◆ **Conditional Approval** – If a permit receives conditional approval the reasons will be noted on a separate sheet of paper attached to the permit. Reason for conditional approval could be waiting for a finished construction elevation certificate.
- ◆ **Denial** – If a permit is denied the reasons for denial will be noted on a separate piece of paper and attached to the permit form. The applicant will be notified in writing and given a copy of the reasons for denial.

#### F. Endangered Species Act verification:

- ◆ In order to verify compliance with the Endangered Species Act a community official or the developer may send a request to the US Fish and Wildlife Service office in Manhattan, Kansas. It is suggested you send an email request. Include a description, in the email, of the work to be done and where it will be done. Maps of the area are particularly useful and should be attached to the email.

◆

- ◆
- ◆ Send to:  
Kansas Ecological Services  
U.S. Fish and Wildlife Service  
2609 Anderson Avenue  
Manhattan, KS 66502  
785-539-3474  
[Kansases@fws.gov](mailto:Kansases@fws.gov)

Keep copies of correspondence from USFWS on file with permit records.

### III. Inspection Process

- ◆ Regular inspections are required for all projects. Depending on the project there may be multiple inspections. The person to whom the permit is issued will be informed at the time of permit issuance of the required inspections. A final inspection must be completed to receive a certificate of occupancy.

### IV. Administrative Activities

#### A. Recreational Vehicles

- ◆ Recreational Vehicles may be allowed in the floodplain if they meet the requirements of Article 4 Section F of the City Floodplain management regulations. Monitoring for compliance will be done by the Floodplain Manager. RVs in floodzones can only be on site for less than 180 days, be fully licensed for highway use. Suspected violations will be photographed and checked again in 180 days. RV owners could also present proof of licenses.

#### B. Elevation Certificates

- ◆ In some cases, a finished Construction Elevation Certificate is required to document compliance. The property owner will be given 30 days from completion of the structure to provide an elevation certificate. At the end of 30 days failure to provide a finished construction elevation certificate will be treated as a violation. Enforcement will be in accordance with the section of these procedures titled, "Enforcement Actions".

#### C. Openings

- ◆ Openings in lower floor enclosures should be monitored periodically. Flood vent openings in enclosures can be accidentally or deliberately blocked. The Floodplain Manager will perform regular drive by inspections of properties with flood vents. When violations are found the enforcement will be in accordance with the section of these procedures titled, "Enforcement Actions".

#### D. Basements and Crawlspace

- ◆ No below-grade construction will be allowed in the floodplain.

#### E. Review of Special Flood Hazard Areas.

- ◆ The Floodplain Manager will periodically go out and inspect all floodplain will ensure familiarity with areas and discover unpermitted activities before they go on too long.

#### F. Minor Exemptions

- ◆ Floodplain development permits will not be required for reroofing, painting, minor siding repair or very small improvements under \$500 in value to existing structures.

### V. Variances

- ◆ A Variance Request Form is completed when requesting a variance.
- ◆ The Arkansas City Board of Zoning Appeals Board will hear requests for a variance. The fee for requesting a variance is spelled out the Comprehensive Fee Schedule. Applicants requesting a variance must notify the Floodplain Manager at least 30 days before the next meeting of the Appeals Board. The person requesting the variance must provide documents to the Floodplain Manager 30 days before the Appeals Board meeting. Supporting documents for a variance to the permitting requirements should be in accordance with **Article 5 of Ordinance/Resolution \_\_\_\_\_**.
- ◆ A variance may be granted by a majority vote of the Arkansas City Board of Zoning Appeals.
- ◆ The applicant will be notified of the variance by certified mail. A copy of the letter will be maintained in the Neighborhood Services office on the 2<sup>nd</sup> Floor of Cit Hall. The following information will be contained in the letter when a variance is granted. "A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance."

### VI. Record Keeping System

- ◆ Floodplain Development Permits will be filed in the Neighborhood Services office. The Floodplain Manager will be responsible for maintaining records of Floodplain Development Permits as well as Elevation Certificates, Letters of Map Change, and Non-Residential Floodproofing Certificates. Floodplain related records are permanent records and are not to be purged. Records related to floodplain development will be maintained in Laserfiche.
- ◆ Blank forms are available on request from the Floodplain Manager in the Neighborhood Services office. Forms can be sent on request by fax, e-mail or regular mail. The Floodplain Development Permit is available at [www.arkcity.org](http://www.arkcity.org).

### VII. Map Appeals and Revisions

- ◆ A copy of each LOMA/LOMR must be filed with the official community floodplain map (FIRM/FHBM/FBFM/FIS). Flood maps are maintained by the Floodplain Manager. The Floodplain Manager will also ensure these are all mapped in the



City's GIS system. Notification to the landowner is not required in those cases where a LOMA was granted at the landowner's request.

- ◆ FEMA flood maps are available for review in the Neighborhood Services Office in City Hall. Flood maps can be viewed on the internet at <https://msc.fema.gov/>.

## VIII. Investigate Complaints

- ◆ A complaint about an issue in the floodplain can be made to the Floodplain Manager. If the Floodplain Manager is not available notify the Building Official. Please provide as much information as possible.
- ◆ Anonymous complaints will be accepted. The identity of all complainants will be protected to the extent allowed by law.
- ◆ An investigation typically will involve a site visit.
- ◆ The Floodplain Manager may make reasonable entry upon any lands and waters in Arkansas City for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The Floodplain Manager shall provide notice of entry by certified mail at least three days in advance, electronic mail, phone call, personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property for five (5) days. If the owners do not respond, cannot be located or refuse entry to the floodplain administrator, the floodplain administrator may only enter the property through a Search Warrant.
- ◆ A photo will be taken of the violation if possible generally from the Right of Way. A letter stating the complaint will be sent to the owner of record of the property where the violation is occurring. Letters will be sent by certified mail. A file will be started in the City's Comcate software. Copies of letters, photos, and other documents will be kept in the file. The Division of Water Resources (DWR) will be notified about the complaint as well. In some cases a permit from DWR may be required and in other cases the notification is in order to inform the NFIP Coordinator for State of Kansas.
- ◆ Complaint files will be kept in the Floodplain Manager's office. The Floodplain Manager's office is located in the Neighborhood Services office on the 2<sup>nd</sup> Floor of City Hall

## IX. Enforcement Actions

- ◆ When a violation is identified the property owner will be sent a certified letter that identifies the problem and establishes a time line for correction. A copy of the receipt for the letter will be kept on file with a copy of the letter. Additional copies of the letter will be sent to the Division of Water Resources.
- ◆ The first step in resolving a violation involves a meeting with the property owner. In some cases violations could be resolved by removal of material stored in flood area, the property owner applies for the proper permits, the property owner consults with an engineer or land surveyor or a finished elevation certificate is provided by the property owner to the Floodplain Manager. Each violation will be handled on a case

by-case basis. If the property owner refuses to cooperate or the violation there are enforcement procedures in ordinance \_\_\_\_\_.

- ◆ When a successful resolution can be agreed on the Floodplain Manager will verify it through either review of documents or a site visit. Resolution will be documented in a letter to the property owner. A copy of the letter will be attached to the original complaint.

**X. Damage Estimation**

- ◆ The Floodplain Manager will determine when structures have been substantially damaged. Disasters may not always be floods. A tornado could strike homes in the special flood hazard area. A single home could be destroyed in a fire without a disaster declaration.
- ◆ Outreach to the public that damage estimations and permits for repairs will be conducted after a disaster. As soon as it is safe to do so, the floodplain manager will conduct a windshield survey of the damaged properties. The windshield survey will allow an initial assessment of the properties that will later be inspected for substantial damage. Building inspectors, emergency staff, or appraisers may assist the floodplain manager. FEMA software will be used to evaluate the damage estimates. Property tax information from County Appraiser be the standard used to measure fair market value. Buildings determined to have substantial damage will be placarded. Property owners will be notified by mail if their property is determined to be substantially damaged. Notices be sent by certified postal mail. If property owners want to protest the substantial damage estimation for their properties, they shall provide a contractor’s estimate, insurance estimate or a licensed appraiser. Damage estimations and documents will be kept on file with floodplain development permits.

**XI. Certification of Adoption**

These Administrative Procedures for Floodplain Management for the community of Arkansas City shall be in full force and effect from and after this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk





# City Commission Agenda Item

**Meeting Date:** September 6, 2022

**From:** Lesley Shook, City Clerk

**Item:** Sale and Consumption of Alcoholic Liquor at Wilson Park during Cowley Market Craft Show, from 10:00 a.m. to 4:00 p.m. on Saturday, September 24, 2022.

**Purpose:** Consider first reading of an Ordinance exempting the application of K.S.A. § 41-719(c) to allow the sale and consumption of alcoholic liquor at a designated area of Wilson Park during Cowley Market Craft Show, from 10:00 a.m. to 4:00 p.m. on Saturday, September 24, 2022. **(Roll Call Vote)**

**Background:** Shelley Robertson, One Margarita Express LLC, has requested the Governing Body allow her to sell and serve alcohol at a designated area of Wilson Park during the Cowley Market Craft Show, from 10:00 a.m. to 4:00 p.m. on Saturday, September 24, 2022. One Margarita Express LLC has an active Caterers’ license issued through the State of Kansas and Ms. Robertson has provided reasonable assurances that she will take all necessary precautions to ensure the property is used in full compliance with applicable state and local law.

In order to use the property in the manner requested, the Governing Body is required by Kansas statute to adopt an Ordinance specifically exempting the property from the provisions of K.S.A. § 41-719(c), which prohibits the consumption of alcoholic liquor on public property.

**Commission Options:**

1. Approve the the Ordinance
2. Disapprove the Ordinance
3. Table the Ordinance for further consideration

**Fiscal Impact:**

Amount:

Fund: Department: Expense Code:

Included in budget       Grant       Bonds       Other (explain)

**Approved for Agenda by:**

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Randy Frazer, City Manager

(First Published in the CowleyCourier Traveler, \_\_\_\_\_ 20\_\_

**ORDINANCE NO. 2022-09-\_\_\_\_\_**

**AN ORDINANCE EXEMPTING THE APPLICATION OF K.S.A. § 41-719(C) TO ALLOW THE SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR AT A DESIGNATED AREA OF WILSON PARK DURING COWLEY MARKET CRAFT SHOW, FROM 10:00 A.M. TO 4:00 P.M. ON SATURDAY, SEPTEMBER 24, 2022.**

**WHEREAS**, Shelley Robertson, One Margarita Express LLC, has requested the Governing Body allow her to sell and serve alcohol at a designated area of Wilson Park during Cowley Market Craft Show, from 10:00 a.m. to 4:00 p.m. on Saturday, September 24, 2022; and

**WHEREAS**, Shelley Robertson has provided reasonable assurances that she will take all necessary precautions to ensure the property is used in full compliance with applicable state and local law; and

**WHEREAS**, in order to use the property in the manner requested, the Governing Body is required by Kansas statute to adopt an Ordinance specifically exempting the property from the provisions of K.S.A. § 41-719(c), which prohibits the consumption of alcoholic liquor on public property.

**NOW, THEREFORE, IN CONSIDERATION OF THE AFORESTATED PREMISES, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE:** Notwithstanding any provision of Municipal Code to contrary, the Governing Body of the City of Arkansas City hereby exempts property located at Wilson Park, and designated on the attached map (hereafter “the Premises”) from the provisions of K.S.A. § 41-719(c), starting at 10:00 a.m. until 4:00 p.m. on Saturday, September 24, 2022. The Governing Body hereby grants this exemption as it is a community event; it will be fully-contained and have extensive measures in place to provide for security and extensive monitoring to ensure compliance with Municipal laws. By providing this exemption, the Governing Body hereby authorizes Shelley Robertson, One Margarita Express, LLC, to sell and serve alcoholic liquor by the drink for consumption on the Premises, subject to the following terms and conditions:

1. Shelley Robertson shall provide security for the event, and shall take all necessary precautions to ensure compliance with all other provisions of Arkansas City Municipal Code, including the public offense code.
2. No person under twenty-one (21) years of age shall be served alcohol, and precautions shall be taken to ensure this does not occur. Shelley Robertson or her designee shall check photo identification and provide wristbands to those over the age of 21, to ensure no one under the age of 21 is served alcoholic liquor.
3. The Premises must be fully-gated or otherwise enclosed. Any place where the gating or other enclosure provides an opening for entrance and exit from the

Premises must be manned to ensure no one may leave the fenced premises with an open container of alcohol/cereal malt beverage.

- 4. Shelley Robertson shall not allow a number of persons inside the Premises in excess of the occupancy load established by approved authorities, if applicable.
- 5. Shelley Robertson shall leave the Premises in a same or similar condition as it existed prior to the exemption dates, and shall remove all gating, trash, seating, portable toilets, and other supplies from the event; and repair any damage, in a timely fashion.
- 6. This exemption shall only apply to the interior of the gated Premises and shall not include any surrounding curtilage.

**SECTION TWO: PUBLICATION; EFFECTIVE DATE.** This ordinance, or a summary thereof, shall be published one time in the official City newspaper, and shall take effect and be in force from and after said publication.

**PASSED AND ORDAINED** by the Governing Body of the City of Arkansas City, Kansas, on the 6<sup>th</sup> day of September, 2022.

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

CERTIFICATE

I, hereby certify that the above and foregoing is a true and correct copy of the Ordinance No. 2022-09-\_\_\_\_ of the City of Arkansas City, Kansas adopted by the governing body on September 6, 2022 as the same appears of record in my office.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Lesley Shook, City Clerk



# City Commission Agenda Item

**Meeting Date:** September 6, 2022  
**From:** Josh White, Principal Planner/Mike Bellis, Building Official  
**Item:** Illegal Dump Site Cleanup 425 W Quincy

**Purpose:** Consider a Resolution regarding the cleanup of the property located at 425 W Quincy Avenue, Arkansas City, Kansas, and providing for cooperation with the Kansas Department of Health and Environment in achieving said repair and cleanup. **(Voice Vote)**

**Background:**

The property at 425 W Quincy Avenue has been identified and designated by City staff and the Kansas Department of Health and Environment Bureau of Waste Management as an illegal dumpsite. The KDHE Illegal Dump Program will pay up to \$10,000 per site. The City is responsible for a 25% match but this will be met by in-kind services such as labor and equipment. KDHE uses FEMA rates for labor and equipment which minimizes any out of pocket expenses for the city. KDHE is hiring city staff to use their equipment to remediate the site. All city staff time is included in the work plan that will be established to use as the match.

In order to proceed with this project and receive grant funds, the City must pass a resolution and enter into an agreement with the Kansas Department of Health and Environment.

Staff recommends approval of the resolution and agreement.

**Commission Options:**

1. Approve the Resolution
2. Disapprove the Resolution
3. Table the Resolution for further consideration

**Fiscal Impact:**

Amount: \$13,333.33 (\$10,000 Grant, \$3,333.33 In-kind services)

Fund: \_\_\_\_\_ Department: \_\_\_\_\_ Expense Code: \_\_\_\_\_  
 Included in Budget     Grant     Bonds     Other (explain): In-kind services

**Attachments:**

**Approved for Agenda by:**



Randy Frazer, City Manager

**A RESOLUTION REGARDING THE CLEANUP OF THE PROPERTY LOCATED AT 425 W QUINCY AVENUE, ARKANSAS CITY, KANSAS, AND PROVIDING FOR COOPERATION WITH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT IN ACHIEVING SAID REPAIR AND CLEANUP.**

**WHEREAS**, the City Commission after study and review has determined as follows, to-wit:

**THAT**, K.S.A. 65-3415a(c)(7) authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to take corrective action where the release of solid waste presents an actual or potential threat to human health or the environment if the owner or operator has not been identified or is unable or unwilling to perform corrective action.

**THAT**, K.S.A. 65-3415a(d) requires that the person(s) responsible for the operation or long-term care of a disposal area whose failure to comply with the solid waste act, rules and regulations or permit conditions resulted in the determination that expenditures from the solid waste fund are responsible for repayment of those funds and the Secretary shall take the appropriate action to recover those funds.

**THAT**, the Secretary has determined that the site presents an actual or potential threat to human health or the environment and the owner or operator is unable or unwilling to perform the necessary corrective action. The Secretary has further determined that the person(s) responsible for the long-term care of the site has not violated the solid waste act, rules, regulations, or permit conditions resulting in the determination that funds should be expended and therefore is not responsible for repayment of funds expended.

**THAT**, the City of Arkansas City should enter into an agreement to remediate the human health or environmental hazards at the site located in Cowley County, Kansas known as 425 W Quincy Ave, Arkansas City, KS, as the same represents a threat to the safety of the citizens of the City of Arkansas City and Cowley County, Kansas.

**THAT**, the Secretary has determined that it is most cost effective for the City to contract for performance of the tasks necessary to remediate the site.

**NOW, THEREFORE, IN CONSIDERATION OF THE AFORESTATED PREMISES, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the City of Arkansas City, Kansas, to enter into an agreement with the Kansas Department of Health and Environment for the clean-up of 425 W Quincy Avenue, Arkansas City, Kansas, and to provide for a work plan for said repair and clean-up, and to perform all acts necessary to contract for the performance of the tasks necessary to accomplish same and to enter into a reimbursement agreement with KDHE to recover the actual costs associated in performing said services.

**SECTION TWO:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the Mayor and/or City staff of the City of Arkansas City, Kansas, to take such further and other necessary actions that are required to effectuate the intent and purposes of this Legislative Enactment.

**SECTION THREE:** This Resolution shall be in full force and effect from its date of passage by the Governing Body of the City of Arkansas City, Kansas.

**PASSED AND RESOLVED** by the Governing Body of the City of Arkansas City, Kansas, on this \_\_ day of September, 2022.

(Seal)

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution No. 2022-09-\_\_\_\_ of the City of Arkansas City, Kansas, adopted by the Governing Body thereof on \_\_\_\_\_, 2022, as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Lesley Shook, City Clerk



CONTRACT ILD-23-002

Between

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

And

City of Arkansas City (Baker/Welch)

SUBJECT: Corrective action at Illegal Dump Site #ILD-23-002

DIVISION: Bureau of Waste Management

CONTRACT

PERIOD: Upon signature of the Secretary through February 28, 2023

AMOUNT: Estimated \$10,000.00 not to exceed \$10,000.00

This agreement between the Kansas Department of Health and Environment (hereinafter KDHE) and the City of Arkansas City takes effect upon signature of the Secretary of the Kansas Department of Health and Environment.

The relevant property with an address as follows: GOOCH'S ADD, S36, T34, R03, ACRES 11.22, W460 OF OUTLOT A & PT OUTLOT A BEG W132 FROM NE COR, W160, S63 0, E160, N630 TO POB SECTION 36 TOWNSHIP 34 RANGE 03 commonly known as 425 W. Quincy Ave., Arkansas City, KS 67005, Cowley County, Kansas, is an illegal solid waste dumping area pursuant to K.S.A. 65-3415(a). The City of Arkansas City has agreed to administer the contract.

K.S.A. 65-3415a(c)(12) authorizes the secretary of KDHE to pay for seventy-five percent (75%) up to a maximum of ten thousand dollars (\$10,000) of the costs of removal and disposal or stabilization of solid waste from the site of illegal dumping activity, if the city or county of jurisdiction consents.

K.S.A. 65-3415a(d) requires that the person(s) responsible for the illegal solid waste dumping activity at the subject site, whose failure to comply with the solid waste act, rules and regulations or permit conditions resulted in the determination that expenditures from the solid waste fund are necessary, are responsible for repayment of those funds. The secretary shall, in his discretion, take the appropriate action to recover those funds.

The secretary has determined that the above site is an illegal solid waste dumping site which requires authorized corrective action, and also that the person(s)

responsible for the illegal dumping activity is/are either unknown, unable or unwilling to pay for the cost of corrective action.

The City of Arkansas City wishes to enter into an agreement to perform corrective action at the above illegal solid waste dumping site.

The secretary has determined that it is most cost effective for the City of Arkansas City to perform or contract for performance of the tasks necessary to take correction action at the site.

In consideration of the foregoing and the representations and obligations undertaken herein and intending to be legally bound, the parties hereto agree as follows:

I. The KDHE shall:

- (1) Provide reimbursement to the City of Arkansas City for 75% of their actual cost of corrective action not to exceed \$10,000.
- (2) Agree that the City of Arkansas City may utilize the labor cost of its employees and cost of use of appropriate equipment in the calculation of its total cost of corrective action, subject to review and approval by KDHE.
- (3) Advance 25% of \$10,000.00 or \$2,500.00 of the estimated contract amount upon execution of the contract if requested.
- (4) Reimburse the remainder of the actual cost contract amount upon completion of the project as verified by receipt of Certified Expenditure Affidavits supported by evidence of expenditure, if KDHE approves the evidence of expenditure as appropriate. No reimbursements will be processed until the advanced contract amount is expended.
- (5) Review all requests and contracts submitted by the City of Arkansas City for approval by KDHE within thirty days of receipt by KDHE.
- (6) Provide technical assistance to the City of Arkansas City for project execution and administration.

II. The City of Arkansas City:

- (1) Shall incur 25% of the total cost of the clean up, either through the direct payment of expenses or supplying a minimum of in-kind contributions through labor, equipment or landfill space.

- (2) Shall submit a work plan to KDHE for approval prior to initial distribution of funds.
- (3) Shall submit Certified Expenditure Affidavits and a final affidavit supported by evidence of expenditures upon completion of the project and a final affidavit. The final affidavit shall be received by KDHE no later than 30 days after completion of the project. Complete, accurate documentation and current accounting of all funds received and expended shall be maintained to provide an audit trail to source documentation.
- (4) Agrees that no capital equipment will be purchased with the funds provided by KDHE. No matching funds will be reimbursed to the City of Arkansas City for the purchase of any capital equipment.
- (5) Submit all contracts over \$500 for approval by KDHE. KDHE recommends that the City of Arkansas City use competitive bid procedures for purchases over \$500, however, the City of Arkansas City may follow the same policies and procedures utilized for procurements obtained in the normal course of business.
- (6) Afford access, upon written request, to the secretary of KDHE or the secretary's authorized representative, or Kansas Legislative Post Audit to any documents and other records necessary to certify compliance with Kansas statutes, regulations, and appropriation requirements.
- (7) Complete the project as specified in the approved work plan.
- (8) Submit a final report to KDHE detailing the work accomplished in implementing the work plan.
- (9) Obtain all necessary site access agreements if not already obtained. Documentation of any such agreements shall be submitted to KDHE with the final report or upon request of KDHE.
- (10) Provide additional funds or resources, over the contract amount, as necessary, for completion of the project. The City of Arkansas City agrees not to seek any reimbursement from the property owner or other parties for any expenses not covered under this agreement. Any reimbursement sought under this agreement will be the sole responsibility of KDHE.
- (11) The City of Arkansas City shall submit to KDHE a copy of the resolution adopting this agreement. Upon submission, the resolution shall be incorporated into this agreement as Exhibit A.

III. The parties mutually agree that:

- (1) Failure to submit an acceptable work plan shall render this contract void.
- (2) The provisions found in Contractual Provisions Attachment (Form DA-146a), which is attached hereto and executed by the parties to the agreement, are hereby incorporated into this contract and are made a part hereof.
- (3) This agreement constitutes the whole agreement between the parties, and it is mutually understood and agreed that no alternative or variation to the terms of this agreement shall be valid unless amendments hereto are made in writing and agreed to by both parties.
- (4) This contract shall terminate upon the City of Arkansas City receipt of written notice from KDHE that the City of Arkansas City has demonstrated that the items set forth in the work plan were satisfactorily completed.
- (5) Nothing in this agreement shall be considered an admission of any fact or an acknowledgment of any liability; and, nothing herein shall be binding or have any effect on the position of the parties on any other agreements which may be negotiated between them.
- (6) KDHE and the City of Arkansas City will not be liable for any acts or omissions of their respective employees, agents, assigns, contractors, or persons acting on behalf of KDHE or City of Arkansas City in carrying out any activities pursuant to the terms of this agreement, beyond that liability granted by the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*
- (7) Failure to obtain necessary site access agreements, per paragraph II. (9), and/or to submit documentation of access agreements to KDHE upon KDHE's request, shall result in KDHE denying reimbursement of outstanding funds to the City of Arkansas City.
- (8) KDHE shall not be responsible for any payments for site access or crop damage.
- (9) By signing this agreement, the person below warrants that he or she has the authority to sign this document and to bind the parties to its terms.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the dates indicated below.

BY: \_\_\_\_\_  
Kanyon Gingham  
Mayor  
City of Arkansas City

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Janet Stanek, Secretary  
Kansas Department of Health  
And Environment

\_\_\_\_\_  
Date:

STATE OF KANSAS

CAPITOL BUILDING  
ROOM 241 SOUTH  
TOPEKA, KS 66612



PHONE: (785) 296-3232  
FAX: (785) 368-8788  
GOVERNOR.KS.GOV

GOVERNOR JEFF COLYER, M.D.

**EXECUTIVE ORDER 18-04**

**Policy Regarding Sexual Harassment**

**WHEREAS**, sexual harassment and retaliation for sexual harassment claims are unacceptable forms of discrimination that must not be tolerated in the workplace; and

**WHEREAS**, state and federal employment discrimination laws prohibit sexual harassment and retaliation in the workplace; and

**WHEREAS**, officers and employees of the State of Kansas are entitled to working conditions that are free from sexual harassment, discrimination, and retaliation; and

**WHEREAS**, the Governor and all officers and employees of the State of Kansas should seek to foster a culture that does not tolerate sexual harassment, retaliation, and unlawful discrimination.

**NOW THEREFORE**, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order as follows:

1. All Executive Branch department and agency heads shall have available, and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.

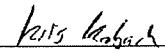
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, and retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within ninety (90) days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.
7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.
8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination, and shall not be interpreted to in any way diminish such laws and regulations. The Order provides conduct requirements for covered persons, and is not intended to create any new right or benefit enforceable against the State of Kansas.
9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

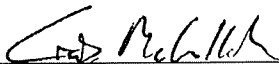
This document shall be filed with the Secretary of State as Executive Order No. 18-04 and shall become effective immediately.

**THE GOVERNOR'S OFFICE**

BY THE GOVERNOR 

DATED 5 February 2018

  
Secretary of State

  
Asst. Secretary of State

**FILED**  
FEB 05 2018  
KRIS W. KOBACH  
SECRETARY OF STATE



## Policy Regarding Sexual Harassment

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**WHEREAS**, state and federal employment discrimination laws prohibit sexual harassment and retaliation in the workplace; and

**WHEREAS**, officers and employees of the State of Kansas are entitled to working conditions that are free from sexual harassment, discrimination, and retaliation; and

**WHEREAS**, the Governor and all officers and employees of the State of Kansas should seek to foster a culture that does not tolerate sexual harassment, retaliation, and unlawful discrimination.

**NOW THEREFORE**, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order as follows:

1. All Executive Branch department and agency heads shall have available, and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, or retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within ninety (90) days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.

7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.
8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination, and shall not be interpreted to in any way diminish such laws and regulations. The Order provides conduct requirements for covered persons, and is not intended to create any new right or benefit enforceable against the State of Kansas.
9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

**Agreement to Comply with the Policy Against Sexual Harassment, Discrimination, and Retaliation.**

I hereby acknowledge that I have received a copy of the State of Kansas Policy Against Sexual Harassment, Discrimination, and Retaliation established by Executive Order 18-04 and agree to comply with the provisions of this policy.

\_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Printed Name

State of Kansas  
 Department of Administration DA-146a  
 (Rev. 07-19)

### CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.



# City Commission Agenda Item

**Meeting Date:** September 6, 2022  
**From:** Josh White, Principal Planner  
**Item:** 212 N 3<sup>rd</sup> Street Property Transfer

**Purpose:** Consider a Resolution authorizing the transfer of certain real estate at 212 N 3<sup>rd</sup> Street to George and Nisa Cummings. **(Voice Vote)**

**Background:**

After the structure was declared dangerous in 2020, the City entered into an agreement with then owners Jerald and Leila Ann Jennings where the Jennings’ would transfer ownership to the City in exchange for demolition of the structure. The intent was to place the property in the land bank but the property was transferred directly to the City instead.

George and Nisa Cummings who reside at 216 N 3<sup>rd</sup> Street have since shown a desire to acquire the property from the City to place a garage on the property. Staff feels that this is a desirable use of the property and would put it back on the tax rolls while recouping some of our costs for the demolition. Staff recommends selling the property at 212 N 3<sup>rd</sup> Street to the Cummings’ for the county appraised value of \$6,930.

The contract has additional provisions requiring the property to have no code violations for 12 months after transfer and complete construction of the garage within 12 months of transfer.

**Commission Options:**

1. Approve the Resolution.
2. Disapprove the Resolution.
3. Table the Resolution for further consideration.

**Fiscal Impact:**

Amount:

Fund:	Department:	Expense Code:
___ Included in Budget	___ Grant    ___ Bonds	___ Other (explain):

**Attachments:**

**Approved for Agenda by:**

Randy Frazer, City Manager

**A RESOLUTION AUTHORIZING THE TRANSFER OF CERTAIN REAL ESTATE AT 212 N 3<sup>RD</sup> STREET TO GEORGE AND NISA CUMMINGS.**

**WHEREAS**, the City of Arkansas City owns a lot it acquired in exchange for a demolition of a dangerous structure at 212 N 3<sup>rd</sup> Street; and

**WHEREAS**, George and Nisa Cummings reside at the property at 216 N 3<sup>rd</sup> Street and wish to acquire this property to build a garage; and

**WHEREAS**, the City has held this property since 2021 with no other requests; and

**WHEREAS**, the City desires to put excess and underutilized city owned property back on the tax rolls.

**NOW, THEREFORE, IN CONSIDERATION OF THE AFORESTATED PREMISES, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the City to execute a purchase contract with George E Cummings III and Nisa J Cummings for the transfer of property located at 212 N 3<sup>rd</sup> Street and legally described as:

LOTS 20 AND 21, BLOCK 132, ARKANSAS CITY ORIGINAL TOWN, COWLEY COUNTY, KANSAS.

**SECTION TWO:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the Mayor and/or City Manager of the City of Arkansas City, Kansas, to take such further and other necessary actions that are required to effectuate the intent and purposes of this Legislative Enactment.

**SECTION THREE:** This Resolution shall be in full force and effect from its date of passage by the Governing Body of the City of Arkansas City, Kansas.

**PASSED AND RESOLVED** by the Governing Body of the City of Arkansas City, Kansas, on this 6th day of September, 2022.

(Seal)

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

Section , Item 2.

I hereby certify that the above and foregoing is a true and correct copy of the Resolution No. 2022-09-\_\_\_\_ of the City of Arkansas City, Kansas, adopted by the Governing Body thereof on \_\_\_\_\_, 2022, as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Lesley Shook, City Clerk

REAL ESTATE SALES CONTRACT

THIS AGREEMENT made and entered this \_\_\_\_\_ day of \_\_\_\_\_ 2022, by and between **THE CITY OF ARKANSAS CITY, KANSAS**, herein referred to as **SELLER**, and **GEORGE E CUMMINGS, III and NISA J CUMMINGS**, herein referred to as **BUYER**.

**WITNESSETH:**

WHEREAS, SELLER has agreed to sell, and BUYER has agreed to buy property pursuant to the provisions set forth below; and

WHEREAS, SELLER does hereby covenant and agree that in consideration of the payments and performance of the covenants herein recited to be made and performed by BUYER, SELLER shall convey unto the BUYER, in fee simple, subject to any covenants, declarations, restrictions, zoning laws, or easements of record, but clear of all mortgage or financial encumbrances whatsoever, by Quit Claim Deed, the real estate described below in Section One and all improvements located thereon situate in Arkansas City, Cowley County, Kansas.

SECTION ONE: PROPERTY:

All real property owned by SELLER located at 212 N 3<sup>rd</sup> Street, Arkansas City, Cowley County, Kansas and legally described as:

**LOTS 20 AND 21, BLOCK 132, ARKANSAS CITY ORIGINAL TOWN, COWLEY COUNTY, KANSAS.**

SECTION TWO: PURCHASE PRICE:

BUYER hereby covenant and agree to pay unto SELLER the full sum of: Six Thousand Nine Hundred Thirty (\$6,930.00), on the date of closing, which shall occur no later than 180 days after execution of this Contract.

SECTION THREE: TAXES:

BUYER shall pay all taxes due and owing from and after the date of closing on this Contract.

SECTION FOUR: POSSESSION OF PROPERTY:

SELLER shall give possession of the aforescribed property immediately upon closing.

SECTION FIVE: TITLE INSURANCE:

BUYER shall have the option of obtaining Title Insurance at BUYER’S own expense.

SECTION SIX: CONDITION OF PREMISES:

The property is sold as-is, and SELLER makes no warranty as to the suitability of the property for any proposed use by BUYER.

SECTION SEVEN: ADDITIONAL PROVISIONS:



BUYER agrees to construct a garage on the property within one (1) year of the execution of this contract and shall have no notices of code violations for one (1) year on the property from the date of the execution of this contract.

SECTION EIGHT: APPLICABLE LAW:

This contract shall be governed by, construed, and enforced in accordance with the laws of the State of Kansas. In the event any action is filed in relation to this real estate purchase, the unsuccessful party in the action shall pay to the successful party in addition to all other sums that may be declared due and payable, a reasonable sum for the prevailing party's attorney's fees, expert fees and costs related thereto.

IT IS MUTUALLY AGREED that all covenants and agreements herein contained shall extend to and be obligatory upon the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and year first above appearing.

BUYER:  
**GEORGE E and NISA J CUMMINGS**

\_\_\_\_\_  
By: George E. Cummings

ACKNOWLEDGMENT

STATE OF KANSAS        )  
COUNTY OF COWLEY    ) ss:

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_ 2022, before me, the undersigned, a Notary Public in and for the aforesaid County and State aforesaid, came George E. Cummings, who is personally known to me to be the same persons who executed the within instrument in writing, and duly acknowledged the execution of same.

In witness whereof, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My appointment expires:

\_\_\_\_\_  
By: Nisa J. Cummings

ACKNOWLEDGMENT

STATE OF KANSAS        )  
COUNTY OF COWLEY    ) ss:

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_ 2022, before me, the undersigned, a Notary Public in and for the aforesaid County and State aforesaid, came Nisa J. Cummings, who is personally known to me to be the same persons who executed the within instrument in writing, and duly acknowledged the execution of same.

In witness whereof, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My appointment expires:

SELLER:

**THE CITY OF ARKANSAS CITY, KANSAS**

\_\_\_\_\_  
By: Kanyon Gingher  
Mayor

ACKNOWLEDGMENT

STATE OF KANSAS        )  
COUNTY OF COWLEY    ) ss:

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_ 2022, before me, the undersigned, a Notary Public in and for the aforesaid County and State aforesaid, came Kanyon Gingher, who is personally known to me to be the same person who executed the within instrument in writing, and duly acknowledged the execution of same as the authorized act and deed of the City of Arkansas City, Kansas Landbank Board of Trustees.

In witness whereof, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My appointment expires:

**STATUTORY QUIT CLAIM DEED**

---

GRANTOR,

**THE CITY OF ARKANSAS CITY, KANSAS,  
A Kansas Municipality of the Second Class**

In consideration of the sum of One Dollar and other valuable consideration, the receipt of which is hereby acknowledged, does hereby quit claim unto:

GRANTEE,

**GEORGE E. CUMMINGS III and NISA J. CUMMINGS,  
Husband and wife, as joint tenants with rights of survivorship and not as tenants in common,**

all the following lands and property situated in Cowley County, together with any and all improvements located thereon, subject to easements and restrictions of record, if any, and legally described as:

LOTS 20 AND 21, BLOCK 132, ARKANSAS CITY ORIGINAL TOWN, COWLEY COUNTY, KANSAS.

WITNESS Grantor's hand this the \_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
By: Kanyon Gingher  
Mayor, City of Arkansas City

STATE OF KANSAS     )  
COUNTY OF COWLEY ) ss:

On this \_\_\_\_ day of \_\_\_\_\_ 2022, before me, a Notary Public within and for said County and State, having first been duly sworn under oath, personally appeared: KANYON GINGHER, who is personally known to me to be the same person who executed the foregoing instrument, and the aforementioned acknowledged said instrument to be his free and voluntary act and deed and a duly authorized act on behalf of the City of Arkansas City, Kansas Landbank Board of Trustees. In testimony whereof I have hereunto subscribed my hand and affixed my official seal the day and year last above appearing.

\_\_\_\_\_  
Notary Public

My appointment expires:



# City Commission Agenda Item

**Meeting Date:** September 6, 2022  
**From:** Randy Frazer, City Manager  
**Item:** Memorandum of Understanding for Development of City owned Property.

**Purpose:** Consider a Resolution authoring the City of Arkansas to enter into a Memorandum of Understanding with “a to be determined entity” composed of Consolidate Housing Services and Consolidated Development Partners , to acquire property and develop a residential housing development on the city owned lot bordered by N. 1<sup>st</sup> Street, N. 2<sup>nd</sup> Street, W. Birch Ave., and W. Pine Avenue. **(Voice Vote)**

**Background:**

Consolidate Housing Services and Consolidated Development Partners would like to acquire property and develop a residential housing development on the city owned lot bordered by N. 1<sup>st</sup> Street, N. 2<sup>nd</sup> Street, W. Birch Ave., and W. Pine Avenue.

The proposed development would consist of the following housing options:

- 15 units of market rate townhomes
- 40 units of apartments that include some market rates units but majority affordable

**Commission Options:**

1. Approve the Resolution.
2. Disapprove the Resolution.
3. Table the Resolution for further consideration.

**Fiscal Impact:**

Amount: N/A


Fund:            Department:            Expense Code:

Included in budget             Grant             Bonds             Other (explain)

**Attachments:**

-Memorandum of Understanding

**Approved for Agenda by:**



Randy Frazer, City Manager

A RESOLUTION AUTHORIZING THE CITY OF ARKANSAS TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH "A TO BE DETERMINED ENTITY" COMPOSED OF CONSOLIDATE HOUSING SERVICES AND CONSOLIDATED DEVELOPMENT PARTNERS, TO ACQUIRE PROPERTY AND DEVELOP A RESIDENTIAL HOUSING DEVELOPMENT ON THE CITY OWNED LOT BORDERED BY N. 1ST STREET, N. 2ND STREET, W. BIRCH AVENUE, AND W. PINE AVENUE.

NOW, THEREFORE, IN CONSIDERATION OF THE AFORESTATED PREMISES, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:

**SECTION ONE:** The Governing Body of the City of Arkansas City hereby authorizes the City of Arkansas City to enter into a Memorandum of Understanding (MOU) with "a to be determined entity" composed of Consolidate Housing Services and Consolidated Development Partners, to acquire property and develop a residential housing development on the city owned lot bordered by N. 1st Street, N. 2nd Street, W. Birch Avenue, and W. Pine Avenue. Such Memorandum of Understanding is attached hereto and incorporated by reference as if fully set forth herein.

**SECTION TWO:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the Mayor and/or City staff of the City of Arkansas City, Kansas, to take such further and other necessary actions that are required to effectuate the intent and purposes of this Legislative Enactment.

**SECTION THREE:** This Resolution shall be in full force and effect from its date of passage by the Governing Body of the City of Arkansas City, Kansas.

**PASSED AND RESOLVED** by the Governing Body of the City of Arkansas City, Kansas, on this 6<sup>th</sup> day of September, 2022.

(Seal)

\_\_\_\_\_  
Kanyon Gingher, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Shook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution No. 2022-09-\_\_\_\_ of the City of Arkansas City, Kansas, adopted by the Governing Body thereof on September 6, 2022. as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Lesley Shook, City Clerk

**MEMORANDUM OF UNDERSTANDING  
FOR THE DEVELOPMENT OF CITY OWNED PROPERTY LOCATED IN ARKANSAS  
CITY, KANSAS.**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”), made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Arkansas City, Kansas (the “City” or “Arkansas City”) and a to be determined entity composed of **Consolidated Housing Services and Consolidated Development Partners**, a Kansas Limited Liability Corporation whose address is 4501 Fairmount Avenue, Kansas City, Missouri 64111 (“Developer”).

**WITNESSETH:**

**Whereas**, Arkansas City has interest in the redevelopment of property identified in Exhibit A, Arkansas City, Kansas (“Project”);

**Whereas**, Arkansas City desires to see the property (the land) developed and is willing to convey it to a qualified redeveloper party; and

**Whereas**, “THE DEVELOPER” desires to acquire and develop the Project into multi-family housing and potentially community related uses; and

**Whereas**, “THE DEVELOPER” is willing to allocate time and resources to developing the Project, subject to the terms and conditions set forth herein;

**Now, therefore**, it is hereby agreed as follows:

1. Engagement. Arkansas City hereby agrees to enter into this MOU with “THE DEVELOPER” so that it can allocate time and resources to plan for the redevelopment of the Project. Except for the terms and conditions set out in Section 5, this MOU is non-binding and neither party shall be obligated for anything hereunder unless and until the parties shall mutually agree in writing. **The terms of Section 5 shall be binding on the both parties from and after the effective date of this MOU.**
2. Duties of “THE DEVELOPER”. The duties of “THE DEVELOPER” under this MOU shall include all tasks necessary to complete master planning, design, financing, construction and development of the Project according to specifications and parameters mutually agreed upon by the City of Arkansas City and “THE DEVELOPER”. The City understands that “THE DEVELOPER” will assemble a team of other consultants and professionals that will be responsible for tasks including the following:
  - i. Planning and development of a multi-family project between twenty (20) and fifty (50) units. The Development Team proposes to develop a project with income-restrictions.
  - ii. Determining appropriate team members to develop the Project including

investors, co-Developers, architects, contractors, financial consultants, engineers, etc.;

- iii. Acquiring any required market surveys of the type and in the manner prescribed by the funding sources;
  - iv. Preparing the operating budgets and construction cost estimates acceptable to the funding sources obtained for the project;
  - v. Completing the due diligence required by capital, credit and grant funding sources, if any, for the Project;
  - vi. Managing the combined negotiations and planning required to reach closing with the Project's equity investors and lenders;
  - vii. Obtaining adequate construction and permanent financing to ensure the timely commencement and completion of construction for the Project (Sources to include affordable housing tax credits).
  - viii. Specifically, including the above tasks, the Developer will:
    1. Fund any market analysis activities or costs for the project.
    2. Fund any fees associated with any Affordable Housing Tax Credit (Section 42) application.
  - ix. Complete City's Application for Financial Incentives and pay application fee and deposit.
3. Duties of the City. The duties of "The City" under this MOU shall include tasks necessary to complete development of the project. The "DEVELOPER" understands the City will be responsible for the following tasks in order to facilitate development of the structure:
- i. Contribute the land for the development of the Project.
  - ii. The City will assist the Developer in obtaining building permits, any water or sewer taps, electrical supply and any other item required to complete the project approval process.
  - iii. The City will waive the costs of building permit fees, utility tap fees, and utility infrastructure.
  - iv. The City and local taxing jurisdictions will implement a Rural Housing Incentive District (RHID), or other appropriate program for the project. The intent of the RHID is to finance public improvements and utilities for the Project.
4. Expenses. Each party shall be responsible for any expenses it incurs with respect to this MOU. Upon execution of the long form binding development agreement and/or purchase agreement as contemplated within this MOU, the parties may choose to share certain development costs related to the Project as mutually agreed in such long form binding development agreement and/or purchase contract.
5. Exclusive Rights of Negotiation. For a period of ninety (90) days from the date of this MOU and any extensions thereof in accordance with this Section 5, "THE DEVELOPER" shall have the exclusive rights to negotiate with Arkansas City for the purchase and development of the Project ("Period of Exclusivity"). During such Period of Exclusivity, Arkansas City hereby agrees not to contact or engage any other party concerning the development activities as described in Section 2 of this MOU, except to the extent such third party is being consulted by Arkansas City to assist or coordinate with "THE



DEVELOPER” in conformance with this MOU. Further, during the Period of Exclusivity, the City of Arkansas City and “THE DEVELOPER” shall negotiate in good faith the terms of a long form binding development agreement and/or purchase contract defining the rights and obligation of the each party in connection with development of the Project, said agreement to define, among other things; i) the terms of sale for the site or portion thereof, ii) the terms related to any development incentives available for the Project, iii) the terms related to the subdividing and dedication of excess land located within the Project, and iv) the timeline needed to obtain financing for the Project. Upon conclusion of initial Period of Exclusivity, such period shall automatically extend for successive 30 day terms (such extensions to be considered part of the Period of Exclusivity as that term is used in this MOU), unless either party elects to terminate such Period of Exclusivity, said notice of termination being effective upon the last date of such Period of Exclusivity if such written notice of termination is received by the non-terminating party no later than five (5) business days prior the end of applicable period.

6. The City of Arkansas City’s Obligations. By executing this MOU, the City of Arkansas City intends to donate the land for development, subject to final approval by Arkansas City City Council. The City also agrees to provide support for the project as it relates to the pursuit of affordable housing tax credits. The City also agrees to provide support as outlined in Section 3 of this agreement.

If, in the event that the development is not successful in the initial application submittal to KHRC, the City agrees to extend the terms of this agreement for a second submittal, likely in the following calendar year.

7. Participation in Similar Transaction. Participation by “THE DEVELOPER” and the City, their respective officers, directors or stockholders, or their respective Affiliates and their officers, directors or stockholders, in other real estate or similar ventures, including but not limited to the same type of projects pursued under this MOU, shall not constitute a conflict of interest. As used herein, Affiliate shall mean a person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with another person or entity, including “THE DEVELOPER” and the City. The City acknowledges that “THE DEVELOPER” may pursue opportunities identical to this Project and that such participation is not a conflict of interest with the City or this MOU.

- 8. Assistance. "THE DEVELOPER" and the City will each provide the other access to staff necessary for assistance in generating details required for the Project in a timely manner, prompt access to all pertinent information necessary for satisfying due diligence and negotiating processes; and all information required for the negotiations, related due diligence and contract processes of the Project, as the case may be, to satisfy the obligations of each under this MOU.
- 9. Assignment. This MOU may not be assigned by either party without the prior written consent of the other party, except that "THE DEVELOPER" may freely assign this MOU to an affiliate of "THE DEVELOPER" that is owned or controlled by "THE DEVELOPER" or a majority of the members in "THE DEVELOPER".
- 10. Notice. Any notice, declaration, demand, request, or other communication which by any provision of this MOU is required or permitted to be given to or be served on any party hereto shall be given in writing and shall be deemed to have been received for all purposes when delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, to the address set forth for such party in the preamble of this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

The Developer

By: \_\_\_\_\_ WITNESS: \_\_\_\_\_

Its: Member/Owner

The City of Arkansas City, Kansas

By: \_\_\_\_\_ WITNESS: \_\_\_\_\_

Its: \_\_\_\_\_

Exhibit A – Property Location



Figure 1 - General Location.





# City Commission Agenda Item

**Meeting Date:** September 6, 2022  
**From:** Randy Frazer, City Manager  
**Item:** 2023 Final IPPS Rule

**Purpose:** Consider a motion authorizing the City of Arkansas City Commissioners to sign a letter concerning the 2023 Final IPPS Rule that could cause negative financial consequences to SCK Health. **(Voice Vote)**

**Background:**

Jeff Bowman, CEO, reached out with the request of SCK Health Board Chair and Vice-Chair, requesting the City Commissioners send a letter directly to our Congressman and Senators concerning the 2023 Final IPPS Rule and how it could cause a negative financial impact to SCK Health.

**Commission Options:**

1. Approve the motion
2. Disapprove the motion
3. Table the motion for further consideration

**Fiscal Impact:**

Amount: N/A

Fund: Department: Expense Code:

Included in budget       Grant       Bonds       Other (explain)

**Attachments:**

- Copies of proposed letter for our legislative contingent

**Approved for Agenda by:**

\_\_\_\_\_  
Randy Frazer, City Manager



## CITY OF ARKANSAS CITY, KANSAS

U.S. Senator Jerry Moran  
521 Dirksen Senate Office Building  
Washington, DC, 20510

Senator Moran,

The Medicare Low Volume Hospital (LVH) program provides enhanced payment to hospitals that do not qualify as critical access hospitals with low patient volumes and was created in 2003 under the Medicare Prescription Drug, Improvement and Modernization Act of 2003. Similarly, the Medicare Dependent, Small Rural Hospital (MDH) program was established in 1990 to provide additional financial support to small rural hospitals with a significant percentage of Medicare patients, recognizing the low reimbursement rates of the Medicare program.

The Bipartisan Budget Act of 2018 modified the Medicare LVH adjustment criteria to allow payment increases for hospitals that have less than 3,800 total discharges and are located more than fifteen road miles from another hospital (excluding critical access, psychiatric, rehabilitation, long-term care, cancer, research, and children's hospitals) for fiscal years 2019 – 2022. However, for fiscal year 2023 and subsequent fiscal years, the payment adjustment and qualifying criteria revert to the preexisting requirements – more than twenty-five road miles and less than two hundred total discharges. This will result in payment reductions of \$12.1 million annually for Kansas hospitals. South Central Kansas Regional Medical Center, a rural quasi-municipal entity established by the City pursuant to statute, in Arkansas City, Kansas received the **LVA which was a 25% add on payment to Medicare IP payments and was approximately \$537K for 2021**. The end of these funds moving forward will have a dramatic impact on viability to continue operations each year moving forward without some intervention.

The Act also extended the MDH program through 2022. If it is allowed to expire, it will result in losses of \$2.2 million annually for Kansas hospitals.

Respectfully,

\_\_\_\_\_  
Mayor Kanyon Gingher

\_\_\_\_\_  
Commissioner Charles Jennings

\_\_\_\_\_  
Commissioner Scott Rogers

\_\_\_\_\_  
Commissioner Diana Spielman

\_\_\_\_\_  
Commissioner Jay Warren

City Hall / 118 W. Central Avenue / Arkansas City, Kansas / 67005-0778  
(620) 441-4414 / Fax (620) 441-4426 / rfrazier@arkansascityks.gov  
www.arkansascityks.gov

*"The City of Arkansas City strives to provide a high quality of life for its citizens by furnishing a variety of efficient services in a professional, courteous manner."*



## CITY OF ARKANSAS CITY, KANSAS

U.S. Senator Roger Marshall  
 Russell Building, Suite 479A  
 Washington, DC, 20510-1607

Senator Marshall,

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 Commissioner Charles Jennings

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 Commissioner Scott Rogers

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CITY OF ARKANSAS CITY, KANSAS

Congressman Ron Estes  
2411 Rayburn HOB  
Washington, DC, 20510

Congressman Estes,

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